

**BOARD OF TRUSTEES
UNIVERSITY OF THE DISTRICT OF COLUMBIA
UDC RESOLUTION NO. 2023 – 37**

SUBJECT: APPROVAL OF A USE AND DEVELOPMENT AGREEMENT BETWEEN THE UNIVERSITY OF THE DISTRICT OF COLUMBIA (“UNIVERSITY”) AND THE DISTRICT OF COLUMBIA, ACTING BY AND THROUGH ITS DEPARTMENT OF GENERAL SERVICES, FOR THE DISTRICT OF COLUMBIA OFFICE OF THE SECRETARY AND ITS OFFICE OF PUBLIC RECORDS (“AGREEMENT”)

WHEREAS, pursuant to D.C. Code § 38-1202.1(a)(5), the Board of Trustees (“Board”) possesses all powers necessary or convenient to accomplish its statutorily prescribed objects and duties, including the power to make, deliver, and receive deeds, leases and other instruments; and

WHEREAS, in 2018, the University entered into an agreement with the District of Columbia’s Office of the Secretary to explore the location of the DC Archives at the University; and

WHEREAS, pursuant to Board Resolution No. 2020-53, approving the 2021 – 2030 Van Ness Campus Master Plan, the Board authorized the potential redevelopment of the campus’ Building 41 for the District of Columbia’s Office of the Secretary and Office of Public Records use; and

WHEREAS, pursuant to Board Resolution No. 2023-08, the Board approved the concept design to construct a new DC Archives building on the Van Ness Campus and indicated that the Administration was in the process of negotiating an agreement with the District; and

WHEREAS, pursuant to Board Resolution No. 2023-31, the Board approved an amendment to the 2021 – 2030 Van Ness Campus Master Plan, to permit demolition of Building 41 for the purposes of constructing the new DC Archives building; and

WHEREAS, the University and the District, acting through the Department of General Services, have negotiated the Agreement to govern the terms and conditions of the demolition of Building 41, construction, use of and access to the new DC Archives building, including certain portions of the building being used by the UDC Felix E. Grant Jazz Archives and UDC University Archives,

WHEREAS, the Administration has determined that the terms in the Agreement are favorable to the University and will serve the educational mission of the University; and

WHEREAS, pursuant to 8B DCMR § 205.4, the President, subject to Board approval, is authorized to execute on behalf of the University this Agreement.

**BOARD OF TRUSTEES
UNIVERSITY OF THE DISTRICT OF COLUMBIA
UDC RESOLUTION NO. 2023 – 37**

NOW THEREFORE BE IT RESOLVED, that the Board of Trustees approves the Agreement and the President is authorized to execute the Agreement in substantially the form attached hereto as **Attachment A**.

Submitted by the Operations Committee:

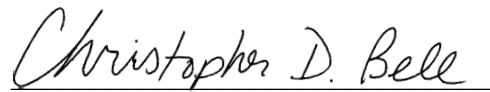
July 13, 2023

Approved by the Executive Committee:

July 19, 2023

Ratified by the Board of Trustees:

September 12, 2023

A handwritten signature in cursive script that reads "Christopher D. Bell". The signature is written in dark ink and is positioned above a horizontal line.

Christopher D. Bell
Chairperson of the Board

USE AND DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE UNIVERSITY OF THE DISTRICT OF COLUMBIA

AND

**THE DISTRICT OF COLUMBIA,
ACTING BY AND THROUGH ITS DEPARTMENT OF GENERAL SERVICES,**

**FOR THE DISTRICT OF COLUMBIA OFFICE OF THE SECRETARY
AND ITS OFFICE OF PUBLIC RECORDS**

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USE AND DEVELOPMENT AGREEMENT

This **USE AND DEVELOPMENT AGREEMENT** (this “**Agreement**”) is made this _____ day of _____, 2023 (the “**Effective Date**”), by and between the **UNIVERSITY OF THE DISTRICT OF COLUMBIA**, a public institution of higher education and an independent agency of the District of Columbia government (“**UDC**”), and the **DISTRICT OF COLUMBIA**, a municipal corporation, acting by and through its Department of General Services (the “**District**”).

RECITALS

WHEREAS, the U.S. General Services Administration transferred jurisdiction of certain real property located at the intersection of Connecticut Avenue NW and Van Ness Street NW, with a street address of 4200 Connecticut Avenue NW and currently known as UDC’s Van Ness Campus (the “**Van Ness Campus**”), to the District of Columbia for use by Washington Technical Institute (predecessor to UDC) as an educational facility, pursuant to that certain Transfer of Jurisdiction dated September 11, 1972 and recorded in the Land Records of the District of Columbia on January 11, 1973, a copy of which is attached hereto as Exhibit A, and made a part hereof (the “**TOJ**”);

WHEREAS, in connection with the establishment of the District of Columbia’s Home Rule power, the closing of the Washington Technical Institute and other UDC predecessor institutions and Congressional and District of Columbia authorization for the creation of the University of the District of Columbia in 1974 and 1976, respectively, UDC acquired use of the Van Ness Campus;

WHEREAS, the Van Ness Campus includes a building commonly known as Building 41 (the “**Building**”), as depicted on Exhibit B, attached hereto and made a part hereof;

WHEREAS, UDC and the District desire that the Building be redeveloped by the District for use by the District of Columbia’s Office of Public Records (“**OPR**”) as a state of the art 4-story archives building, certain portions of which shall be used by the UDC Felix E. Grant Jazz Archives and UDC University Archives;

WHEREAS, the District of Columbia, through OPR, will use the redeveloped building (sometimes referred herein as the “**Archives Building**”) as a secure government facility to hold and preserve temporary and permanent records documenting the activities, interactions with citizens and history of the Government of the District of Columbia including restricted and security sensitive documents, and archival paper documents, photographs, audio-visual material, microfilm, books, and related ephemera (collectively, the “**District Archives**”);

WHEREAS, the Archives Building shall support the educational mission of UDC to produce lifelong learners who are transformative leaders in the workforce, government, nonprofit sectors and beyond by providing opportunities for research and learning by UDC students, District of Columbia residents and the public;

WHEREAS, the Department of General Services (“**DGS**”) was established pursuant to the Department of General Services Establishment Act of 2011, effective September 14, 2011 (D.C. Law 19-21, 58 DCR 6226), D.C. Official Code Section 10-551.01 (2011 Supp.), and has the authority to perform certain functions with respect to the use of real property and facilities by District of Columbia agencies and the construction and operation thereof; and

WHEREAS, pursuant to D.C. Code 38-1202.01(a) (2001 ed.), the UDC Board of Trustees (the “**UDC Board**”) possesses all powers necessary or convenient to accomplish its statutorily prescribed objects and duties, including the authority to attend to the matters set forth in this Agreement.

