

ST. PAUL PLAZA OFFICE TOWER, LLC.
et al.,

Plaintiffs

v.

DEPARTMENT OF GENERAL
SERVICES, et al.,

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* No. 24-C-10-009242-OG

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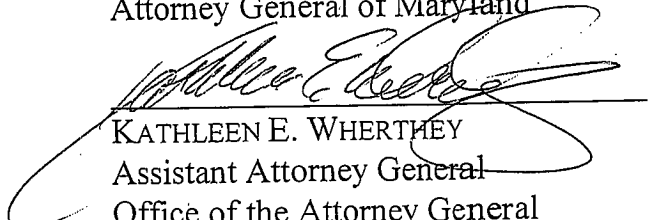
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MOTION FOR PROTECTIVE ORDER REGARDING CONFIDENTIAL, NON-PUBLIC RECORDS OF DEFENDANTS DEPARTMENT OF GENERAL SERVICES AND DEPARTMENT OF TRANSPORTATION OF MARYLAND

Defendants Department of General Services (“DGS”) and Department of Transportation (“DOT”) of Maryland, by their undersigned counsel, hereby move, pursuant to Rule 2-403, for a protective order to protect any and all confidential, non-public records of DGS and DOT produced in response to Plaintiffs’ discovery requests in this case. Attached hereto and incorporated herein are a memorandum of law that more fully sets forth the grounds for the requested relief, and a proposed order.

Respectfully submitted,

DOUGLAS F. GANSLER
Attorney General of Maryland

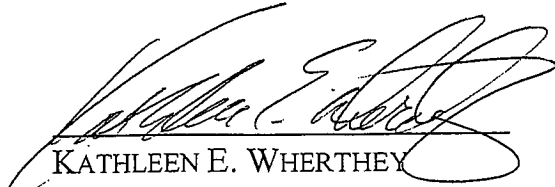

KATHLEEN E. WHERTHEY
Assistant Attorney General
Office of the Attorney General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202
(410) 576-6324

Attorneys for Defendants DGS and DOT

RULE 2-431 CERTIFICATE

I hereby certify that the following good faith but unsuccessful attempts took place to discuss resolution of this discovery dispute before the filing of this motion, but that the parties were unable to reach agreement on the disputed issue. On August 22, 2011, at or about 3:19 p.m., as counsel to DGS and DOT, I sent Plaintiffs' counsel an email message stating that DGS and DOT would like to have a confidentiality agreement in place before producing documents for inspection, and attaching a proposed agreement and stipulated order based on the federal form. On August 25, 2011, at or about 4:19 p.m., Plaintiffs' counsel responded with an email message rejecting DGS's and DOT's request. On August 26, 2011, at 4:56 p.m., I further explained, by email to Plaintiffs' counsel, the grounds of DGS and DOT for requesting the confidentiality agreement and order, and asked Plaintiffs to reconsider their refusal. On August 29, 2011, at 7:11 a.m., Plaintiffs' counsel proposed a telephone conference to discuss the issue. On August 30, 2011, at 4:58 p.m., I emailed Plaintiffs' counsel to request their availability for that call the next day. On August 31, 2011, at or about 3:44 p.m., Plaintiffs' counsel and I discussed, by telephone, our respective positions and the reasons for them, and whether any modification of the proposed confidentiality order would address Plaintiffs' concerns. However, the call concluded with the parties at an impasse, and an email subsequently received from Plaintiffs' counsel on August 31, 2011 at 5:20 p.m., to which I responded on September 1, 2011 at 4:33 p.m., further confirmed the parties' inability to reach agreement on the disputed issues, and the

need for judicial resolution.



KATHLEEN E. WHERTHEY
Assistant Attorney General

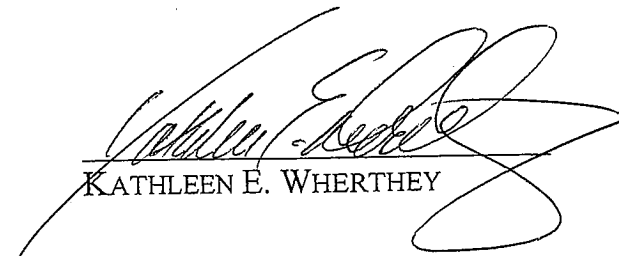
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2ND day of September, 2011, copies of this Motion for Protective Order Regarding Confidential, Non-public Records of Defendants Department of General Services and Department of Transportation of Maryland, together with the Memorandum of Law in support thereof and proposed Order, was served via first-class U.S. mail, postage prepaid to (and delivered a courtesy copy by electronic mail to):

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KATHLEEN E. WHERTHEY

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* No. 24-C-10-009242 OG
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* * * * *

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER REGARDING CONFIDENTIAL, NON-
PUBLIC RECORDS OF DEFENDANTS DEPARTMENT OF GENERAL
SERVICES AND DEPARTMENT OF TRANSPORTATION OF MARYLAND**

On the grounds further stated below, Department of General Services (“DGS”) and Department of Transportation (“DOT”) of Maryland, by their undersigned counsel, hereby move, pursuant to Rule 2-403, for a protective order to protect any and all confidential, non-public records of DGS and DOT produced in response to Plaintiffs’ discovery requests in this case

PROCEDURAL FACTS

Plaintiffs filed this lawsuit on or about December 17, 2010. Since filing this lawsuit, Plaintiffs have served numerous and very broad discovery requests, including requests for production of documents and electronically stored information pursuant to Rule 2-422, on DGS and DOT. Specifically, to date Plaintiffs have served 70 broad document requests on DGS, and 66 broad document requests on DOT. (See Exhibits A, B, C, and D attached.)

In an attempt to respond to Plaintiffs' numerous sweeping requests for documents and electronically stored files, to date DGS and DOT already have invested considerable resources in collecting tens of thousands of potentially responsive documents.

On August 22, 2011, a full week before DGS and DOT's first discovery responses were due under the agreed Scheduling Order, DGS and DOT requested Plaintiffs' counsel's agreement to a stipulated order protecting the confidentiality of the documents to be produced in this case both by DGS and DOT on the one hand, and by Plaintiffs on the other. (See Exhibit E.) After discussion both by email exchanges and by telephone, the parties have been unable to reach agreement on the form of, or need for, such an order.

ARGUMENT

A Confidentiality Order Is Required In Order To Ensure DGS's And DOT's Compliance With Their Statutory Obligations Under the Maryland Public Information Act.

Defendants DGS and DOT are State units subject to the provisions of the Maryland Public Information Act ("PIA"), Md. Code Ann., State Gov't ("SG") §§ 10-611 through 10-630. Under the PIA, a "public record" means "the original or any copy of any documentary material that . . . is made by a unit or instrumentality of the State government . . . or received by the unit or instrumentality in connection with the transaction of public business." SG § 10-611(g)(1)(I). The "custodian" of such a record is either "the official custodian" or "any other authorized individual who has physical custody and control of a public record." SG § 10-611(c).

The PIA, as a general rule, provides access to information on governmental affairs, but “[s]ignificant *mandatory* exemptions exist” to prohibit certain disclosures. *Montgomery County, Md. v. Shropshire*, 23 A.3d 205, ___ (Md. 2011) (emphasis added). In particular:

A custodian *shall* deny inspection of a public record or any part of a public record if:

- (1) by law, the public record is privileged or confidential; or
- (2) the inspection would be contrary to:
 - (i) a State statute;
 - (ii) a federal statute or a regulation that is issued under the statute and has the force of law;
 - (iii) the rules adopted by the Court of Appeals; or
 - (iv) an order of a court of record.

SG § 10-615 (emphasis added). In addition,

A custodian *shall* deny inspection of the part of a public record that contains any of the following information provided by or obtained from any person or governmental unit:

- (1) a trade secret;
- (2) confidential commercial information;
- (3) confidential financial information; or
- (4) confidential geological or geophysical information.

SG § 10-617(d) (emphasis added).

The PIA also authorizes numerous permissible grounds for denial of inspection of public records, at the discretion of the records custodian. For example, the records custodian may deny inspection of interagency and intra-agency documents (*see* SG § 10-618(b)) and documents concerning State institutional research projects (*see* SG § 10-618(d)). The types of interagency and intra-agency documents that are subject to PIA protection from inspection include pre-decisional and deliberative documents, and pre-decisional and deliberative

portions of otherwise public documents. *See Stromberg Metal Works, Inc. v. Univ. of Md.*, 382 Md. 151 (2004). Plaintiffs' discovery requests demand the production of many such documents. (*See Exhibits A, B, C, and D.*)

Plaintiffs' extraordinarily broad demands for State documents and electronically stored information necessarily invoke the protections of the PIA. This case concerns a large, multi-phase real estate development project that has involved considerable effort, and entailed the generation and receipt of thousands of documents, by two major State agencies (DGS and DOT), over a period of years. A great many of those documents are potentially subject to one or more of the mandatory and discretionary exceptions to the PIA discussed above, and therefore presumptively not subject to public disclosure. It is self-evident that proceeding without a confidentiality agreement or order in place would impose a further significant and unreasonable burden on DGS and DOT to assess whether all or part of each of tens of thousands of responsive documents is a public record subject to disclosure under the numerous and complex provisions of the PIA. It is equally self-evident that a review of that scope would impose significant delays on the discovery process and the ability of DGS and DOT to produce responsive documents while fulfilling their responsibilities to protect non-public records of State agencies from improper disclosure. That result is undesirable, as this litigation should be expedited as much as reasonably possible due to its public importance. Yet any attempt to rush this review in order to comply with discovery deadlines under the Rules presents a serious risk that confidential, privileged, and protected documents

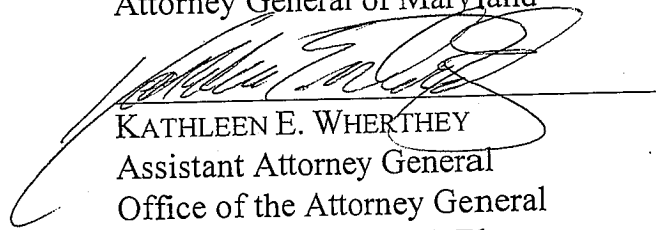
could inadvertently be disclosed, despite the exercise of all due and reasonable care on the part of DGS and DOT.

