

**TERM SHEET
BETWEEN
VIA METROPOLITAN TRANSIT
AND
DREAMON DEVELOPMENT COMPANY, LLC
“SCOBAY STORAGE COMPLEX”**

This Term Sheet (the “Term Sheet”) is between VIA Metropolitan Transit (“VIA”), a Texas transit authority, and DreamOn Development Company, LLC (“Developer”), a Texas limited liability company (collectively, the “Parties), and is dated effective as of [Jan 31, 2023 ____].

Developer and VIA hereby agree to work cooperatively to develop commercial units (the “Commercial Units”) and affordable housing (the “Residential Units,” which, together with the Commercial Units, the “Project”) at 301 North Medina Street in San Antonio, Texas, in accordance with the terms of this Term Sheet.

The Project will be held in a condominium structure with the Commercial Units being one unit of the condominium and the Residential Units being a separate condominium unit. VIA will create a local government corporation (the “LGC”) which will own the Residential Units. The LGC will enter into a 99 year lease of the Project to the Residential Partnership as described herein. The Parties will also pursue a tax exemption under Texas Tax Code Section 11.24. If that is successful and adds value to the project, the LGC structure will be abandoned, and a new appropriate structure will be adopted.

In order to accomplish this purpose, the Parties agree as follows:

AGREEMENTS:

A. Affordability Requirements.

Developer agrees to the following rent targeting for the Residential Units in the Project:

- 10% of the units serving households earning up to 60% of the area median income.
- 40% of the units serving households earning up to 80% of the area median income.
- 40% of the units serving households earning up to 150% of the area median income.
- The balance of the units will have no rent or income restrictions.

The units restricted to 60% and 80% of the area median income will be adjusted for family and unit size and their rents shall be calculated utilizing the Calculator.

B. Definitions.

1. Annual Tax Savings – Annual Tax Savings means for each calendar year, beginning in year four of the lease the Appraised Value of the project multiplied by the effective tax rate for the year of the calculation.

2. Appraised Value – Appraised Value means the value of the Residential Units and shall be initially calculated as the total cost of the Residential Units as shown in the Project Budget times 80% and adjusted by 3% per year beginning in the second year after the Residential Units stabilize. In addition, the Appraised Value will be adjusted to the actual sales price upon each Capital Event. The lease will contain detailed provisions on the qualifications and selection of the Appraiser and the timing for triggering this provision.
3. Calculator – Calculator means the Novogradac Rent and Income Limit Calculator for the applicable year, under the “Other Federal, State, or Local Program” category for San Antonio, TX HUD Metro FMR Area with rent calculations based on either: (i) “80%” and Imputed Persons Per Bedroom for Rent Limited Calculations set to “1.5 Person/1 Bedroom” and the applicable family size selected for the respective Low Income Household leasing a particular Affordable Unit or (ii) “60%” and Imputed Persons Per Bedroom for Rent Limited Calculations set to “1.5 Person/1 Bedroom” and the applicable family size selected for the respective Household leasing a particular Affordable Unit, as applicable. In the event such tool is not available, applicable rent and income limits shall be calculated using a reasonable substitute tool as mutually agreed to by the parties hereto.
4. Capital Event – A sale of the Residential Units (including any proposed assignment of the entire Lease) to a third party for consideration or of all of the interests in the Residential Partnership to a third party for consideration.
5. Closing - The initial closing and funding of the Loans and Equity financing to the Residential Partnership.
6. Commercial Partnership – The limited partnership formed for the purpose of owning and redeveloping the Commercial Units.
7. Loans – The loans identified in Section F.1 hereof for the construction of the Project.
8. Contractor – A to-be-formed Local Government Corporation sponsored by VIA or other VIA-related entity under which the Project can enjoy avoidance of sales and/or renovation taxes.
9. Developer – DreamOn Development Company, LLC, or one of its affiliates.
10. Development Fee – The fee paid to Developer in the amount set forth in Section L.1 hereof.
11. Equity – The equity financing of the Project identified in Section F.2 hereof.
12. Residential General Partner – A single purpose entity affiliated with the LGC that will be admitted to the Partnership as general partner.

13. Guarantor – One or more affiliates of the Special Limited Partner which if required will guarantee the Loans and Equity.
14. Residential Investor LP –The provider of the Equity through a purchase of an Investment in the Residential Partnership.
15. Manager – The company who shall manage the Residential Units.
16. Management Agreement – Management and Accounting Services Agreement between the Residential Partnership and Manager.
17. Residential Partnership – The limited partnership formed for the purpose of owning the Residential Units.
18. Residential Partnership Agreement – The Amended and Restated Partnership Agreement to be entered into among the Residential General Partner, Residential Special Limited Partner, and the Residential Investor LP, to be drafted by counsel for the Residential Special Limited Partner or Residential Investor LP.
19. Sales Tax Savings – The purchase price of the construction materials purchased by the contractor, multiplied by the effective sales tax rate at the time of purchase.
20. Residential Special Limited Partner – The affiliate of Developer that, to the extent permitted by applicable law, will be admitted to the Partnership.
21. Term Sheet – This Term Sheet between VIA and Developer.