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, UDC and the District agree as follows:

ARTICLE I.

DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below.

Section 1.01 Definitions.

“**Agreement**” has the meaning given to such term in the first paragraph above.

“**Approved Schematics**” has the meaning given to such term in Section 2.02 hereof.

“**Archives Building**” has the meaning given to such term in the fifth Whereas clause above.

“**Building**” has the meaning given to such term in the second Whereas clause above.

“**Building Systems**” has the meaning given to such term in Section 4.02 hereof.

“**Campus Facilities/Improvements**” means all structures, equipment, utilities and vegetation (such as trees, shrubs and grass) on the Van Ness Campus but outside of the Land.

“**DGS**” has the meaning given to such term in the fifth Whereas clause above.

“**District**” has the meaning given to such term in the first paragraph above.

“**District Archives**” has the meaning given to such term in the fifth Whereas clause above.

“District Uses” has the meaning given to such term in Section 2.01 hereof.

“Effective Date” has the meaning given to such term in the first paragraph above.

“Entitlements” has the meaning given to such term in Section 2.02 hereof.

“Force Majeure” means any of the following that directly cause any of a Party’s obligations under this Agreement not to be performed in a timely manner: an act of God (including fire, flood, earthquake, hurricane, or other natural disaster); explosion; war; acts of terrorism (as defined by the United Nations Security Council); insurrection; riot; government orders or shutdown orders; applicable states of emergency; a general shortage of labor, equipment, facilities, materials or supplies in the open market; failure or unavailability of transportation; strike, lockout, or other actions of labor unions; a health epidemic or pandemic or similar healthcare emergency, as declared by the Centers for Disease Control or District of Columbia government officials; or any other cause, whether similar or dissimilar to the foregoing that is not within the reasonable control of such Party or caused by the willful misconduct or negligence of such Party.

“Land” means the real property upon which the Building is located and depicted on attached Exhibit C-7.

“Logistics Plan” has the meaning given to such term in Section 3.01(a).

“OPR” has the meaning given to such term in the fourth Whereas clause above.

“OPR Parking Area” means the area for 28 to 35 parking spaces located on the B1 level of the Parking Facility for the exclusive use of OPR staff, licensees and invitees, as depicted on Exhibit C-6, attached hereto and made a part hereof.

“Notice” has the meaning given to such term in Section 7.02 hereof.

“Parking Facility” means the 2-level below grade parking facility located within the Archives Building, comprised of the UDC Parking Area and the OPR Parking Area.

“Parties” means, collectively, UDC and the District (including their respective successors and permitted assigns); each, a **“Party.”**

“Plans and Specifications” has the meaning given to such term in Section 2.02 hereof.

“Project” means the construction of the Archives Building and the development of the Property pursuant to the Plans and Specifications.

“Property” means the Building and the Land.

“PSD” has the meaning given to such term in Section 5.07(a) hereof.

“**TOJ**” has the meaning given to such term in the first Whereas clause above.

“**TOJ Use**” has the meaning given to such term in Section 2.01 hereof.

“**UDC**” has the meaning given to such term in the first paragraph above.

“**UDC Areas**” means, collectively, the UDC Work Space, the UDC Parking Area and the UDC Outdoor Area; each, a “**UDC Area**.”

“**UDC Board**” has the meaning given to such term in the seventh Whereas clause above.

“**UDC Outdoor Area**” means the Land, including the fountain and sunken lawn areas, as depicted on Exhibit C-7, attached hereto and made a part hereof.

“**UDC Parking Area**” means the B level of the Parking Facility (but not including the DC Archives Service Area depicted on Exhibit C-6) and the 113 parking space area located on the B1 level of the Parking Facility, each for the exclusive use of UDC employees, licensees and invitees, as depicted on Exhibit C-6, attached hereto and made a part hereof.

“**UDC Staff**” means UDC employees working specifically for UDC’s university and jazz archives.

“**UDC Work Space**” has the meaning given to such term in Section 4.01 hereof.

“**Van Ness Campus**” has the meaning given to such term in the first Whereas clause above.

ARTICLE II.

USE AND DEVELOPMENT

Section 2.01 TOJ; Use.

(a) The Parties acknowledge and agree that (a) pursuant to the TOJ, jurisdiction of the Van Ness Campus was transferred to the District of Columbia for use as an educational facility by UDC, as the successor entity of the Washington Technical Institute (the “**TOJ Use**”); and (b) the terms of this Agreement, including the terms relating to the development and operation of the Archives Building by the District and the use of the Archives Building by OPR and UDC, are in compliance with the TOJ Use. In addition, UDC acknowledges and agrees that the terms of this Agreement are in compliance with UDC’s Campus Master Plan (as amended), as required under the TOJ. UDC hereby grants and conveys to the District the exclusive right to possess, occupy and control (i) the Land for the development of the Project; and (ii) the Archives Building for (x) use by OPR for its governmental purpose, but subject to UDC’s right to occupy, use and operate the UDC Areas, and (y) the performance of the District’s operation and maintenance obligations hereunder (the “**District Uses**”), in accordance with and subject to the terms of this

Agreement; provided, however, that the District Uses shall be subject to and in compliance with the TOJ Use. In the event the District decides to cease using the Building as the District Archives, the District shall provide prior written notice to UDC. The notice shall include the intended use of the Building, the length of time the Building is expected to remain vacant, a general description of any interior renovation or other Building modifications, and the expected date for reopening the Building. The District's intended use shall be subject to approval by the UDC Board, which shall not be unreasonably withheld, conditioned or delayed.