Consequently, well before the deadline for production, DGS and DOT proposed the reasonable compromise of a confidentiality agreement and order that would protect the confidentiality of the non-public records of Plaintiffs, DGS, and DOT alike. (*See Ex. E.*) The agreement was based closely on the federal form, with the exception that the form's requirement of pre-marking documents as "confidential" in order to obtain protection was omitted. The proposed confidentiality agreement would have facilitated prompt and smooth document production. The agreement would have allowed Plaintiffs, DGS, DOT, their counsel, their employees, court reporters, consultants, investigators, and expert witnesses, full access to the documents during the litigation. The agreement would only have protected against dissemination of non-public, confidential, and PIA-protected information beyond that directly interested group. The agreement even would have permitted disclosure beyond that group, by providing a mechanism for either party to challenge the confidentiality of the opposing party's documents, without the necessity of Court intervention. Use of the federal form, even with modifications, is rarely controversial, but Plaintiffs, at the outset, rejected it outright, and maintained their objection even after further discussions. Consequently, it has become necessary to request the Court's intervention, and to propose an order that adequately protects the interests of DGS and DOT in fulfilling their statutory obligations under the PIA.

Consequently, relief is requested, and appropriate, in the form of the proposed Order. Its terms will permit discovery and litigation to proceed, as expeditiously as possible, while also affording due protection to DGS and DOT and the non-public records that Plaintiffs' document production requests obligate DGS and DOT to produce. "The circuit court has broad discretion in matters of discovery." *Venter v. Bd. of Educ. of Howard County*, 185 Md. App. 648, 684 (citations and internal quotation marks omitted), *cert. denied*, 410 Md. 561 (2009). In particular, "[t]he power of the court to enter a protective order relating to discovery is broad," *Bond v. Slavin*, 157 Md. App. 340, 358 n. 29 (2004) (citation omitted), and the Court properly should exercise that power to enter the protective order that DGS and DOT request to ensure the confidentiality of all confidential, non-public records that DGS and DOT produce to any party in this case.

Respectfully submitted,

DOUGLAS F. GANSLER
Attorney General of Maryland



KATHLEEN E. WHERTHEY
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Baltimore, Maryland 21202
(410) 576-6324

Counsel for DGS and DOT

IN THE CIRCUIT COURT FOR BALTIMORE CITY

ST. PAUL PLAZA OFFICE
TOWER, LLC, *et al.*,

Plaintiffs,

vs.

DEPARTMENT OF GENERAL SERVICES
STATE OF MARYLAND, *et al.*,

Defendants.

Case No. 24-C-10-009242 OG

**PLAINTIFFS' FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS AND ESI TO DEFENDANT,
DEPARTMENT OF GENERAL SERVICES**

TO: Defendant, Department of General Services

FROM: Plaintiffs, St. Paul Plaza Office Tower, LLC, et al.

Pursuant to Rule 2-422, Plaintiffs, by and through counsel, hereby request that Defendant, Department of General Services, respond in writing to this request within the time specified by Rule 2-422 (c) and the Maryland Discovery Guidelines, and produce the following documents and electronically stored information, for inspection and copying at the Offices of the Attorney General, 200 St. Paul Place, Baltimore, MD, or such location as is mutually agreeable by the parties, on the 7th day of April, 2011, beginning at 9 o'clock a.m., until concluded.

Defendant's written responses shall state with respect to each item or category that (1) inspection and related activities will be permitted as requested, (2) the request is refused, or (3) the request for production in a particular form is refused. The grounds for each refusal shall be fully stated. If the refusal relates to part of an item or category, the part shall be specified. If the refusal relates to the form in which electronically stored information ("ESI") is requested to be

produced (or if no form was specified in the request) the responding party shall state the form in which it would produce the information.

Definitions

- A. The phrase “in defendant’s possession, custody, or control” includes the possession, custody or control of any third party or parties who, upon defendants’ request or demand, would, or is required to, surrender possession, custody or control to defendant.
- B. “Change of Control” has the same meaning as the same term in the Master Development Agreement, defined herein below.
- C. “Communication” means any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, conversations in person, electronic mail, and correspondence in any form.
- D. “Amended Complaint” refers to the claims filed by Plaintiffs, including any and all amendments to the claims.
- E. “Describe” when used in connection with a Communication, discussion, or negotiation requires that you summarize the key features of the discussion or negotiation, identify the participants, and provide the date, time, and location, if known.
- F. “Developer” has the same meaning as the same term defined in ¶22 of the Amended Complaint and page 4 of the Master Development Agreement, and refers to State Center, LLC.
- G. “Document” includes electronically stored information and any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in any medium from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form. (Standard General Definition (a).) Plaintiffs offer to meet and confer with Defendants to discuss any and all issues related to ESI, including preservation, form, and production.
- H. “Each,” “every,” “all,” and “any,” whether used separately or together, shall be interpreted to encompass all material, events, incidents, persons, or information responsive to the discovery request in which those terms appear.
- I. “First Amendment” is the First Amendment to the Master Development Agreement and has the same meaning as the same terms defined in ¶8 of the Amended Complaint, and referred to as First Amendment to Master Development Agreement by and between the State of Maryland, by and through the Department of General Services and State Center, LLC, dated September 1, 2010.
- J. “Garage” refers to the State Center Project Garage described in the First Amendment.
- K. “Identify,” “identity,” or “identification,” (1) when used in reference to a natural person, means that person’s full name, last known address, home and business telephone numbers, and present occupation or business affiliation; (2) when used in reference to a person other than a natural person, means that person’s full name, a description of the nature of the person (that is, whether it is a corporation, partnership, etc. under the definition of person below), and the person’s last known address, telephone number, and principal place of business; (3) when used in reference to any person after the person has been properly identified previously means the person’s name; and (4) when used in reference to a document, requires you to state the date, the author (or, if different, the

- signer or signers), the addressee, the identity of the present custodian of the document, and the type of document (e.g., letter, memorandum, telegram, or chart).
- L. "Master Development Agreement" and "MDA" have the same meaning as the same terms defined in ¶4 of the Amended Complaint, and referred to as the Master Development Agreement by and between the State of Maryland, by and through the Department of General Services and State Center, LLC, dated June 15, 2009.
 - M. "Person" includes an individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, the State, an agency or political subdivision of the State, a court, and any other governmental entity. (Standard General Definition (c).)
 - N. "Possession" includes possession, custody, or control. (Standard Motor Vehicle Tort Definition (c).)
 - O. "Project" means the State Center Project and has the same meaning as the same term defined in ¶2 of the Amended Complaint.
 - P. "Relating to," "concerning," or "regarding" mean constituting, comprising, consisting of, containing, setting forth, proposing, showing, disclosing, describing, discussing, explaining, summarizing, reflecting, dealing with, referring to, identifying, analyzing, or in any way addressing, involving, pertaining to, touching upon, or affecting the matter specified in the relevant document request.
 - Q. "Request for Qualifications" and "RFQ" have the same meaning as the same terms defined in ¶6 of the Amended Complaint, and referred to as the State Center Request for Qualifications, dated September 21, 2005.
 - R. "You," "your," and "defendant" refers to the Department of General Services and its respective agents, officers and employees.
 - S. Any term not specifically defined herein has the same meaning as any similar term used in the Amended Complaint. If no similar term is used in the Amended Complaint, the term has the same meaning as any similar term used in the MDA. If no similar term is used in the Amended Complaint or MDA, the terms have the same meaning as any similar term used in the First Amendment. If no similar term is used in the Amended Complaint, MDA, or First Amendment, the term has the same meaning as in customary language. Any term not specifically defined herein has the broadest meaning permissible under the Maryland Rules.
 - T. References to the singular include the plural and vice versa.
 - U. References to the past tense include the present, and references to the present tense include the past.
 - V. Disjunctive terms or phrases should be read to include the conjunctive and vice versa.

Instructions

1. Each request for a document, documents, or ESI to be produced, whether memoranda, reports, letters or other documents of any description, contemplates production of the document in its entirety, without abbreviation or expurgation, with ESI in native format, including metadata.

2. This request shall be deemed to be continuing so as to require further and supplemental production if defendants find, receive or generate additional documents or ESI responsive to this request. If at any time defendants receive information that makes a prior response incomplete, inaccurate, or misleading, defendants are required to make a supplemental production of documents and ESI. Such production is to be made as soon as reasonably possible after the information is obtained.

3. If you object to production of any portion or aspect of a document request, provide documents responsive to the remainder of the request. If you object to the form of production of ESI, please comply with Rule 2-422(c).

4. Each request should be responded to separately. However, a document which is responsive to more than one request may, if the relevant portion is indexed or marked, be produced only once and cross-referenced in each request to which it is responsive.

5. If you object to producing any document or ESI response to a request, in part or in its entirety, on grounds of privilege, including executive privilege, provide the information described in the Maryland Discovery Guidelines, including Guideline 5(c)(2)(ii).

6. Each request refers to all documents that are either known by defendant to exist or that can be located or discovered by reasonably diligent effort of defendant.

7. Except as noted herein, all documents and ESI responsive to a request shall be produced *in toto* notwithstanding the fact that portions thereof may contain information not requested.

8. Where requested ESI is archived in computer databases or a computer-readable medium (e.g., computer disk, floppy diskette, magnetic tape, CD-ROM, etc.), whether instead of or in addition to being maintained on paper, please provide a copy of the document in a computer-readable form (e.g. diskette, magnetic tape, CD-ROM) and, for any document so produced, please provide documentation sufficient to access the information contained in such production, including, but not limited to, file layouts, codebooks, and any other documentation describing the file fields or data elements and their relationships.

9. Each request refers and relates to the Project and the events, transactions, and occurrences described in, and the subject matter of, the Amended Complaint. Unless otherwise noted within a specific request, the relevant time period for the purposes of these requests is 2004 through the present.

Specific Document Requests

1. All documents referred to in responding to the Plaintiffs' Interrogatories.
2. All documents reviewed or prepared by all persons whom you expect to call as an expert witness at trial in this case, including but not limited to *curriculum vitae*, email, letters,

memoranda, notes, reports, draft reports, retainer agreements, fee agreements, invoices, payments, publications, diagrams, photographs, or other documents relating to or regarding the Project.

3. All documents relating to, regarding, or identified in your answer to Standard General Interrogatory No. 3, which asks: "If you intend to rely upon any documents, electronically stored information, or tangible things to support a position that you have taken or intend to take in the action, . . . provide a brief description, by category and location, of all such documents, electronically stored information, and tangible things, and identify all persons having possession, custody, or control of them." (Standard General Interrogatory No. 3 Modified).