C. Summary of Compensation and Fees.

1. Developer shall receive one-hundred percent (100%) of the Developer Fee. (See Section L.1.)
2. Subcontractor, pursuant to the Subcontract shall receive a general contractor fee, overhead, profit and general conditions.
3. Manager shall receive a Management Fee as set forth in Section H.
4. General Partner shall receive a portion of the cash flow of the Partnership as set forth in Section L.3 hereof.
5. The LGC will receive a structuring fee equal to \$250,000 at the closing of the financing for this Project.

D. Residential Units Ownership Structure.

1. The Residential Partnership has been formed for the sole purpose of owning the Residential Units. VIA will contribute the Residential Units to the Residential Partnership and will receive a capital account balance equal to 51% of the current

value of the Project. In addition, VIA will receive an 8% preferred return. VIA will also upon the initial Sale Event receive 15% of remaining cash flows after the payment of outstanding debt, the return of the Equity for the Residential Partnership and an 8% preferred return on such Equity, as Rent, in addition to their capital account proceeds.

2. The Residential General Partner will become the sole general partner and will be admitted to the Residential Partnership at Closing. To the extent permitted by applicable law as amended between the date hereof and Closing, the Residential Special Limited Partner will have certain control, oversight and approval rights. Any such rights must be agreed to by VIA.
3. The duties of the Residential General Partner and the Residential Special Limited Partner shall be set forth in the Residential Partnership Agreement.
4. Fee simple title to the land for the Project shall be held by VIA, the LGC or one of its affiliates, and leased to the Residential Partnership for a term of ninety-nine (99) years.

E. Commercial Units and Historic Tax Credits Ownership Structure

1. VIA will contribute the Commercial Units to the Commercial Partnership and will receive a capital account balance equal to 49% of the current value of the Project. In addition, VIA will receive 10% of the promote the Developer receives from the development of the Commercial Units. The Commercial Units will not utilize an LGC (except to the extent such use is advantageous for sales or renovation tax purposes).
2. The Project is pursuing historic tax credits. The Parties acknowledge that the overall structure will need to be adjusted for compliance with the legal and practical requirements of historic tax credits.

F. Lease.

1. Lease between the LGC, as landlord, and Residential Partnership, pursuant to which the LGC leases the applicable portions of the Project to the Residential Partnership for a term of 99 years (the "Lease"). Landlord will not be permitted to assign its interests under the Lease in any manner which jeopardizes the availability of exemption of the Project from ad valorem taxation or to the extent as may be prohibited in any loan documents with the lenders. In the event the Residential Partnership wishes to maintain the property tax exemption on the Residential Units, the Residential General Partner will have to remain the GP of the buying entity and the lease will have to remain in place. Accordingly, the Residential General Partner will have reasonable approval rights regarding any sale which continues the property tax exemption on the Residential Units.

2. The Partnership will pay LGC rent for the Residential Units initially set at \$190,000, commencing six months after the Project stabilizes, which is defined as reaching 90% occupancy, which shall be the start of Year 1. Beginning in Year 3, the rent will increase at the same percentage rate as the net operating income increased from Year 1 to Year 2 and shall increase annually at the same percentage as the prior year's increase in net operating income until it reaches a rent that is equal to 25% of the Annual Tax Savings. In the event of a decrease in net operating income, the rent will not decrease. Rent will be paid annually, in full, on the first of the month following six months after stabilization and every 12 months thereafter.
3. The Lease will require the Residential Partnership to maintain the Residential Units as a Class A residential project and will require renovations to the extent financially feasible, to the extent necessary to maintain the Residential Units as a Class A residential project. Residential Partnership will insure the Residential Units and will set aside an amount per door per year as determined by lenders as a reserve for replacements. Residential Partnership will provide full indemnities to LGC. Provisions will be negotiated to help the LGC assure that the Residential Units remain a Class A residential project throughout the Term of the Lease, including conducting periodic needs assessments at predetermined intervals and at any point in time when there is a significant negative change in occupancy. For avoidance of doubt, the Parties agree that maintaining the Residential Units as a Class A apartment project means keeping the Residential Units as originally designed and constructed in appropriate condition to compete with other Class A residential projects of the same age as the Residential Units, but does not mean adding amenities, making structural or other changes to the exterior or interior of the Residential Units to make it consistent with newly constructed Class A apartment projects at a future date.