(b) The District hereby accepts responsibility for the Archives Building for the District Uses, in accordance with and subject to the terms of this Agreement. The Parties acknowledge that this Agreement is subject to any reversionary rights of the federal government with respect to the Property and the remainder of the Van Ness Campus.

Section 2.02 District Development of the Project.

(a) The Parties acknowledge that they have approved the concept plans for the Project attached hereto as Exhibits C-1 through C-7, and that schematic design plans for the Project will be developed based on the concept plans, which schematic design plans shall be subject to the reasonable approval of the Parties (as approved, the “**Approved Schematics**”). The Parties acknowledge that the attached concept plans identify spaces within the Archives Building by color and that the Approved Schematics shall be referenced for the avoidance of any doubt as to any Archives Building space (e.g., in the event a copy of this Agreement does not show the concept plans in color). The District shall develop construction phase plans and specifications based upon the Approved Schematics (the “**Plans and Specifications**”) and develop the Project pursuant to the Plans and Specifications and applicable laws. UDC shall have the right to review and approve the Plans and Specifications solely with respect to conformance of the Plans and Specifications with the Approved Schematics, which approval shall not be unreasonably withheld, conditioned or delayed. The District may revise the Plans and Specifications without the approval of UDC, provided that any change which materially expands the Archives Building footprint or materially affects (i) the exterior construction of the Archives Building; (ii) the configuration or square footage of the UDC Areas; or (iii) the operations of the Van Ness Campus (except as contemplated herein) shall require the approval of UDC, which shall not be unreasonably withheld, conditioned or delayed. The District shall obtain all necessary zoning approvals, permits and other entitlements necessary for the Project (the “**Entitlements**”), and UDC shall reasonably cooperate with the District's efforts upon the District's request.

(b) UDC shall cause all occupants of the Building to vacate, and all furniture and equipment located on or within the Building to be removed, no later than December 31, 2023, it being acknowledged and agreed that the Project requires the demolition of the current Building (other than the Parking Facility).

(c) OPR shall cause, at OPR's cost, the UDC Jazz Archives materials to be moved from (i) the Building to either the Washington Research Library Consortium or Iron Mountain for storage during the development of the Archives Building; and (ii) such storage location to the Archives Building upon completion thereof, provided that UDC shall be responsible

for (x) the packing of such materials for transport, and (y) any cost associated with accessing the Jazz Archives materials during storage charged by the storage provider.

(d) Notwithstanding the foregoing, the District shall cause the relocation of any and all telecommunications equipment located on the Property that is identified by the District of Columbia's Office of Unified Communications as equipment to be relocated to an alternate location on the Van Ness Campus (such location to be agreed upon by the Parties), which relocation shall occur after the District has obtained all governmental approvals, permits and other entitlements for such relocation but prior to the demolition of the Building.

(e) The Parties further acknowledge and agree that:

(i) UDC is providing the Property for the development of the Project in its as-is condition;

(ii) UDC authorizes the demolition of the Building, which shall be at no cost to UDC;

(iii) the District expects that the Project will be completed and the Archives Building will be occupied by December 31, 2026. The District shall notify UDC if Project completion or the Archive Building occupation is delayed; and

(v) upon Project completion, the Land shall be free of waste and the personal property of the District and its contractors and subcontractors (such as tools and equipment).

Section 2.03 Term and Termination of Agreement.

(a) The term of this Agreement shall commence on the Effective Date and end upon termination in accordance with the terms and conditions contained herein.

(b) In the event that the District is unable to obtain all Entitlements for the Project, this Agreement shall terminate and be of no further force or effect, it being agreed that the District shall not perform any demolition activities on the Property until all Entitlements for the Project have been obtained. In the event of such termination, the Parties shall evidence the same in writing.

ARTICLE III.

PROJECT AND POST-PROJECT ACCESS RIGHTS

Section 3.01 District Access Rights.

(a) The Parties acknowledge that the District's contractor for the Project shall prepare a logistics plan which shall show any access and use rights on the Van Ness Campus required by the District during the Project. The logistics plan shall be subject to the approval of UDC, which shall not be unreasonably withheld, conditioned or delayed (as approved, the

“Logistics Plan”). The District and its contractors and subcontractors shall have such use and access to the Van Ness Campus as required for the Project pursuant to the Logistics Plan. If, pursuant to the Logistics Plan any portion of the Van Ness Campus outside of the Land has been so used and accessed, the Logistics Plan shall include the requirement that such portion of the Van Ness Campus be restored to at least the same condition as existed prior to such use and access. The Logistics Plan will also include (i) measures to preserve and protect the Van Ness Campus during demolition of the Building and development of the Project, (ii) any relocation and restoration of Campus Facilities/Improvements required for the foregoing; and (iii) the materials for any construction barriers. The District shall cause any curbs, sidewalks and service drives on the Van Ness Campus used or accessed during construction of the Project to be protected from damage. Any Campus Facilities/Improvements, curbs, sidewalks or service drives damaged by the District or its contractors or subcontractors during construction of the Project shall be repaired by the District.

(b) The District and OPR shall have the use of any service drive between public streets and (i) the loading docks of the Archives Building, and (ii) the Parking Facility. In no event shall UDC make alterations to the Van Ness Campus which would result in the lack of a service drive between public streets and such loading docks or the Parking Facility.

(c) In no event shall the District, OPR or their contractors, subcontractors or agents block any service drive on the Van Ness Campus without UDC’s prior approval, which shall not be unreasonably withheld, conditioned or delayed.

ARTICLE IV.

UDC AREAS

Section 4.01 UDC Work Space.

UDC shall have sole and exclusive use of approximately eight hundred eighty (880) square feet of space on the first (1st) floor and approximately one thousand fifteen (1,015) square feet of space on the second (2nd) floor of the Archives Building, as depicted on Exhibit C-2, attached hereto and made a part hereof (the **“UDC Work Space”**).

Section 4.02 UDC Parking Area.

(a) The Parties acknowledge that the UDC Parking Area and the OPR Parking Area on the B1 level of the Building shall be separated by a metal mesh or similar barrier, and that entry into the OPR Parking Area shall require keycard or badged access available only to OPR.