4. Regulations of DGS, including internal operating procedures, per State Finance and Procurement Article §12-109.

5. The MDA and any and all drafts.

6. The First Amendment and any and all drafts.

7. Each exhibit and/or appendix to the RFQ, MDA, First Amendment, and any and all drafts.

8. All documents relating to or regarding any exclusive negotiating privilege in connection with the Project.

9. All documents relating to or regarding the Preliminary Development Plan and/or the Approved Concept Plan for the Project.

10. All documents relating to or regarding any anticipated economic terms for any occupancy lease, such as, but not limited to, those described in MDA ¶2.5.1.2.

11. All documents relating to or regarding the Civic Amenities Plan described in MDA ¶2.12.

12. All documents relating to or regarding any competitive procurement process for the Project, or any phase or portion thereof.

13. All documents relating to or regarding the selection of a master developer, developer, general contractor, contractor, builder, lessor, lessee, or construction manager for any and all phases of the Project.

14. All documents relating to or regarding alteration of ownership structure (per MDA Recital R-11 (p. 6) to replace of Struever Bros., Eccles & Rouse, Inc., as well as Doracon Development, LLC, Inc., Mr. Ronald Lipscomb, and to substitute PS Partners, LLC, Kevin Johnson, Joseph Haskins, Eddie Brown, TAC Companies, Midtown Convergence, LLC and/or Neighborhood Development Company.

15. All documents relating to or regarding any Phase I lease or the terms of any Phase I lease, including all Phase I leases, with exhibits, and any and all drafts.

16. All documents relating to, regarding or that include any analysis of the economic terms of any Phase I lease.

17. All documents relating to or regarding any communication with the Downtown Partnership in connection with the Project and/or its impact on the City of Baltimore.

18. All documents and studies relating to or regarding the "State Center Project Review" dated December 8, 2010, prepared by DGS and MDOT, including, but not limited to, all drafts of that "Review."

19. All lease agreements or contracts to which DGS is a party or that DGS negotiated on behalf of any State agency, signed during the past five years that do not have a "termination for convenience" clause.

20. All appraisals relating to or regarding the Project, including those referred to during the June 3, 2009, BPW meeting.

21. The letter placed in the record by Secretary McDonald on June 3, 2009, during the BPW meeting.

22. All paper documents relating to or regarding slide decks or slide presentations made to BPW, the General Assembly or its committee(s), and/or MEDCO regarding the Project.

23. All documents relating to or regarding the efforts made and described by Assistant Secretary Gaines during the July 28, 2010, BPW meeting that "they are looking for private tenants now [for the Project]."

24. All communications with, relating to, or regarding Jones Lang LaSalle, a national real estate consulting firm in connection with the Project, as discussed by Mr. Gaines at the July 28, 2010, BPW meeting.

25. All communications with, relating to, or regarding Bay Area Economics, a real estate consulting firm in connection with the Project, as discussed at the July 28, 2010, BPW meeting.

26. All communications with, relating to or regarding CB Richard Ellis services to evaluate "our overall portfolio" as discussed at the July 28, 2010, BPW meeting.

27. All documents relating to or regarding the meeting between Secretary Collins, Mr. Gaines, and the Attorney General, as described during the July 28, 2010, BPW meeting, regarding relocating the Office of the Attorney General.

28. All documents relating to or regarding the "goals for moving agencies into State Center," as discussed at the July 28, 2010, BPW meeting.

29. All documents that refer or relate to the impact that the State Center Project will have on tax revenues, including estimating work sheets, for Baltimore City and/or State of Maryland.

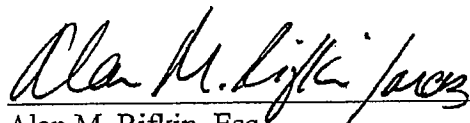
30. All communications and/or all documents relating to any and all Tax Increment Financing, MEDCO bonds, Payments in Lieu of Taxes, tax incentive, public funding, or use of federal funding for the State Center Project.

31. All communications to, from or by the Department of Legislative Services that refer or relate to the State Center Project.

32. All documents that refer or relate to any bond issued or to be issued as part of financing for any and all parts of the Garage and/or State Center Project.

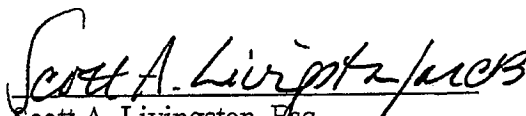
Respectfully submitted,

RIFKIN, LIVINGSTON, LEVITAN & SILVER, LLC


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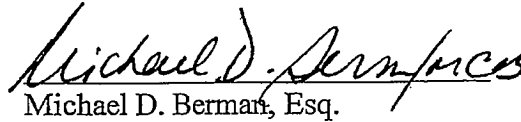
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(301) 951-0172 facsimile

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of March, 2011, a copy of the foregoing was served by electronic mail and hand-delivery on the following:

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Baltimore, Maryland 21202

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Office of the Attorney General
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and Department of Transportation of the State of Maryland*

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*Attorneys for Defendants State Center, LLC, PSP First
Phase Parcel G Office LLC, and PSP First Phase Parcel I
Office LLC*



M. Celeste Bruce

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Plaintiffs,

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TO: Defendant, Maryland Department of Transportation

FROM: Plaintiffs, St. Paul Plaza Office Tower, LLC, et al.

Pursuant to Rule 2-422, Plaintiffs, by and through counsel, hereby request that Defendant, Maryland Department of Transportation, respond in writing to this request within the time specified by Rule 2-422 (c) and the Maryland Discovery Guidelines, and produce the following documents and electronically stored information, for inspection and copying at the Offices of the Attorney General, 200 St. Paul Place, Baltimore, MD, or such location as is mutually agreeable by the parties, on the 4th day of April, 2011, beginning at 9 o'clock a.m., until concluded.

Defendant's written responses shall state with respect to each item or category that (1) inspection and related activities will be permitted as requested, (2) the request is refused, or (3) the request for production in a particular form is refused. The grounds for each refusal shall be fully stated. If the refusal relates to part of an item or category, the part shall be specified. If the refusal relates to the form in which electronically stored information ("ESI") is requested to be

produced (or if no form was specified in the request) the responding party shall state the form in which it would produce the information.

Definitions

- A. The phrase “in defendants’ possession, custody, or control” includes the possession, custody or control of any third party or parties who, upon defendants’ request or demand, would, or is required to, surrender possession, custody or control to defendants.
- B. “Change of Control” has the same meaning as the same term in the Master Development Agreement, defined herein below.
- C. “Communication” means any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, conversations in person, electronic mail, and correspondence in any form.
- D. “Amended Complaint” refers to the claims filed by Plaintiffs, including any and all amendments to the claims.
- E. “Describe” when used in connection with a Communication, discussion, or negotiation requires that you summarize the key features of the discussion or negotiation, identify the participants, and provide the date, time, and location, if known.
- F. “Developer” has the same meaning as the same term defined in ¶22 of the Amended Complaint and page 4 of the Master Development Agreement, and refers to State Center, LLC.
- G. “Document” includes electronically stored information and any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in any medium from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form. (Standard General Definition (a).) Plaintiffs offer to meet and confer with Defendants to discuss any and all issues related to ESI, including preservation, form, and production.
- H. “Each,” “every,” “all,” and “any,” whether used separately or together, shall be interpreted to encompass all material, events, incidents, persons, or information responsive to the discovery request in which those terms appear.
- I. “First Amendment” is the First Amendment to the Master Development Agreement and has the same meaning as the same terms defined in ¶8 of the Amended Complaint, and referred to as First Amendment to Master Development Agreement by and between the State of Maryland, by and through the Department of General Services and State Center, LLC, dated September 1, 2010.
- J. “Garage” refers to the State Center Project Garage described in the First Amendment.
- K. “Identify,” “identity,” or “identification,” (1) when used in reference to a natural person, means that person’s full name, last known address, home and business telephone numbers, and present occupation or business affiliation; (2) when used in reference to a person other than a natural person, means that person’s full name, a description of the nature of the person (that is, whether it is a corporation, partnership, etc. under the definition of person below), and the person’s last known address, telephone number, and principal place of business; (3) when used in reference to any person after the person has been properly identified previously means the person’s name; and (4) when used in reference to a document, requires you to state the date, the author (or, if different, the

- signer or signers), the addressee, the identity of the present custodian of the document, and the type of document (e.g., letter, memorandum, telegram, or chart).
- L. "Master Development Agreement" and "MDA" have the same meaning as the same terms defined in ¶4 of the Amended Complaint, and referred to as the Master Development Agreement by and between the State of Maryland, by and through the Department of General Services and State Center, LLC, dated June 15, 2009.
 - M. "Person" includes an individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, the State, an agency or political subdivision of the State, a court, and any other governmental entity. (Standard General Definition (c).)
 - N. "Possession" includes possession, custody, or control. (Standard Motor Vehicle Tort Definition (c).)
 - O. "Project" means the State Center Project and has the same meaning as the same term defined in ¶2 of the Amended Complaint.
 - P. "Relating to," "concerning," or "regarding" mean constituting, comprising, consisting of, containing, setting forth, proposing, showing, disclosing, describing, discussing, explaining, summarizing, reflecting, dealing with, referring to, identifying, analyzing, or in any way addressing, involving, pertaining to, touching upon, or affecting the matter specified in the relevant document request.
 - Q. "Request for Qualifications" and "RFQ" have the same meaning as the same terms defined in ¶6 of the Amended Complaint, and referred to as the State Center Request for Qualifications, dated September 21, 2005.
 - R. "You," "your," and "defendant" refers to the Maryland Department of Transportation, and its respective agents, officers and employees.
 - S. Any term not specifically defined herein has the same meaning as any similar term used in the Amended Complaint. If no similar term is used in the Amended Complaint, the term has the same meaning as any similar term used in the MDA. If no similar term is used in the Amended Complaint or MDA, the terms have the same meaning as any similar term used in the First Amendment. If no similar term is used in the Amended Complaint, MDA, or First Amendment, the term has the same meaning as in customary language. Any term not specifically defined herein has the broadest meaning permissible under the Maryland Rules.
 - T. References to the singular include the plural and vice versa.
 - U. References to the past tense include the present, and references to the present tense include the past.
 - V. Disjunctive terms or phrases should be read to include the conjunctive and vice versa.