G. Due Diligence.

1. VIA requires Developer to provide all due diligence information on the Project and its proposed financing and operations.
2. A proforma budget of the Project is attached to this Term Sheet as Exhibit "A" (the "Budget"). VIA and Developer acknowledge that the proforma is subject to change and that Developer shall be responsible for maintaining and updating the Budget, which shall be subject to review and approval by VIA.

H. Financing.

1. The Developer will propose how it wishes to capitalize the Project, subject to VIA's President's approval. Such proposal shall include mortgage loans on the leasehold interest and the fee interest for the Project.
2. Developer will obtain one or more equity contribution partners who will invest approximately the amount shown in the Budget. The equity partners will be paid

from cash flow and will always be subordinate to debt financing. The equity contribution partners will receive a preferred return on their contributions and will be repaid their investment before any “promote”. Accordingly, cash flow splits will adjust after the payment of preferred returns.

3. Developer shall pay all costs and fees associated with applying for the Loans which costs, along with all other pre-development costs incurred by Developer (to the extent included within the approved Budget), shall be reimbursed at Closing from the proceeds of the Loans and Equity. In the event this Term Sheet is terminated, or the transaction fails to close as contemplated herein, Developer shall be solely responsible for all costs described above and VIA and its affiliates shall have no responsibility for payment or reimbursement of such costs. Notwithstanding the foregoing, the Parties have entered into that certain Pre-Development Services Agreement dated Jan 31, 2023, 2023 that will cover certain pre-development expenses, for which VIA and Developer will be reimbursed at Closing.
4. Guarantor shall provide any guarantees that may be required in conjunction with the Loan financing, or the Equity referenced in paragraphs F.1 and F.2 above.

Developer is providing any ongoing guaranties.

I. Design and Construction.

1. Developer shall provide comprehensive development services for the Project pursuant to a Development Agreement to be entered into by the respective Residential and Commercial Partnerships and Developer. The parties will commence development of the Development Agreement within ninety (90) business days of the date hereof.
2. Developer shall be responsible for obtaining the services of design professionals for the design of the site plan and design of the Project.
3. To secure an exemption from state sales tax for the acquisition of building materials, LGC will serve as general contractor for the construction of the Project and will subcontract with Subcontractor for the performance under the construction contact. To compensate VIA for participating as the general contractor, VIA shall receive the balance of any contingencies remaining in the Project budget upon the completion of the Project in an amount up to 25% of the Sales Tax Savings for the Project.
4. Developer shall be responsible for obtaining all governmental approvals and permits needed in order to construct and operate the Project.
5. Subcontractor shall guarantee to the Partnership, the Investor LP and any lender, delivery of the Project on time and within the approved Budget (as it may be amended or revised from time to time with appropriate approvals).

6. The Project shall be constructed so as to comply with ADA and Section 504 requirements, as applicable under federal and state law.

J. Management and Operation.

Manager or such other Developer-designated affiliate shall serve as the property manager for the Residential Units, which will be memorialized in a management agreement (the “Management Agreement”). The amount of the Management Fee shall be at prevailing market rates.

K. Accounting.

Subject to termination for reasonable cause, Developer, shall provide accounting services (including but not limited to: (i) bookkeeping, monitoring reporting requirements and processing construction loan draws and change orders, and (ii) preparation of and/or coordinating preparation of tax returns and the Partnership’s audit and audited financial statements for filing or certification by the Partnership’s outside accountants,) to the Project and shall receive a reasonable fee for doing so.

L. Tax Exemption.

The ownership structure contemplated herein is expected to generate an ad valorem tax exemption for the Residential Units. VIA, on behalf of the Partnership, shall work with the applicable appraisal district to obtain confirmation of the availability of such exemption. The Partnership will obtain a property tax opinion from a recognized law firm at the time of Closing. The Commercial Units will not be eligible for a tax exemption.

M. Fees and Expenses.

1. Partnership shall, in accordance with the applicable Partnership Agreements, pay to Developer a fee (the “Developer Fee”) of approximately four percent (4%) of the Project costs, which Developer Fee shall include any of Developer’s overhead charged to the Project. The obligations of the Partnership to pay the Developer Fee shall be non-recourse to the Partners of the Partnership but recourse to the assets of the Partnership.
2. The Special Limited Partner will be entitled to receive certain fees or priority distributions for its services in such capacity as set forth in the Partnership Agreement.
3. The VIA controlled special limited partner for the Commercial Units shall split any promotes received related to the Project with the VIA special limited partner for the Commercial Units receiving 10% of any promote. The General Partner will have the right to approve all of the terms of the Partnership Agreement.
4. Neither party shall enter into any contractual relationship or agreement relating to the Project that would cause either financial or legal liability to the other, without the other party’s prior written consent.