(b) UDC shall have sole and exclusive use of the UDC Parking Area; provided, however, that the District and OPR shall have (i) sole and exclusive access at all times to the DC Archives Service Area on the B level of the Parking Facility, as depicted on Exhibit C-6, and (ii) access at all times to any areas within the UDC Parking Area necessary to perform its operations or obligations hereunder (the **“Building Systems”**). UDC shall be responsible, at its sole cost, for the maintenance and repair of the UDC Parking Area excluding the Building Systems.

Notwithstanding the foregoing, each of UDC and the District shall have access to the “UDC Switchgear” on the B-1 level of the Building, as depicted on Exhibit C-6, for their respective operations within the Building.

Section 4.03 UDC Outdoor Area.

UDC shall maintain and repair, at its sole cost, the UDC Outdoor Area, subject to the District’s landscaping obligations under Section 5.07(c) below.

Section 4.04 Use of UDC Areas.

The Parties acknowledge and agree that any description of a UDC Area set forth in this Agreement may be subject to any change reflected in the Plans and Specifications. UDC shall maintain, repair, replace and operate the UDC Areas, at its sole cost. Any work to or within the UDC Areas performed by or on behalf of UDC shall be performed in a good and workmanlike manner. UDC shall not permit any mechanic’s lien to be filed against the Property for work claimed to have been performed for, or materials claimed to have been furnished to, UDC. UDC may perform improvements or other alterations to the UDC Areas without the District’s prior approval; provided, however, that (a) any alteration which would affect Building structures or systems shall require the prior written approval of the District, which shall not be unreasonably withheld, conditioned or delayed; and (b) any such UDC work shall not unreasonably interfere with the operations of OPR within the Building.

Section 4.05 Dennard Plaza.

The District acknowledges and agrees that Dennard Plaza is a location on the Van Ness Campus where university students and visitors congregate and events are held. Nothing contained in this Agreement shall impair UDC from utilizing Dennard Plaza as a gathering place and a place for events.

ARTICLE V.

USE AND ACCESS; OPERATIONS

Section 5.01 Use and Access General.

The following Sections 5.02 through 5.06 set forth the terms pursuant to which the Parties shall access and use areas within the Archives Building, such areas being depicted in Exhibits C-1 through C-7.

Section 5.02 First Floor.

(a) Security. UDC and OPR staff shall have badged access into the Archives Building through a dedicated entrance in the lobby. All other persons shall be required to go through District security protocols in order to enter the Archives Building.

(b) Exhibit Space. The lobby exhibit space and the dedicated exhibit space shall be used exclusively by OPR, provided that UDC may request the use of such exhibit space so long as the exhibit is consistent with the collections of the UDC Felix E. Grant Jazz Archives or the UDC University Archives housed in the Archives Building. UDC's request shall (i) include a description of the proposed exhibit and the desired space and dates; and (ii) be made no less than 6 months prior to the desired start date of the exhibit. UDC shall be responsible, at its cost, for the installation and dismantling of any UDC exhibit, and shall timely return the space to OPR in the condition in which it was made available to UDC. UDC may request the use of the multi-purpose room for a reception or similar event to be held in connection with a UDC exhibit, subject to the terms of Section 5.02(c) below.

(c) Multi-Purpose Room. The multi-purpose room shall be used exclusively by OPR, provided that UDC may request use of the room for lectures or similar events which do not cause material disruption to OPR's operations. UDC's request shall include a description of the event and the desired date and times, and shall be submitted to OPR no less than 48 hours prior to the event.

(d) Patron Lounge and Bathrooms. The patron lounge and bathrooms shall be available for use by each of the Parties and their respective staff, invitees, licensees and other guests.

(e) Main Research Room. The main research room shall be used exclusively by OPR and its staff, invitees, licensees and other guests, provided that UDC may request use of space within the main research room, which shall be subject to approval by OPR. UDC's request shall include the desired space, date and times for such use, and shall be submitted to OPR no less than 48 hours in advance.

(f) UDC Research Room. The UDC research room shall be used exclusively by UDC and its staff, invitees, licensees and other guests.

(g) Loading Docks. The loading docks shall be used exclusively by OPR, provided that UDC may request use of the docks, which request shall include the desired date and times and shall be submitted to OPR no less than 48 hours prior to the desired use.

(h) Requests to OPR. Requests by UDC to OPR under this Section 5.02 shall be submitted by email to the State Archivist and the Public Records Administrator or their designee(s), the email addresses for whom shall be provided by OPR and may be updated by OPR from time to time. Any grant by OPR of the use of space shall be subject to availability and may be reasonably conditioned by OPR upon the payment by UDC of security costs and costs for an engineer to provide overtime HVAC. OPR shall provide UDC with viewer access to OPR's reservation system for the Archives Building which shall enable UDC to view OPR's schedule of events.

(i) OPR and District Space. Except as expressly set forth above (including Section 4.01), the first floor shall be used and operated exclusively by OPR and the District.

Section 5.03 Second Floor.

(a) Cool Storage. OPR shall have exclusive use of the cool storage area except for approximately 5,263.33 cubic feet of space within the area for use by UDC for the storage of the following archival materials in its Jazz Archives and University Archives collections: grooved phono-discs, optical discs and magnetic tape. No UDC Staff shall enter the cool storage area except those specifically credentialed to enter the area, and in no event shall any other UDC Staff, employees, licensees, invitees or guests be permitted to enter the area.

(b) Paper Storage. OPR shall have exclusive use of the paper storage area except for approximately 5,349.6 cubic feet of space within the area for use by UDC for the storage of the following archival materials in its Jazz Archives and University Archives collections: books, photographs, periodicals, paper materials and other ephemera, and oversized posters and banners for flat file storage. No UDC Staff shall enter the paper storage area except those specifically credentialed to enter the area, and in no event shall any other UDC Staff, employees, licensees, invitees or guests be permitted to enter the area.

(c) OPR Work Areas and Vault. OPR shall have sole and exclusive use of the OPR work areas and the vault.

(d) UDC Work Area. UDC shall have sole and exclusive use of the UDC Work Area. Any person other than UDC Staff within the UDC Work Area must at all times be escorted by UDC Staff.

(e) Bathrooms. The bathrooms shall be available for use by OPR and UDC Staff (and with respect to UDC, its escorted employees, licensees, invitees and other guests).