Instructions

1. Each request for a document, documents, or ESI to be produced, whether memoranda, reports, letters or other documents of any description, contemplates production of the document in its entirety, without abbreviation or expurgation, with ESI in native format, including metadata.

2. This request shall be deemed to be continuing so as to require further and supplemental production if defendant finds, receives or generates additional documents or ESI responsive to this request. If at any time defendant receives information that makes a prior response incomplete, inaccurate, or misleading, defendant is required to make a supplemental production of documents and ESI. Such production is to be made as soon as reasonably possible after the information is obtained.

3. If you object to production of any portion or aspect of a document request, provide documents responsive to the remainder of the request. If you object to the form of production of ESI, please comply with Rule 2-422(c).

4. Each request should be responded to separately. However, a document which is responsive to more than one request may, if the relevant portion is indexed or marked, be produced only once and cross-referenced in each request to which it is responsive.

5. If you object to producing any document or ESI response to a request, in part or in its entirety, on grounds of privilege, including executive privilege, provide the information described in the Maryland Discovery Guidelines, including Guideline 5(c)(2)(ii).

6. Each request refers to all documents that are either known by defendant to exist or that can be located or discovered by reasonably diligent effort of defendant.

7. Except as noted herein, all documents and ESI responsive to a request shall be produced *in toto* notwithstanding the fact that portions thereof may contain information not requested.

8. Where requested ESI is archived in computer databases or a computer-readable medium (e.g., computer disk, floppy diskette, magnetic tape, CD-ROM, etc.), whether instead of or in addition to being maintained on paper, please provide a copy of the document in a computer-readable form (e.g. diskette, magnetic tape, CD-ROM) and, for any document so produced, please provide documentation sufficient to access the information contained in such production, including, but not limited to, file layouts, codebooks, and any other documentation describing the file fields or data elements and their relationships.

9. Each request refers and relates to the Project and the events, transactions, and occurrences described in, and the subject matter of the Amended Complaint. Unless otherwise noted within a specific request, the relevant time period for the purposes of these requests is 2004 through the present.

Specific Document Requests

1. All documents referred to in responding to the Plaintiffs' Interrogatories.
2. All documents reviewed or prepared by all persons whom you expect to call as an expert witness at trial in this case, including but not limited to *curriculum vitae*, email, letters,

memoranda, notes, reports, draft reports, retainer agreements, fee agreements, invoices, payments, publications, diagrams, photographs, or other documents relating to or regarding the Project.

3. All documents relating to, regarding, or identified in your answer to Standard General Interrogatory No. 3, which asks: "If you intend to rely upon any documents, electronically stored information, or tangible things to support a position that you have taken or intend to take in the action, . . . provide a brief description, by category and location, of all such documents, electronically stored information, and tangible things, and identify all persons having possession, custody, or control of them." (Standard General Interrogatory No. 3 Modified).

4. Regulations of MDOT, including internal operating procedures, per SFP §12-109.

5. All documents relating to or regarding any competitive procurement process for the Project, or any phase or portion thereof.

6. All documents relating to or regarding the selection of a master developer, developer, general contractor, contractor, builder, lessor, lessee, or construction manager for any and all phases of the Project.

7. All documents relating to or regarding alteration of ownership structure (per MDA Recital R-11 (p. 6) to replace of Struever Bros., Eccles & Rouse, Inc., as well as Doracon Development, LLC, Inc., Mr. Ronald Lipscomb, and to substitute PS Partners, LLC, Kevin Johnson, Joseph Haskins, Eddie Brown, TAC Companies, Midtown Convergence, LLC and/or Neighborhood Development Company.

8. All documents relating to or regarding any communication with the Downtown Partnership in connection with the Project and/or its impact on the City of Baltimore.

9. All documents and studies relating to or regarding the "State Center Project Review" dated December 8, 2010, prepared by DGS and MDOT, including, but not limited to, all drafts of that "Review."

10. All documents that refer or relate to the designation of the Project as a Transit Oriented Development by any State or local government official.

11. All lease agreements or contracts to which MDOT is a party, signed during the past five years, that do not have a "termination for convenience" clause, per SFP § 13-218(a)(2)

12. All documents and/or communications relating to or regarding Randall Gross, and/or his firm, African Development Economic Consultants ("ADEC"), and/or any firm with which he is associated, in connection with the Project, including all documents relating to or regarding any disagreement with any statement or assertion made by Randall Gross in connection with the Project.

13. The letter placed in the record by Secretary McDonald on June 3, 2009, during the BPW meeting.

14. All paper documents relating to or regarding slide decks or slide presentations made to BPW, the General Assembly or its committee(s), and/or MEDCO regarding the Project.

15. All documents relating to or regarding the meeting between Secretary Collins, Mr. Gaines, and the Attorney General, as described during the July 28, 2010, BPW meeting, regarding relocating the Office of the Attorney General.

16. All documents relating to or regarding the "goals for moving agencies into State Center," as discussed at the July 28, 2010, BPW meeting.

17. The traffic management association plan discussed by Mr. Patusky at the July 28, 2010, BPW meeting.

18. All documents that refer or relate to the impact that the State Center Project will have on tax revenues, including estimating work sheets, for Baltimore City and/or State of Maryland.

19. All communications and/or all documents relating to any and all Tax Increment Financing, MEDCO bonds, Payments in Lieu of Taxes, tax incentive, public funding, or use of federal funding for the Project.

20. All communications to, from or by the Department of Legislative Services that refer or relate to the Project.

21. All documents that refer or relate to any bond issued or to be issued as part of financing for any and all parts of the Garage and/or the Project.

22. All documents that refer or relate to the award of any contract(s) by Developer and approved by State Agency Defendants for:

- A. Architectural/engineering services contracts for the Garage, among other things, at State Center, per First Amendment, Recital R-2 (page 1)
- B. Construction Manager, per statements to BPW on July 28, 2010 (pp. 69-71).

23. All documents that refer or relate to any and all Inducement Resolution(s), vote(s), on such a resolution or resolutions, and/or presentation of any such resolution(s) at any and all Board of Directors or Commission meeting(s) in connection with any and all parts of the Garage and/or the State Center Project.

24. All documents that refer or relate to any obligation or commitment by the State or its instrumentalities to provide consideration in support of the issuance of bonds for the Garage and/or the Project.

25. All resolutions and drafts thereof authorizing the issuance of bonds under Econ. Dev. Art. §10-118 for the Garage and/or the Project.

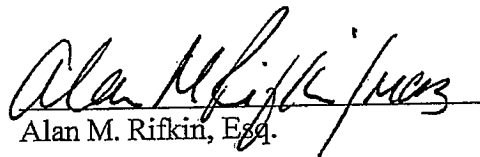
26. All trust agreements and drafts thereof, as that term is used in Econ. Dev. Art. §10-121 that refer or relate to the Garage and/or the Project.

27. All "Preliminary Official Statements," including drafts that refer or relate to any and all parts of the Garage and/or the Project.

28. All retainer agreements and studies prepared, including drafts, by any "accountants, engineers, lawyers, financial advisors, or other consultants as necessary," pursuant to Econ. Dev. Art. §10-110, in connection with the Garage and/or the Project, and statements showing amount(s) paid to obtain those services.

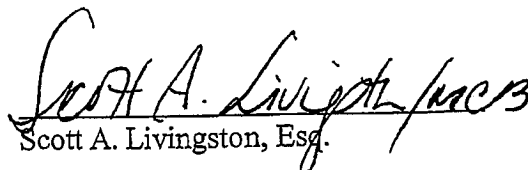
Respectfully submitted,

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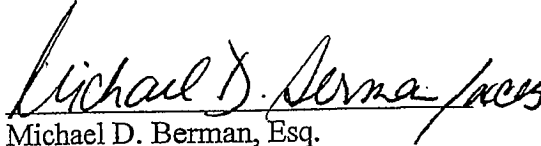
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of March, 2011, a copy of the foregoing was served by electronic mail and hand-delivery on the following:

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Assistant Attorney General
Office of the Attorney General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202

Kathleen E. Wherthey
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Attorneys for Defendants State Center, LLC



M. Celeste Bruce

IN THE CIRCUIT COURT FOR BALTIMORE CITY

ST. PAUL PLAZA OFFICE
TOWER, LLC, *et al.*,

Plaintiffs,

vs.

DEPARTMENT OF GENERAL SERVICES
STATE OF MARYLAND, *et al.*,

Defendants.

Case No. 24-C-10-009242 OG

**PLAINTIFFS' SECOND REQUEST FOR PRODUCTION
OF DOCUMENTS TO DEFENDANT,
DEPARTMENT OF GENERAL SERVICES**

TO: Defendant, Department of General Services

FROM: Plaintiffs, St. Paul Plaza Office Tower, LLC, et al.

Pursuant to Rule 2-422, Plaintiffs, by and through counsel, hereby request that Defendant, Department of General Services, respond in writing to this request within the time specified by Rule 2-422 (c) and the Maryland Discovery Guidelines, and produce the following documents and electronically stored information, for inspection and copying at the Offices of the Attorney General, 200 St. Paul Place, Baltimore, MD, or such location as is mutually agreeable by the parties, on the 9th day of September, 2011, beginning at 9 o'clock a.m., until concluded.

Defendant's written responses shall state with respect to each item or category that (1) inspection and related activities will be permitted as requested, (2) the request is refused, or (3) the request for production in a particular form is refused. The grounds for each refusal shall be fully stated. If the refusal relates to part of an item or category, the part shall be specified. If the refusal relates to the form in which electronically stored information ("ESI") is requested to be

produced (or if no form was specified in the request) the responding party shall state the form in which it would produce the information.