N. **Long Term Ownership.**

The LGC, or other VIA affiliate shall have an option to acquire the Residential Units at any time as necessary to obtain the required property tax exemption.

O. **VIA Expenses.**

Developer acknowledges that it is the Parties' intent that neither VIA nor LGC bear any out of pocket expenses in connection with the Project except as shown in the Pre-Development Services Agreement, provided that such reasonable expenses shall be considered Project expenses and shall be shown in the Budget.

P. **VIA Office Lease.**

VIA shall lease approximately 26,500 square feet of office space in the Project for a seven year term. Such office space is located as shown on Exhibit "B." VIA will pay \$26.00 per rentable square foot per year for such space, increasing at 2% annually. VIA will provide a finish out allowance of up to \$4,902,500 for such space. At the end of the seven year term VIA shall acquire such office space at a price of \$15,032,963.

Q. **Miscellaneous.**

1. This Term Sheet reflects the entire understanding between the parties and may only be amended by VIA or Developer in writing, signed by both parties. **This Term Sheet shall be non-binding and subject to the negotiation of the definitive documents outlined herein.**
2. Each party hereto is prohibited from assigning any of its interests, benefits or responsibilities hereunder to any third party, without the prior written consent of the other party, such consent not to be unreasonably withheld, conditioned or delayed.
3. This Term Sheet may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement.
4. THIS TERM SHEET SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF TEXAS, EXCLUSIVE OF CONFLICT OF LAWS PRINCIPLES.
5. In case any one or more of the provisions contained in this Term Sheet for any reason are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof, and this Term Sheet will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

6. The parties hereto submit exclusively to the jurisdiction of the state and federal courts of Bexar County, Texas, and venue for any cause of action arising hereunder shall lie exclusively in the state and federal courts of Bexar County, Texas.
7. The subject headings contained in this Term Sheet are for reference purposes only and do not affect in any way the meaning or interpretation hereof.
8. This Term Sheet shall continue until terminated upon the occurrence of one of the following conditions:
 - (i) VIA and Developer sign a mutual consent to terminate this Agreement;
 - (ii) The transactions contemplated hereby are not closed within 24 months of the date of this Term Sheet;
 - (iii) The terms of the documents for the Project are unacceptable to the President of VIA, at his/her sole discretion;
 - (iv) VIA's Board of Directors and/or Developer's governing body does not approve the Project and any documents therefore;
 - (v) Either party breaches its obligations under this Term Sheet, the non-breaching party provides the breaching party notice of such fact and a 15-day opportunity to cure, and the breaching party fails to do so; or
 - (vi) Either party files for bankruptcy protection, makes an assignment for the benefit of creditors, has a receiver appointed as to its assets or generally becomes insolvent.

Upon termination of this Term Sheet for any other reason, neither party shall have any ongoing obligation to the other with respect to this Term Sheet and the Project.

9. In addition, the provisions of this Term Sheet with respect to the Project, other than those provisions which expressly survive the termination hereof, will be terminated and suspended when the Parties or their affiliates, as applicable, enter into definitive agreements with respect to the governance of the Partnership and the development, construction, financing, and operation of the Project as contemplated herein.


If this Term Sheet is terminated for any reason and neither VIA nor any of its affiliates acts as General Partner regarding the Project, VIA shall retain all rights to control the Project. The provisions of this paragraph shall survive termination of this Term Sheet; provided, however, once a binding development agreement is executed, that agreement will govern the relationship between the parties.

10. The parties acknowledge that, the General Partner, VIA, and its affiliates will be represented in this transaction by Bracewell LLP, ("General Partner Counsel"). All costs of General Partner Counsel will be considered Expenses of VIA hereunder and paid as provided herein until the Closing on the Project and shall thereafter be

reimbursed by the Project. The Residential Partnership, Developer, the Residential Special Limited Partner, Commercial Partnership and their affiliates will be represented by separate counsel whose fees will also be an expense of the Partnership reflected in the Budget and will not be entitled to rely on General Partner Counsel for representation in this matter.

EXECUTED to be effective as of the date above shown.

VIA METROPOLITAN TRANSIT

By: 
Name: Jeff Arndt
Title: President/CEO

DREAMON DEVELOPMENT GROUP, LLC


By: 
Name: Rene Garcia
Title: Partner

EXHIBIT “A”
PROFORMA DEVELOPMENT BUDGET
(TO BE ATTACHED)

EXHIBIT "B"
VIA OFFICE SPACE LEASE AREA