Section 5.04 Third Floor.

(a) Quiet Room, Wellness Room, Staff Lounge and Bathrooms. The quiet room, wellness room, staff lounge and bathrooms shall be available only to UDC Staff and OPR.

(b) OPR Work and Storage Areas. OPR shall have sole and exclusive use of the OPR work areas and the storage areas and, except as set forth in Section 5.04(a), all other space on the third floor.

Section 5.05 Fourth Floor and Roof.

OPR shall have sole and exclusive use of the fourth floor. UDC shall have no right to access or use the fourth floor or the roof.

Section 5.06 Outdoor Area.

The District shall develop the Land pursuant to the Plans and Specifications, which shall include the construction of the UDC Outdoor Area. Upon the completion of such construction, the Parties shall together perform a walkthrough of the UDC Outdoor Area and upon

mutual confirmation of completion (which shall be evidenced in writing), UDC shall be solely responsible, at its cost, for the maintenance, repair and operation of the UDC Outdoor Area.

Section 5.07 Operations.

(a) Security. The District shall be responsible for the provision of security for the Archives Building, as the District determines to be necessary or appropriate, in its sole and absolute discretion. The District's security measures may include the provision of DGS Protective Services Division ("PSD") personnel, interior and exterior security cameras, security for the District Parking Area, loading docks and lobby. If PSD personnel are assigned to the Archives Building, such personnel and UDC's Office of Public Safety and Emergency Management shall work cooperatively and in good faith with respect to the safety and security of the Property.

(b) Structure and Systems. The District shall be responsible for the maintenance and repair of the structural elements and the HVAC, plumbing, electrical and other systems of the Archives Building, as the District determines to be necessary or appropriate, in its sole and absolute discretion.

(c) Janitorial and Other District Activities. The District shall be responsible for the provision of (i) janitorial services for the Archives Building which shall include the UDC Work Area but no other UDC Areas; and (ii) window washing for all windows of the Archives Building; (iii) snow and ice removal for the walkways immediately adjacent to the Archives Building entrance and loading docks, but no other walkways or areas on the Property; and (iv) landscaping for the area immediately surrounding and adjacent to the Archives Building as shown on Exhibit C-7 as "District Landscaping Area", but no other areas on the Property including the sunken lawn area.

(d) Utilities. All accounts for utilities serving the Archives Building shall be in the name of and paid by the District. All accounts for utilities serving the UDC Outdoor Area shall be in the name of and paid by UDC.

(e) Operating Hours. The daily operating hours for the Archives Building shall be determined by OPR. UDC may request that the Archives Building be open for its use of the UDC Work Space outside of such building hours by email sent pursuant to Section 5.02(f) above. Any grant by OPR, in its sole and absolute discretion, may be reasonably conditioned by OPR upon the payment by UDC of security costs and costs for an engineer to provide overtime HVAC.

Section 5.08 Signage.

(a) The size and design of the signage within the Archives Building shall be developed collaboratively by OPR and UDC, and each Party's respective signage shall be subject to such Party's approval.

(b) OPR may install such signage on and within the Archives Building (including the exterior of the Archives Building), other than on or within the UDC Areas, as OPR elects, in its sole and absolute discretion; provided, however, that the District may install signs on

or within the UDC Areas if necessary or appropriate for the operation and maintenance of the Archives Building or for the safety of persons or property. Any such signage on the exterior of the Archives Building shall be consistent with UDC exterior signage on the Van Ness Campus and shall be subject to the approval of UDC, which shall not be unreasonably withheld, conditioned or delayed.

Section 5.09 Opportunities for Training and Employment of UDC Students.

OPR agrees to (a) share OPR announcements of employment opportunities within OPR with the UDC Office of Career Services; and (b) provide opportunities to UDC students to apply for work study and to allow for UDC students with an interest in archives or cultural heritage to apply for a practicum or field study with the DC Archives within OPR. During the practicum/field study, students would conduct processing activities and/or digitization activities on one or more accessioned collections. In addition, UDC students may attend UDC portions of design and construction meetings and Project walkthroughs with the UDC representative(s) at the meeting or walkthrough if coordinated through the UDC representative(s) with the DGS Project manager in advance, so long as such student participation in walkthroughs does not pose a risk to life or property, in the District's reasonable discretion.

Section 5.10 Damage or Destruction.

(a) If the Archives Building is totally or partially damaged or destroyed, the District shall, in its sole discretion, determine whether it will repair or reconstruct the Archives Building. If the District elects to repair or reconstruct the Archives Building, then it shall diligently perform such repair or restoration.

(b) In the event that the District elects not to repair or restore damage to or destruction of the Archives Building, the District shall notify UDC of such election in writing, in which event the persons identified in Section 7.01 below shall determine whether (and, if applicable, how) this Agreement shall be amended or terminated.

ARTICLE VI.

INSURANCE AND LIABILITY

Section 6.01 Insurance.

The Parties acknowledge that any liability, property or other insurance for or relating to the Property, whether the Property is used, controlled or occupied by UDC or the District, is carried by the Government of the District of Columbia, as determined by its Office of Risk Management (“ORM”). As such, the Parties agree that this Agreement shall not impose any obligation on either Party regarding the procurement of insurance except as may be required by ORM.

Section 6.02 Liability.

Each Party shall be liable for its own negligence and willful misconduct and that of its employees, officers, agents, contractors, subcontractors, invitees, licensees and other guests, as determined by the judgment of a court of competent jurisdiction. In the event a Party or its Agent causes damage to any part of the Archives Building, such Party shall be responsible, at its sole cost, for promptly repairing such damage lien free and in accordance with Laws; provided, however, that with respect to damage caused by UDC or its Agent, the District may require that the work be performed or supervised by the District, in its discretion, and if such repair is performed by the District, UDC shall be responsible for the reasonable cost thereof.

ARTICLE VII.

MISCELLANEOUS PROVISIONS

Section 7.01 Disputes.

Any dispute between the Parties arising under this Agreement shall be resolved by the Director of the Department of General Services, the Secretary of the District of Columbia's Office of the Secretary of State and the President of UDC, or their respective delegates.

Section 7.02 Notices.