Definitions

- A. The phrase “in defendant’s possession, custody, or control” includes the possession, custody or control of any third party or parties who, upon defendants’ request or demand, would, or is required to, surrender possession, custody or control to defendant.
- B. “Change of Control” has the same meaning as the same term in the Master Development Agreement, defined herein below.
- C. “Communication” means any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, conversations in person, electronic mail, and correspondence in any form.
- D. “Amended Complaint” refers to the claims filed by Plaintiffs, including any and all amendments to the claims.
- E. “Describe” when used in connection with a Communication, discussion, or negotiation requires that you summarize the key features of the discussion or negotiation, identify the participants, and provide the date, time, and location, if known.
- F. “Developer” has the same meaning as the same term defined in ¶22 of the Amended Complaint and page 4 of the Master Development Agreement, and refers to State Center, LLC.
- G. “Document” includes electronically stored information and any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in any medium from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form. (Standard General Definition (a).) Document includes all drafts. Plaintiffs offer to meet and confer with Defendants to discuss any and all issues related to ESI, including preservation, form, and production.
- H. “Each,” “every,” “all,” and “any,” whether used separately or together, shall be interpreted to encompass all material, events, incidents, persons, or information responsive to the discovery request in which those terms appear.
- I. “First Amendment” is the First Amendment to the Master Development Agreement and has the same meaning as the same terms defined in ¶8 of the Amended Complaint, and referred to as First Amendment to Master Development Agreement by and between the State of Maryland, by and through the Department of General Services and State Center, LLC, dated September 1, 2010.
- J. “Garage” refers to the State Center Project Garage described in the First Amendment.
- K. “Identify,” “identity,” or “identification,” (1) when used in reference to a natural person, means that person’s full name, last known address, home and business telephone numbers, and present occupation or business affiliation; (2) when used in reference to a person other than a natural person, means that person’s full

name, a description of the nature of the person (that is, whether it is a corporation, partnership, etc. under the definition of person below), and the person's last known address, telephone number, and principal place of business; (3) when used in reference to any person after the person has been properly identified previously means the person's name; and (4) when used in reference to a document, requires you to state the date, the author (or, if different, the signer or signers), the addressee, the identity of the present custodian of the document, and the type of document (e.g., letter, memorandum, telegram, or chart).

- L. "Master Development Agreement" and "MDA" have the same meaning as the same terms defined in ¶4 of the Amended Complaint, and referred to as the Master Development Agreement by and between the State of Maryland, by and through the Department of General Services and State Center, LLC, dated June 15, 2009.
- M. "Person" includes an individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, the State, an agency or political subdivision of the State, a court, and any other governmental entity. (Standard General Definition (c).)
- N. "Possession" includes possession, custody, or control. (Standard Motor Vehicle Tort Definition (c).)
- O. "Project" means the State Center Project and has the same meaning as the same term defined in ¶2 of the Amended Complaint.
- P. "Relating to," "concerning," or "regarding" mean constituting, comprising, consisting of, containing, setting forth, proposing, showing, disclosing, describing, discussing, explaining, summarizing, reflecting, dealing with, referring to, identifying, analyzing, or in any way addressing, involving, pertaining to, touching upon, or affecting the matter specified in the relevant document request.
- Q. "Request for Qualifications" and "RFQ" have the same meaning as the same terms defined in ¶6 of the Amended Complaint, and referred to as the State Center Request for Qualifications, dated September 21, 2005.
- R. "Transit-oriented Development" shall have the same meaning set forth in §7-101(m) of the Transportation Article.
- S. "You," "your," and "defendant" refers to the Department of General Services and its respective agents, officers and employees.
- T. Any term not specifically defined herein has the same meaning as any similar term used in the Amended Complaint. If no similar term is used in the Amended Complaint, the term has the same meaning as any similar term used in the MDA. If no similar term is used in the Amended Complaint or MDA, the terms have the same meaning as any similar term used in the First Amendment. If no similar term is used in the Amended Complaint, MDA, or First Amendment, the term has the same meaning as in customary language. Any term not specifically defined herein has the broadest meaning permissible under the Maryland Rules.
- U. References to the singular include the plural and vice versa.
- V. References to the past tense include the present, and references to the present tense include the past.

- W. Disjunctive terms or phrases should be read to include the conjunctive and vice versa.

Instructions

1. Each request for a document, documents, or ESI to be produced, whether memoranda, reports, letters or other documents of any description, contemplates production of the document in its entirety, without abbreviation or expurgation, with ESI in native format, including metadata.
2. This request shall be deemed to be continuing so as to require further and supplemental production if defendants find, receive or generate additional documents or ESI responsive to this request. If at any time defendants receive information that makes a prior response incomplete, inaccurate, or misleading, defendants are required to make a supplemental production of documents and ESI. Such production is to be made as soon as reasonably possible after the information is obtained.
3. If you object to production of any portion or aspect of a document request, provide documents responsive to the remainder of the request. If you object to the form of production of ESI, please comply with Rule 2-422(c).
4. Each request should be responded to separately. However, a document which is responsive to more than one request may, if the relevant portion is indexed or marked, be produced only once and cross-referenced in each request to which it is responsive.
5. If you object to producing any document or ESI response to a request, in part or in its entirety, on grounds of privilege, including executive privilege, provide the information described in the Maryland Discovery Guidelines, including Guideline 5(c)(2)(ii).
6. Each request refers to all documents that are either known by defendant to exist or that can be located or discovered by reasonably diligent effort of defendant.
7. Except as noted herein, all documents and ESI responsive to a request shall be produced *in toto* notwithstanding the fact that portions thereof may contain information not requested.
8. Where requested ESI is archived in computer databases or a computer-readable medium (e.g., computer disk, floppy diskette, magnetic tape, CD-ROM, etc.), whether instead of or in addition to being maintained on paper, please provide a copy of the document in a computer-readable form (e.g. diskette, magnetic tape, CD-ROM) and, for any document so produced, please provide documentation sufficient to access the information contained in such production, including, but not limited to, file layouts, codebooks, and any other documentation describing the file fields or data elements and their relationships.
9. Each request refers and relates to the Project and the events, transactions, and occurrences described in, and the subject matter of, the Amended Complaint. Unless otherwise

noted within a specific request, the relevant time period for the purposes of these requests is 2004 through the present.

Specific Document Requests

1. All Documents, including meeting minutes, drafts, notes, reports, sign-in sheets, and business cards, that refer or relate to the meetings with consultants held at the Developer's offices in Tide Point regarding the State Center Project or any Phase of the Project.
2. All Documents, including meeting minutes, drafts, notes, reports, sign-in sheets, and business cards that refer or relate to the meetings with consultants regarding the State Center Project or any Phase of the Project.
3. All Documents including but not limited to all drafts, worksheets, notes, internal memoranda and written impressions of all pro formas, financial assessments, and risk assessments for the State Center Project or any Phase of the Project.
4. All Documents or communications created, generated, or received as a result of any meeting with any consultant for the State Center Project or any Phase of the Project.
5. All Documents provided to or directed to be provided to the Department of Legislative Services or any of its analysts related to or regarding the Project.
6. All Documents received from the Department of Legislative Services or any of its analysts related to or regarding the Project.
7. All calendars, paper or electronic, of Michael Gaines.
8. All telephonic records including mobile phones (and text messaging) of Michael Gaines related to the State Center Project for the period from January 1, 2008, through December 16, 2010.
9. All Documents or communications with PSP First Phase Parcel G Office, LLC related to or regarding the Project.

10. All Documents or communications with PSP First Phase Parcel I Office, LLC related to or regarding the Project.

11. All communications with, Documents provided to or received from the Board of Public Works, any member of the Board of Public Works or their staff member, regarding the State Center Project or any Phase of the Project.

12. All Documents that refer or relate to payments, reimbursements, in-kind contributions or other remuneration made to the Developer or any of its members, affiliates, subsidiaries, agents, employees, successors-in-interest or predecessors-in-interest, or to a third party on behalf of the Developer in connection with the State Center Project.

13. All Documents evidencing payment, reimbursements, in-kind contributions or other remuneration made to the Developer or any of its members, from the State or any agency of the State, the Maryland Stadium Authority, the City of Baltimore, or MEDCO in connection with the State Center Project.

14. All Documents provided to or received from each and every consultant hired for the State Center Project. The consultants are to include, but not be limited to, Randall Gross; Jones Lang LaSalle, Inc. and its predecessor-in-interest Staubach Realty; Bay Area Economics a/k/a Bae Urban Economics; PB PlaceMaking (Parsons Brinckerhoff); and Partners for Economic Solutions, LLC.

15. All Documents relating to the determination to use the RFQ rather than a request for proposals or other method of source selection, as the method of source selection for master development services for the Project or any Phase of the Project.

16. All Documents relating to the Request for Expression of Interest ("RFEI") for the Project issued on or about March 15, 2005, "for redevelopment of two State Center parking lots

into a mixed-use, transit oriented development,” per MDOT letter dated November 20, 2006 to William M. Huddles.

17. All Documents submitted to MDOT/DGS in response to the RFEI.
18. All Documents related to MDOT/DGS’ evaluation or consideration of expressions of interest.
19. All Documents relating to the Pre-Submittal Conference referred to at RFQ (page 9) § 6 “The schedule of activities for this solicitation.”
20. All Documents relating to pre-submittal questions or inquiries to MDOT/DGS referred to at RFQ, (page 9) § 6, and responses thereto.
21. All documents relating to any *draft* State Center Transit Oriented Development Strategy identified in the RFQ (page 11) § 6, paragraph B “TOD Strategy Implementation.”
22. All documents related to the final State Center Transit Oriented Development.
23. All written policies and procedures for “exempted” MDOT and DGS procurements, per SFP §12-401, from 2005 through the present, related to the Project, including:
 - A. policies and procedures for transit oriented developments and
 - B. policies and procedures for products and services required by the Board of Public Works per SFP §11-202(3) (iii) and (iv).
24. All Documents maintained in the “Procurement File” per SFP §13-202.
25. All Documents evidencing any determinations, defined per COMAR 21.02.02.01B (34), and Documents showing any such determinations made by the procurement officer or other MDOT and/or DGS official, that specifications could not be prepared that would allow an award based on the lowest bid price, the lowest evaluated bid price, or the bid most favorable to the State, per SFP§ 13-104(2).

26. All Documents evidencing any determinations, per SFP §13-104(a)(3) made by the head of MDOT and/or DGS, that (i) the need to use a method other than competitive sealed bids is sufficiently compelling to override the general public policy that favors awarding procurement contracts on the basis of competitive sealed bids; and (ii) the use of competitive sealed bidding to obtain master developer services for the Project was not practicable or not advantageous to the State.

27. All Documents related to the public notice of solicitation per SFP, Title 13.

28. All Documents related to the public notice of award, per SFP §13-104(g), of the Master Development Agreement and/or the First Amendment to Developer.

29. All Documents related to Defendants' use of SFP §13-301 as the method of source selection for architectural and engineering services for the Garage.

30. All Documents related to Defendants' use of competitive sealed bidding, per SFP §13-103, as the method of source selection for construction of the Garage.