Whenever any request, approval, consent or notice (a “**Notice**”) shall, or may, be given by one Party to the other under this Agreement, such Notice shall be in writing and addressed to the applicable Party at its respective email address as set forth below.

If to UDC: Javier, Dussan, Vice President of Real Estate & Facilities
Management at Javier.Dussan@udc.edu

with a copy, not constituting notice, to:
Office of the General Counsel at Avis.Russell@udc.edu

If to the District: Tiwana Hicks, DGS Associate Director of Portfolio
Management Division at Tiwana.Hicks@dc.gov

Xavier Beltran, DGS General Counsel at
Xavier.Beltran@dc.gov

Lopez D. Matthews, State Archivist and Public Records
Administrator, Office of Public Records at
Lopez.Matthews@dc.gov

Victor L. Reid, Esq., Administrator, Office of Documents
and Administrative Issuances, Office of the Secretary at
Victor.Reid@dc.gov

Section 7.03 Successors and Assigns.

A Party may assign its rights and obligations under this Agreement only with the prior written approval of the other Party, which shall not be unreasonably withheld, conditioned or delayed. This Agreement and the covenants and conditions herein contained shall inure to the benefit of, and be binding upon, UDC and the District, and their respective successors and permitted assigns.

Section 7.04 Anti-Deficiency Limitations.

(a) Whether expressly or impliedly qualified or limited in any Section of this Agreement, the obligations of UDC or the District to fulfill any financial obligation pursuant to this Agreement or any subsequent agreement entered into pursuant to this Agreement to which UDC or the District is a party (an “**Other Agreement**”; and together with this Agreement, any “**Applicable Agreement**”), or referenced in any Applicable Agreement, are and shall remain subject to the provisions of (a) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341-1351 and 1511-1519 (2004), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2012 Repl.); (b) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 et seq. (2012 Repl. and 2014 Supp.) ((a) and (b) collectively, the “**Anti-Deficiency Acts**”); and (c) § 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2012 Repl.), as each may be amended from time to time and each to the extent applicable to any Applicable Agreement. Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation of a Party in anticipation of an appropriation by the United States Congress (“**Congress**”) for such purpose, and a Party’s legal liability for the payment of any financial obligation under any Applicable Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress and the District of Columbia (references in this Section to “District of Columbia” shall mean the District of Columbia as a sovereign entity, and not as a party to this Agreement). During the term of this Agreement, the District of Columbia agency authorized and delegated by the Mayor of the District of Columbia to administer this Agreement shall, for each corresponding District of Columbia fiscal period, include in the then-current services funding level package a request sufficient to fund such Party’s known financial obligations under this Agreement for such fiscal period.

(b) If no appropriation is made by the District of Columbia or Congress to pay any financial obligation under any Applicable Agreement for any period after the District of Columbia fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the applicable Party shall not be liable to make any payment under such Applicable Agreement upon the expiration of any then-existing appropriation.

(c) Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of either Party or the District of Columbia shall have any personal liability in connection with a breach of the provisions of this Section or in the event of a default by such Party under any Applicable Agreement.

(d) No Applicable Agreement shall constitute an indebtedness of the District of Columbia nor shall it constitute an obligation for which the District of Columbia is obligated to

levy or pledge any form of taxation or for which the District of Columbia has levied or pledged any form of taxation. No officer, employee, director, member or other natural person or agent of either Party is authorized to obligate or expend any amount under any Applicable Agreement unless such amount has been appropriated by Act of Congress and is lawfully available.

Section 7.05 Entire Agreement; Modification.

The Parties, intending to be bound, acknowledge and agree that: (a) this Agreement contains and embodies the entire agreement of the Parties with respect to the matters set forth herein, and supersedes and revokes any and all negotiations, arrangements, letters of intent, representations, inducements or other agreements, oral or in writing with respect to such matters; (b) no representations, inducements or agreements, oral or in writing, between the Parties with respect to such matters, unless contained in this Agreement, shall be of any force or effect; and (c) this Agreement may only be modified by a writing signed by an authorized officer of both Parties expressly setting forth said modification.

Section 7.06 Severability.

Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, then such provision shall be deemed to be replaced by the valid and enforceable provision most substantively similar to such invalid or unenforceable provision, and the remainder of this Agreement and the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby. Nothing contained in this Agreement shall be construed as permitting either Party to charge or receive interest in excess of the maximum rate allowed by law.

Section 7.07 No Broker's Commission.

Each Party warrants and represents to the other that no broker, finder or agent has acted for or on its behalf in connection with the negotiation, execution or procurement of this Agreement.

Section 7.08 Inability to Perform.

If either Party is delayed or prevented from performing any of its obligations under this Agreement by reason of Force Majeure, the period of such delay or such prevention shall be deemed added to the time herein provided for the performance of any such obligation by such Party.

Section 7.09 Construction of Certain Terms.

The term "including" shall mean in all cases "including without limitation". Wherever a Party is required to perform any act hereunder, such Party shall do so at its sole cost and expense, unless expressly provided otherwise.

Section 7.10 No Partnership; No Third Party Beneficiaries.

Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture of or between the Parties, or to create any other relationship between the Parties. Nothing contained in this Agreement shall be deemed or construed to create any third party beneficiaries. The only entities that the Parties intend to be benefitted by this Agreement are UDC and the District of Columbia.

Section 7.11 Absence of Interest.

Each Party represents and warrants that: (i) that no officer, agent, employee, elected official or representative of such Party has received any payment or other consideration for the making of this Agreement, and that no such person has any interest, direct or indirect, in this Agreement, or the proceeds thereof or related thereto; and (ii) the negotiation, execution, delivery and performance of this Agreement by such Party has not been, and shall not be, induced by, the result of or based on Improper Influence. “**Improper Influence**” means any influence that induces or intends to induce any officer, agent, employee, elected official or representative of a Party to give consideration, or to act, regarding this Agreement on any basis other than on the merits of the matter, or in violation of any laws or regulation applicable this Agreement.

Section 7.12 Counterparts.

This Agreement may be executed in several counterparts each of which shall constitute an original, but both of which together shall constitute one and the same instrument. Execution and delivery of this Agreement by electronic or facsimile signature (including without limitation by an e-mailed .pdf document) shall be sufficient for all purposes, and shall be binding on the Parties hereto.

Section 7.13 Drafting; Review by Counsel; Custom and Practice.

There shall be no presumption that this Agreement be construed more strictly against the Party who itself or through its agent prepared this Agreement (it being agreed that all Parties have participated in the preparation of this Agreement and that each Party has had the opportunity to consult legal counsel before the execution of this Agreement). No custom or practice that may evolve between the Parties in the administration of the terms of this Agreement shall be construed to waive either Party’s right to later insist on the other Party’s strict performance of the terms of this Agreement.

[SIGNATURE PAGES AND EXHIBITS FOLLOW]

IN WITNESS WHEREOF, the District of Columbia, acting by and through its Department of General Services, intending to be legally bound hereby, has executed this Agreement as of the day and year first above written.

DISTRICT:

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

By: _____
Name: Delano Hunter
Title: [Acting] Director

Approved For Legal Sufficiency for the District of Columbia by:
The Office of the General Counsel for the Department of General Services

By: _____
Assistant General Counsel

ACKNOWLEDGED AND AGREED TO BY
THE DISTRICT OF COLUMBIA OFFICE OF THE SECRETARY OF STATE:

By: _____
Name: Kimberly A. Bassett
Title: Secretary

[UDC'S SIGNATURE PAGE AND EXHIBITS FOLLOW]

IN WITNESS WHEREOF, UDC, intending to be legally bound hereby, has executed this Agreement as of the day and year first above written.

UDC:

**UNIVERSITY OF THE DISTRICT OF
COLUMBIA,**

a public institution of higher education and
an independent agency of the District of
Columbia government

By: _____

Name: Ronald Mason, Jr.

Title: President

Approved For Legal Sufficiency for the University of the District of Columbia by:

By: _____
Avis Marie Russell, General Counsel

[EXHIBITS FOLLOW]