31. All Documents related to Defendants' use of any method of source selection per SFP Title 13, to obtain construction-related services, including inspection services, for the Garage or the Project.

32. All Documents dealing with recommendations for obtaining professional services for the Project), per SFP § 13-304, by the (i) General Professional Services Selection Board, and/or (ii) the Transportation Professional Services Selection Board to the Board of Public Works for award of a contract for architectural and engineering services costing over \$200,000 made on competitive basis and including an evaluation of the technical proposals and qualifications of at least 2 persons.

33. All Documents related to communications about the Project between MDOT/DGS and representatives of “adjacent property owners, neighborhoods and stakeholders” per § 4, subparagraph H of the RFQ concerning selection of respondents for (a) shortlist, and/or (b) award of a contract.

34. All Documents related to selecting qualified respondents shortlisted for interviews, per RFQ (page 17) §8 “Shortlist Consideration.”

35. All “master development agreements” – for projects, other than State Center, that purport to be transit-oriented developments --to which the Department of General Services and/or the Maryland Department of Transportation were parties between Jan. 1, 2005 and the present, including:

- A. solicitations, per SFP, Title 13 and/or (b) other documents used to solicit offers and expressions of interest
- B. all contracts, including leases with a private party and state agency (including MDOT/DGS) as lessee.

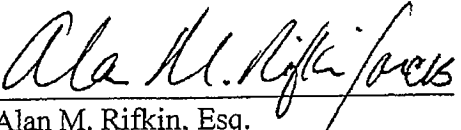
36. All Documents submitted pursuant to Recital R-7 of the First Amendment to the Master Development Agreement for Transit Oriented Development State Center.

37. All Documents provided to or received from Mithun, Inc. with regard to the Project or any Phase of the Project.

38. All Documents provided to the State Center Executive Committee, the State Center Working Group, and/or the State Center Advisory Committee with regard to the Project or any Phase of the Project.

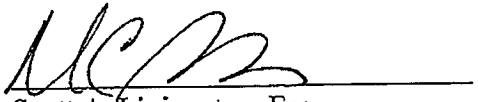
Respectfully submitted,

RIFKIN, LIVINGSTON, LEVITAN & SILVER, LLC


Alan M. Rifkin, Esq.

225 Duke of Gloucester Street
Annapolis, Maryland 21401

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CERTIFICATE OF SERVICE

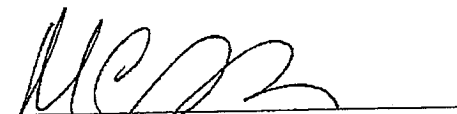
I HEREBY CERTIFY that on this 5th day of August, 2011, a copy of the foregoing was served by electronic mail and first class mail on the following:

Kathleen E. Wherthey
Campbell Killefer
Assistant Attorney General
Office of the Attorney General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202

*Attorneys for Defendants Department of General Services
and Department of Transportation of the State of Maryland*

Kenneth L. Thompson
Venable, LLP
750 East Pratt Street
Baltimore, Maryland 21202

*Attorneys for Defendants State Center, LLC, PSP First
Phase Parcel G Office LLC, and PSP First Phase Parcel I
Office LLC*



M. Celeste Bruce

IN THE CIRCUIT COURT FOR BALTIMORE CITY

ST. PAUL PLAZA OFFICE
TOWER, LLC, *et al.*,

Plaintiffs,

vs.

DEPARTMENT OF GENERAL SERVICES
STATE OF MARYLAND, *et al.*,

Defendants.

Case No. 24-C-10-009242 OG

**PLAINTIFFS' SECOND REQUEST FOR PRODUCTION
OF DOCUMENTS TO DEFENDANT,
MARYLAND DEPARTMENT OF TRANSPORTATION**

TO: Defendant, Maryland Department of Transportation

FROM: Plaintiffs, St. Paul Plaza Office Tower, LLC, et al.

Pursuant to Rule 2-422, Plaintiffs, by and through counsel, hereby request that Defendant, Department of General Services, respond in writing to this request within the time specified by Rule 2-422 (c) and the Maryland Discovery Guidelines, and produce the following documents and electronically stored information, for inspection and copying at the Offices of the Attorney General, 200 St. Paul Place, Baltimore, MD, or such location as is mutually agreeable by the parties, on the 9th day of September, 2011, beginning at 9 o'clock a.m., until concluded.

Defendant's written responses shall state with respect to each item or category that (1) inspection and related activities will be permitted as requested, (2) the request is refused, or (3) the request for production in a particular form is refused. The grounds for each refusal shall be fully stated. If the refusal relates to part of an item or category, the part shall be specified. If the refusal relates to the form in which electronically stored information ("ESI") is requested to be

produced (or if no form was specified in the request) the responding party shall state the form in which it would produce the information.

Definitions

- A. The phrase "in defendant's possession, custody, or control" includes the possession, custody or control of any third party or parties who, upon defendants' request or demand, would, or is required to, surrender possession, custody or control to defendant.
- B. "Change of Control" has the same meaning as the same term in the Master Development Agreement, defined herein below.
- C. "Communication" means any transmission of information by oral, graphic, written, pictorial, or otherwise perceptible means, including, but not limited to, telephone conversations, conversations in person, electronic mail, and correspondence in any form.
- D. "Amended Complaint" refers to the claims filed by Plaintiffs, including any and all amendments to the claims.
- E. "Describe" when used in connection with a Communication, discussion, or negotiation requires that you summarize the key features of the discussion or negotiation, identify the participants, and provide the date, time, and location, if known.
- F. "Developer" has the same meaning as the same term defined in ¶22 of the Amended Complaint and page 4 of the Master Development Agreement, and refers to State Center, LLC.
- G. "Document" includes electronically stored information and any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in any medium from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form. (Standard General Definition (a).) Document includes all drafts. Plaintiffs offer to meet and confer with Defendants to discuss any and all issues related to ESI, including preservation, form, and production.
- H. "Each," "every," "all," and "any," whether used separately or together, shall be interpreted to encompass all material, events, incidents, persons, or information responsive to the discovery request in which those terms appear.
- I. "First Amendment" is the First Amendment to the Master Development Agreement and has the same meaning as the same terms defined in ¶8 of the Amended Complaint, and referred to as First Amendment to Master Development Agreement by and between the State of Maryland, by and through the Department of General Services and State Center, LLC, dated September 1, 2010.
- J. "Garage" refers to the State Center Project Garage described in the First Amendment.
- K. "Identify," "identity," or "identification," (1) when used in reference to a natural person, means that person's full name, last known address, home and business telephone numbers, and present occupation or business affiliation; (2) when used in reference to a person other than a natural person, means that person's full

name, a description of the nature of the person (that is, whether it is a corporation, partnership, etc. under the definition of person below), and the person's last known address, telephone number, and principal place of business; (3) when used in reference to any person after the person has been properly identified previously means the person's name; and (4) when used in reference to a document, requires you to state the date, the author (or, if different, the signer or signers), the addressee, the identity of the present custodian of the document, and the type of document (e.g., letter, memorandum, telegram, or chart).

- L. "Master Development Agreement" and "MDA" have the same meaning as the same terms defined in ¶4 of the Amended Complaint, and referred to as the Master Development Agreement by and between the State of Maryland, by and through the Department of General Services and State Center, LLC, dated June 15, 2009.
- M. "Person" includes an individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, the State, an agency or political subdivision of the State, a court, and any other governmental entity. (Standard General Definition (c).)
- N. "Possession" includes possession, custody, or control. (Standard Motor Vehicle Tort Definition (c).)
- O. "Project" means the State Center Project and has the same meaning as the same term defined in ¶2 of the Amended Complaint.
- P. "Relating to," "concerning," or "regarding" mean constituting, comprising, consisting of, containing, setting forth, proposing, showing, disclosing, describing, discussing, explaining, summarizing, reflecting, dealing with, referring to, identifying, analyzing, or in any way addressing, involving, pertaining to, touching upon, or affecting the matter specified in the relevant document request.
- Q. "Request for Qualifications" and "RFQ" have the same meaning as the same terms defined in ¶6 of the Amended Complaint, and referred to as the State Center Request for Qualifications, dated September 21, 2005.
- R. "Transit-oriented Development" shall have the same meaning set forth in §7-101(m) of the Transportation Article.
- S. "You," "your," and "defendant" refers to the Maryland Department of Transportation and its respective agents, officers and employees.
- T. Any term not specifically defined herein has the same meaning as any similar term used in the Amended Complaint. If no similar term is used in the Amended Complaint, the term has the same meaning as any similar term used in the MDA. If no similar term is used in the Amended Complaint or MDA, the terms have the same meaning as any similar term used in the First Amendment. If no similar term is used in the Amended Complaint, MDA, or First Amendment, the term has the same meaning as in customary language. Any term not specifically defined herein has the broadest meaning permissible under the Maryland Rules.
- U. References to the singular include the plural and vice versa.
- V. References to the past tense include the present, and references to the present tense include the past.

- W. Disjunctive terms or phrases should be read to include the conjunctive and vice versa.

Instructions

1. Each request for a document, documents, or ESI to be produced, whether memoranda, reports, letters or other documents of any description, contemplates production of the document in its entirety, without abbreviation or expurgation, with ESI in native format, including metadata.

2. This request shall be deemed to be continuing so as to require further and supplemental production if defendants find, receive or generate additional documents or ESI responsive to this request. If at any time defendants receive information that makes a prior response incomplete, inaccurate, or misleading, defendants are required to make a supplemental production of documents and ESI. Such production is to be made as soon as reasonably possible after the information is obtained.

3. If you object to production of any portion or aspect of a document request, provide documents responsive to the remainder of the request. If you object to the form of production of ESI, please comply with Rule 2-422(c).

4. Each request should be responded to separately. However, a document which is responsive to more than one request may, if the relevant portion is indexed or marked, be produced only once and cross-referenced in each request to which it is responsive.

5. If you object to producing any document or ESI response to a request, in part or in its entirety, on grounds of privilege, including executive privilege, provide the information described in the Maryland Discovery Guidelines, including Guideline 5(c)(2)(ii).

6. Each request refers to all documents that are either known by defendant to exist or that can be located or discovered by reasonably diligent effort of defendant.

7. Except as noted herein, all documents and ESI responsive to a request shall be produced *in toto* notwithstanding the fact that portions thereof may contain information not requested.

8. Where requested ESI is archived in computer databases or a computer-readable medium (e.g., computer disk, floppy diskette, magnetic tape, CD-ROM, etc.), whether instead of or in addition to being maintained on paper, please provide a copy of the document in a computer-readable form (e.g. diskette, magnetic tape, CD-ROM) and, for any document so produced, please provide documentation sufficient to access the information contained in such production, including, but not limited to, file layouts, codebooks, and any other documentation describing the file fields or data elements and their relationships.

9. Each request refers and relates to the Project and the events, transactions, and occurrences described in, and the subject matter of, the Amended Complaint. Unless otherwise

noted within a specific request, the relevant time period for the purposes of these requests is 2004 through the present.

Specific Document Requests

1. All Documents, including meeting minutes, drafts, notes, reports, sign-in sheets, and business cards, that refer or relate to the meetings with consultants held at the Developer's offices in Tide Point regarding the State Center Project or any Phase of the Project.
2. All Documents, including meeting minutes, drafts, notes, reports, sign-in sheets, and business cards that refer or relate to the meetings with consultants regarding the State Center Project or any Phase of the Project.
3. All Documents including but not limited to all drafts, worksheets, notes, internal memoranda and written impressions of all pro formas, financial assessments, and risk assessments for the State Center Project or any Phase of the Project.
4. All Documents or communications created, generated, or received as a result of any meeting with any consultant for the State Center Project or any Phase of the Project.
5. All Documents provided to or directed to be provided to the Department of Legislative Services or any of its analysts related to or regarding the Project.
6. All Documents received from the Department of Legislative Services or any of its analysts related to or regarding the Project.
7. All calendars, paper or electronic, of Christopher Patusky.
8. All telephonic records including mobile phones (and text messaging) of Christopher Patusky related to the State Center Project for the period from January 1, 2008, through December 16, 2010.
9. All Documents or communications with PSP First Phase Parcel G Office, LLC related to or regarding the Project.

10. All Documents or communications with PSP First Phase Parcel I Office, LLC related to or regarding the Project.

11. All communications with, Documents provided to or received from the Board of Public Works, any member of the Board of Public Works or their staff member, regarding the State Center Project or any Phase of the Project.

12. All Documents that refer or relate to payments, reimbursements, in-kind contributions or other remuneration made to the Developer or any of its members, affiliates, subsidiaries, agents, employees, successors-in-interest or predecessors-in-interest, or to a third party on behalf of the Developer in connection with the State Center Project.

13. All Documents evidencing payment, reimbursements, in-kind contributions or other remuneration made to the Developer or any of its members, from the State or any agency of the State, the Maryland Stadium Authority, the City of Baltimore, or MEDCO in connection with the State Center Project.

14. All Documents provided to or received from each and every consultant hired for the State Center Project. The consultants are to include, but not be limited to, Randall Gross; Jones Lang LaSalle, Inc. and its predecessor-in-interest Staubach Realty; Bay Area Economics a/k/a Bae Urban Economics; PB PlaceMaking (Parsons Brinckerhoff); and Partners for Economic Solutions, LLC.

15. All Documents relating to the determination to use the RFQ rather than a request for proposals or other method of source selection, as the method of source selection for master development services for the Project or any Phase of the Project.

16. All Documents relating to the Request for Expression of Interest ("RFEI") for the Project issued on or about March 15, 2005, "for redevelopment of two State Center parking lots

into a mixed-use, transit oriented development,” per MDOT letter dated November 20, 2006 to William M. Huddles.

17. All Documents submitted to MDOT/DGS in response to the RFEI.
18. All Documents related to MDOT/DGS’ evaluation or consideration of expressions of interest.
19. All Documents relating to the Pre-Submittal Conference referred to at RFQ (page 9) § 6 “The schedule of activities for this solicitation.”
20. All Documents relating to pre-submittal questions or inquiries to MDOT/DGS referred to at RFQ, (page 9) § 6, and responses thereto.
21. All documents relating to any *draft* State Center Transit Oriented Development Strategy identified in the RFQ (page 11) § 6, paragraph B “TOD Strategy Implementation.”
22. All documents related to the final State Center Transit Oriented Development.
23. All written policies and procedures for “exempted” MDOT and DGS procurements, per SFP §12-401, from 2005 through the present, related to the Project, including:
 - A. policies and procedures for transit oriented developments and
 - B. policies and procedures for products and services required by the Board of Public Works per SFP §11-202(3) (iii) and (iv).
24. All Documents maintained in the “Procurement File” per SFP §13-202.
25. All Documents evidencing any determinations, defined per COMAR 21.02.02.01B (34), and Documents showing any such determinations made by the procurement officer or other MDOT and/or DGS official, that specifications could not be prepared that would allow an award based on the lowest bid price, the lowest evaluated bid price, or the bid most favorable to the State, per SFP§ 13-104(2).

26. All Documents evidencing any determinations, per SFP §13-104(a)(3) made by the head of MDOT and/or DGS, that (i) the need to use a method other than competitive sealed bids is sufficiently compelling to override the general public policy that favors awarding procurement contracts on the basis of competitive sealed bids; and (ii) the use of competitive sealed bidding to obtain master developer services for the Project was not practicable or not advantageous to the State.

27. All Documents related to the public notice of solicitation per SFP, Title 13.

28. All Documents related to the public notice of award, per SFP §13-104(g), of the Master Development Agreement and/or the First Amendment to Developer.

29. All Documents related to Defendants' use of SFP §13-301 as the method of source selection for architectural and engineering services for the Garage.

30. All Documents related to Defendants' use of competitive sealed bidding, per SFP §13-103, as the method of source selection for construction of the Garage.

31. All Documents related to Defendants' use of any method of source selection per SFP Title 13, to obtain construction-related services, including inspection services, for the Garage or the Project.

32. All Documents dealing with recommendations for obtaining professional services for the Project), per SFP § 13-304, by the (i) General Professional Services Selection Board, and/or (ii) the Transportation Professional Services Selection Board to the Board of Public Works for award of a contract for architectural and engineering services costing over \$200,000 made on competitive basis and including an evaluation of the technical proposals and qualifications of at least 2 persons.

33. All Documents related to communications about the Project between MDOT/DGS and representatives of “adjacent property owners, neighborhoods and stakeholders” per § 4, subparagraph H of the RFQ concerning selection of respondents for (a) shortlist, and/or (b) award of a contract.

34. All Documents related to selecting qualified respondents shortlisted for interviews, per RFQ (page 17) §8 “Shortlist Consideration.”

35. All “master development agreements” – for projects, other than State Center, that purport to be transit-oriented developments –to which the Department of General Services and/or the Maryland Department of Transportation were parties between Jan. 1, 2005 and the present, including:

- A. solicitations, per SFP, Title 13 and/or (b) other documents used to solicit offers and expressions of interest
- B. all contracts, including leases with a private party and state agency (including MDOT/DGS) as lessee.

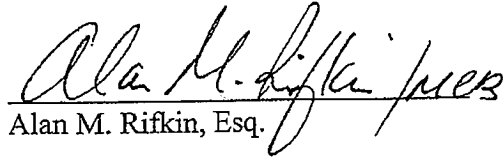
36. All Documents submitted pursuant to Recital R-7 of the First Amendment to the Master Development Agreement for Transit Oriented Development State Center.

37. All Documents provided to or received from Mithun, Inc. with regard to the Project or any Phase of the Project.

38. All Documents provided to the State Center Executive Committee, the State Center Working Group, and/or the State Center Advisory Committee with regard to the Project or any Phase of the Project.


Respectfully submitted,

RIFKIN, LIVINGSTON, LEVITAN & SILVER, LLC


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Annapolis, Maryland 21401

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Michael D. Berman, Esq.

7979 Old Georgetown Road, Suite 400
Bethesda, Maryland 20814

(301) 951-0150 phone
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CERTIFICATE OF SERVICE

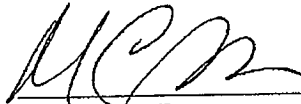
I HEREBY CERTIFY that on this ^{month} 5 day of August, 2011, a copy of the foregoing was served by electronic mail and first class mail on the following:

Kathleen E. Wherthey
Campbell Killefer
Assistant Attorney General
Office of the Attorney General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202

*Attorneys for Defendants Department of General Services
and Department of Transportation of the State of Maryland*

Kenneth L. Thompson
Venable, LLP
750 East Pratt Street
Baltimore, Maryland 21202

*Attorneys for Defendants State Center, LLC, PSP First
Phase Parcel G Office LLC, and PSP First Phase Parcel I
Office LLC*



M. Celeste Bruce

Wherthey, Kathleen

From: Wherthey, Kathleen
Sent: Monday, August 22, 2011 3:19 PM
To: Alan M. Rifkin (ARifkin@rlls.com); Michael Berman (MBerman@rlls.com); Celeste Bruce (CBruce@rlls.com); scottlivingston@rlls.com
Cc: KLThompson@Venable.com
Subject: State Center - proposed confidentiality agreement
Attachments: sharpcopier_oag_state_md_us_20110822_153746.pdf

Counsel:

The State Defendants would like to have a confidentiality agreement in place before we begin producing documents for inspection, and we propose the following agreement and stipulated order, which is based on the federal form; please let us know whether you are amenable to our proposal.

Regards,

Kathleen E. Wherthey
Assistant Attorney General
Office of the Attorney General
Civil Litigation Division
200 St. Paul Place
20th Floor
Baltimore, MD 21202
Ph: 410-576-6345
Fx: 410-576-6955

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-----Original Message-----

From: sharpcopier@oag.state.md.us [<mailto:sharpcopier@oag.state.md.us>] On Behalf Of sharpcopier@
Sent: Monday, August 22, 2011 11:38 AM
To: Wherthey, Kathleen
Subject: Scanned image from Civil Copier

DEVICE NAME: 20 Scanner
DEVICE MODEL: MX-M700U
LOCATION: 20th Floor

FILE FORMAT: PDF MMR(G4)
RESOLUTION: 300dpi x 300dpi

Attached file is scanned image in PDF format.

Use Acrobat(R)Reader4.0 or later version, or Adobe(R)Reader(TM) of Adobe Systems Incorporated to view the document.

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ST. PAUL PLAZA OFFICE TOWER, LLC.
et al.,

Plaintiffs

v.

DEPARTMENT OF GENERAL
SERVICES, et al.,

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* No. 24-C-10-009242 OG

* * * * *

**CONFIDENTIALITY AGREEMENT AND STIPULATED ORDER REGARDING
CONFIDENTIALITY OF DISCOVERY MATERIAL AND INADVERTENT
DISCLOSURE OF PRIVILEGED MATERIAL**

The following constitutes a confidentiality agreement between and among Plaintiffs (and their counsel, agents, and employees) and Defendants the Maryland Department of General Services and Maryland Department of Transportation (and their counsel, Secretaries, agents, and employees) (collectively "the State Defendants").

Whereas Plaintiffs and the State Defendants (collectively the "Parties") have stipulated that certain discovery material be treated as confidential; and

Whereas, upon signing of this Agreement, the Parties and their Counsel agree to be bound thereby;

Accordingly, it is this _____ day of _____, by the Circuit Court for Baltimore City, ORDERED that:

- (1) All documents that the Parties produce in the course of discovery and all deposition exhibits (collectively "Documents") shall be subject to this Agreement and Order concerning

confidential information, as set forth below:

(a) All Documents shall be deemed confidential and subject to a rebuttable presumption of confidentiality. They shall nevertheless be disclosable to the following categories of persons:

(i) Counsel to the Parties and employees of counsel to the Parties who have direct functional responsibility for the preparation, trial (and, if applicable, appeal) of the lawsuit. Any such employee to whom counsel for the Parties makes a disclosure shall be provided with a copy of, and become subject to, the provisions of this Agreement and Order requiring that the documents and information be held in confidence.

(ii) Employees of a Party required in good faith to provide assistance in the conduct of the litigation in which the information was disclosed. Any such employee shall be provided with a copy of, and become subject to, the provisions of this Agreement and Order requiring that the documents and information be held in confidence.

(iii) Court reporters engaged for depositions, and those persons, if any, specifically engaged for the limited purpose of photocopying Documents or electronically storing or transferring Documents produced or otherwise provided by any opposing Party. Before disclosure to any of these persons, any such person must receive a copy of this Agreement and Order and agree

to be bound by its terms.

(iv) Consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed or retained by the Parties or counsel for the Parties to assist in the preparation and trial of the lawsuit. Before disclosure to any such expert, such expert must receive a copy of this Agreement and Order and agree in writing to be bound by its terms.

(b) Except as provided in subparagraphs (a)(i)-(a)(iv) above, and as set forth below, counsel for the Parties shall keep all documents received from any opposing Party secure within their exclusive possession and shall take reasonable efforts to place such documents in a secure area.

(2) If any Party to this Agreement and Order wishes or intends to disclose a Document to any person not included within one of the categories set forth in subparagraphs (a)(i)-(a)(iv) above, then the Party wishing or intending to make such disclosure (the "Requesting Party") shall submit a written request to counsel for the opposing Parties for permission to disclose the Document. Such request shall include a brief statement of the reason for and intended recipient(s) of the disclosure, and shall sufficiently identify (by Bates number or attachment to the request) the Document in question. The Party or Parties receiving such a request (the "Receiving Party") shall have ten business days to determine whether to consent to disclosure, on grounds including the nature of the Document as disclosable under the Maryland Public Information Act, Md. Code Ann., State Gov't §§ 10-601 through 10-630,

or otherwise. On or before the eleventh business day after receiving such a request, the Receiving Party shall advise counsel for the Requesting Party in writing as to whether the request is granted or denied, and provide a brief statement of the reason for that determination. If the Requesting Party disagrees with the opposing Party's determination, then the requesting Party may seek further relief from the Court, but may not make the requested disclosure unless and until permitted by the Court.

(3) Documents shall not be used or disclosed by the Parties or their counsel, or any of the persons included within the categories set forth in subparagraphs (a)(i)-(a)(iv) above, for any purpose whatsoever other than preparing for and conducting the litigation (including appeals) in which the Documents were disclosed.

(4) To the extent that any Party intends to file any Documents and/or Document excerpts (or any brief, pleading, motion, or memorandum attaching, quoting, or otherwise disclosing them) with this Court or any appellate Court, as evidentiary exhibit(s) or otherwise, that Party shall file those Documents and/or Document excerpts under seal with the Clerk of the Court in an envelope marked "Sealed Pursuant To Order of Court Dated _____," together with a simultaneous Motion to Seal pursuant to Maryland Rule 16-1009. Even if the filing Party believes the Documents are not properly classified as confidential, the filing Party nevertheless shall file the Motion to Seal; provided, however, that the filing of the Motion to Seal shall be without prejudice to the filing Party's rights under Paragraph (2) of this Agreement and Order. The Parties may agree to alternative

methods of protecting the confidentiality of Documents to be used in open court proceedings by means of a written stipulation signed by the Parties' counsel and filed with the Court at or before such proceedings.

(5) The inadvertent disclosure of any Document that is subject to a good faith claim that the Document is subject to protection as work product, subject to attorney-client privilege, or otherwise privileged, shall not waive the protection or the privilege for either that Document or the subject matter of that Document. Any protected or privileged Documents that the producing Party claims to have disclosed inadvertently shall be promptly returned to the producing Party, or destroyed, upon that Party's written request. If the claim of protection or privilege is disputed, then the receiving Party may retain a single copy of the Document in question for the exclusive purpose of seeking judicial determination of the matter.

(6) At the conclusion of the litigation, all Documents shall be returned to the producing Party, or destroyed at the request of that Party with written confirmation of destruction by the destroying Party within 5 business days of such destruction. The Clerk of the Court may return to counsel for the Parties, or else destroy, any sealed material at the end of litigation, including all appeals.

DOUGLAS F. GANSLER
Attorney General of Maryland

Kathleen E. Wherthey
Assistant Attorney General
Office of the Attorney General
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202
(410) 576-6324
Attorneys for State Defendants

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arifkin@rlls.com
Counsel for Plaintiffs

Scott A. Livingston, Esquire
M. Celeste Bruce, Esquire
Michael D. Berman, Esquire
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(301) 951-0150
scottlivingston@rlls.com
cbruce@rlls.com
mberman@rlls.com
Counsel for Plaintiffs

Judge Althea M. Handy

ST. PAUL PLAZA OFFICE TOWER, LLC.
et al.,

Plaintiffs

v.

DEPARTMENT OF GENERAL
SERVICES, et al.,

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
* No. 24-C-10-009242 OG
*

* * * * *

**CONFIDENTIALITY ORDER REGARDING CONFIDENTIALITY OF
DISCOVERY MATERIAL AND INADVERTENT DISCLOSURE OF
PRIVILEGED MATERIAL**

It is this _____ day of _____, by the Circuit Court for Baltimore City, ORDERED that:

(1) All documents that Defendants Department of General Services (“DGS”) and Department of Transportation (“DOT”) of Maryland (the “State Parties”) produce in the course of discovery (“State Documents”) to any other party in this case, shall be subject to this Agreement and Order concerning confidential information, as set forth below:

(a) All State Documents shall be deemed subject to a rebuttable presumption of confidentiality. All State Documents shall nevertheless be disclosable to the following categories of persons during the litigation:

(i) Counsel to the parties and employees of counsel to the parties who have direct functional responsibility for the preparation, trial (and, if applicable, appeal) of the lawsuit. Any such employee to whom counsel for the parties makes a disclosure shall be provided with a copy of, and become subject to, the provisions of this Order requiring that the State Documents and information be held in confidence.

(ii) Employees of a party required in good faith to provide assistance in the conduct of the litigation in which the information was disclosed. Any such employee shall be provided with a copy of, and become subject to, the provisions of this Order requiring that the State Documents and information be held in confidence.

(iii) Court reporters engaged for depositions, and those persons, if any, specifically engaged for the limited purpose of photocopying State Documents or electronically storing or transferring State Documents. Before disclosure to any of these persons, any such person must receive a copy of this Order and agree to be bound by its terms.

(iv) Consultants, investigators, or experts (hereinafter collectively "experts") employed or retained by the parties or parties' counsel to assist in the preparation and trial of the lawsuit. Before disclosure to any such expert, such expert must receive a copy of this Order and agree in writing to be bound by its terms.

(b) Except as provided in subparagraphs (a)(i)-(a)(iv) above, and as set forth below, counsel for all parties shall keep all State Documents received from any party secure within the receiving party's exclusive possession and shall take reasonable efforts to place such State Documents in a secure area.

(2) If any party wishes to contest the confidentiality of any State Document, then that Party may seek further relief from the Court, but may not make the requested disclosure unless and until permitted by the Court.

(3) State Documents shall not be used or disclosed by the parties or their counsel, or any of the persons included within the categories set forth in subparagraphs (a)(i)-(a)(iv) above, for any purpose whatsoever other than preparing for and conducting the litigation (including appeals) in which the State Documents were disclosed.

(4) To the extent that any party intends to file any State Documents and/or State Document excerpts (or any brief, pleading, motion, or memorandum attaching, quoting, or otherwise disclosing them) with this Court or any appellate Court, as evidentiary exhibit(s) or otherwise, that Party shall file those State Documents and/or State Document excerpts under seal with the Clerk of the Court in an envelope marked "Sealed Pursuant To Order of Court Dated _____," together with a simultaneous Motion to Seal pursuant to Maryland Rule 16-1009. Even if the filing party believes the State Documents are not properly classified as confidential, the filing party nevertheless shall file the Motion to Seal; provided, however, that the filing of the Motion to Seal shall be without prejudice to the filing party's rights under Paragraph (2) of this Agreement and Order. The parties may agree to alternative methods of protecting the confidentiality of State Documents to be used in open court proceedings by means of a written stipulation signed by the parties' counsel and filed with the Court at or before such proceedings.

(5) The inadvertent disclosure of any State Document that is subject to a good faith claim of being subject to protection as work product, subject to attorney-client privilege, or otherwise privileged or protected, shall not waive the protection or the privilege for either that State Document or the subject matter of that State Document. Any protected or privileged State Documents that any State Party discloses inadvertently shall be promptly returned to the producing party, or destroyed, upon that party's written request. If the claim of protection or privilege is disputed, then the receiving party may retain a single copy of the State Document in question for the exclusive purpose of seeking judicial determination of the matter.

(6) At the conclusion of the litigation, all State Documents shall be returned to the producing party, or destroyed by the receiving party at the request of the producing party, with written confirmation of destruction by the destroying party, within 10 business days of such request. The Clerk of the Court may return to counsel for the Parties, or else destroy,

any sealed material at the end of litigation, including all appeals.

Judge Althea M. Handy