Transfer of Jurisdiction

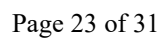


EXHIBIT B

Depiction of Property



First Floor Plan



EXHIBIT C-2

Second Floor Plan



EXHIBIT C-4

Fourth Floor Plan

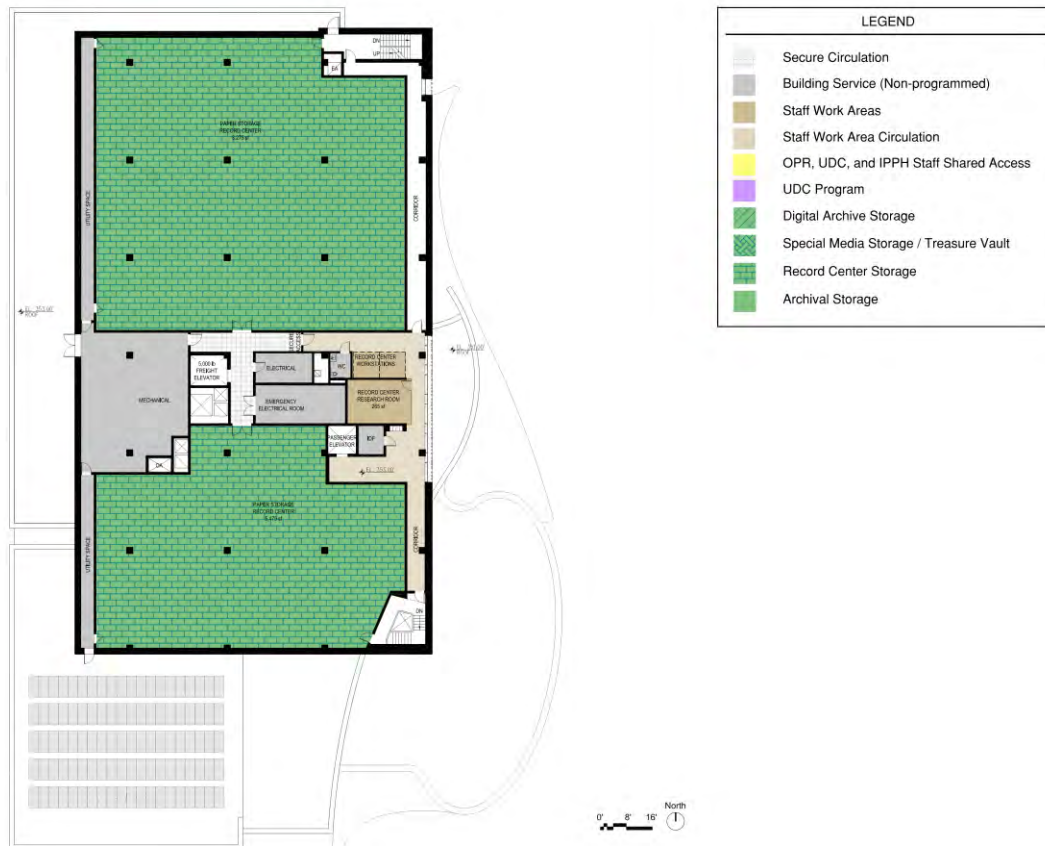


EXHIBIT C-5

Roof Plan

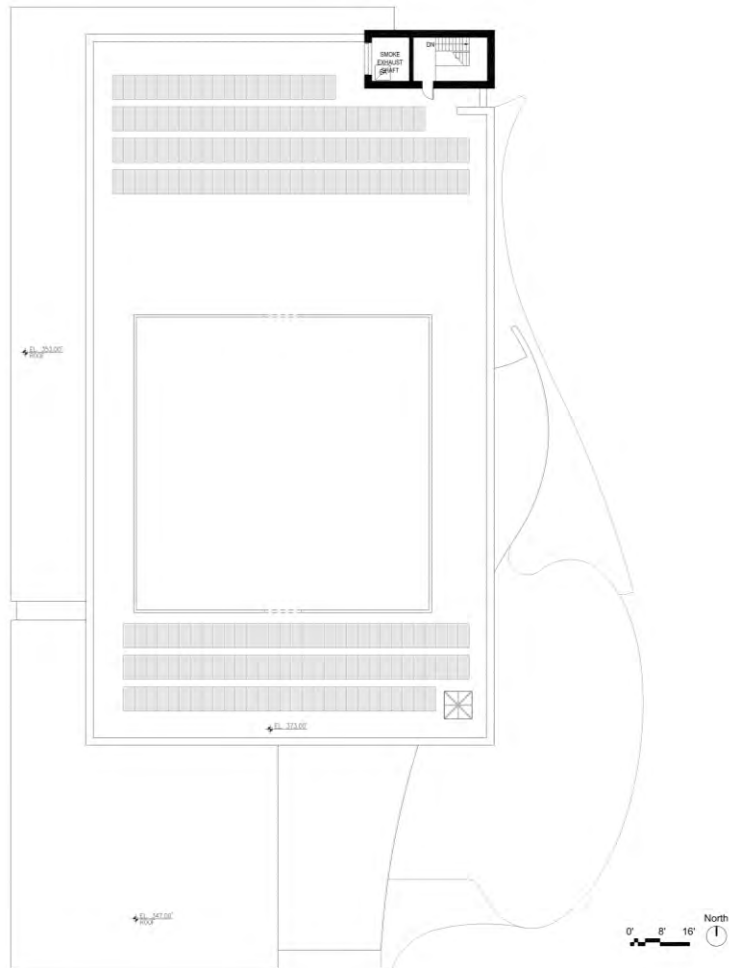


EXHIBIT C-6

Parking Facility Plan



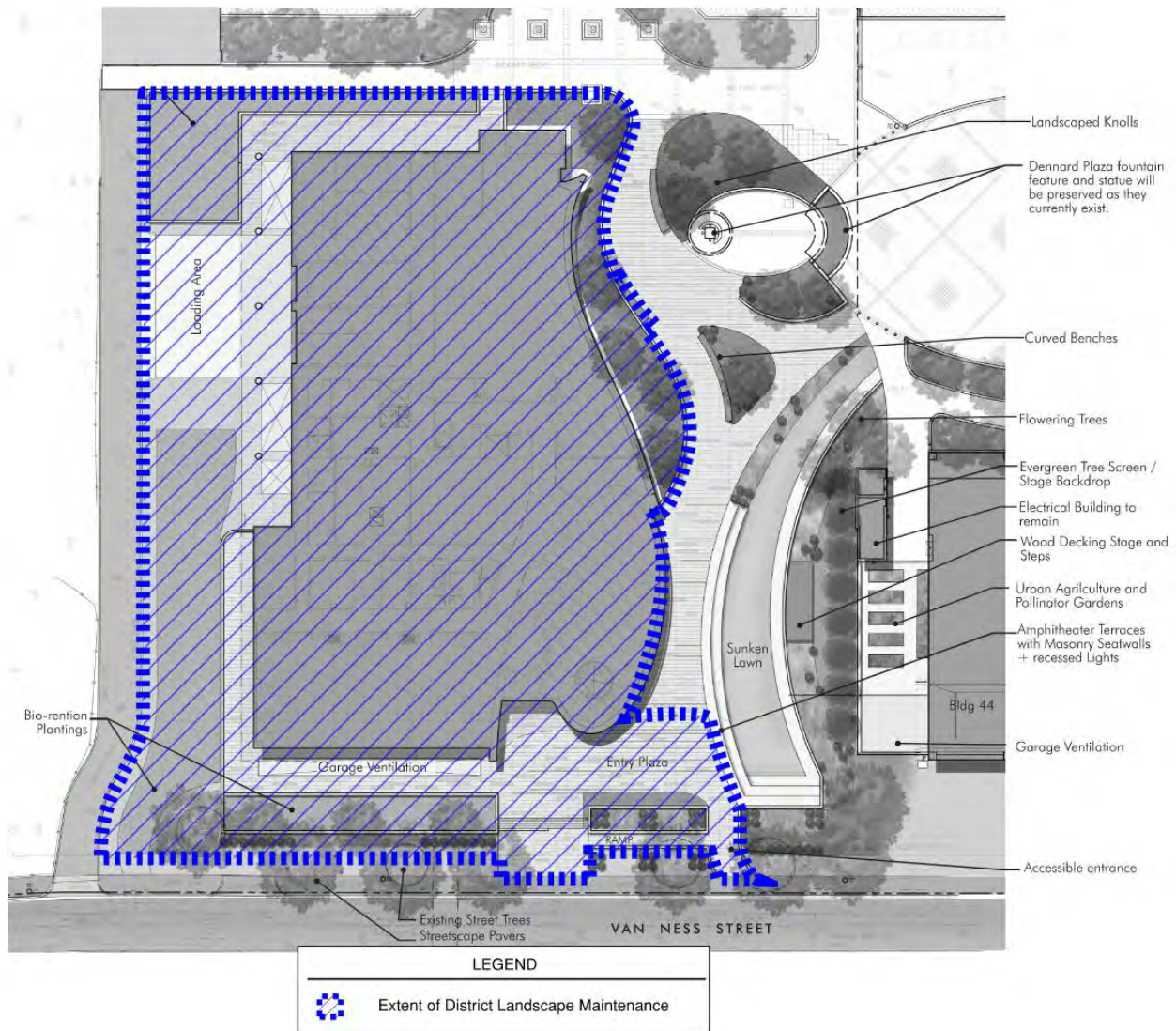
B-1 Level



B Level

EXHIBIT C-7

Outdoor Area Plan



Executive Summary

USE AND DEVELOPMENT AGREEMENT for the DISTRICT OF COLUMBIA ARCHIVES

Below is a summary of key points in the Use and Development Agreement for the DC Archives. The Office of General Counsel on behalf of and with the Office of Facilities and Real Estate Management negotiated this agreement with input from the UDC Jazz Archivist and the UDC Archivist.

Article II

Section 2.01 - UDC grants and conveys to the District the exclusive right to possess, occupy and control (i) the Land for the development of the Project; and (ii) the Archives Building for use by Office of Public Records (OPR) for its governmental purpose, but subject to UDC's right to occupy, use and operate the UDC Areas.

The use of the building has to be consistent with the purpose for which the land was transferred to the District by the federal government. Any change by the District in the use has to be approved by the Board.

Section 2.02 – The UDC Board of Trustees have approved the design concepts. UDC has the right to approve any change which materially expands the Archives Building footprint or materially affects (i) the exterior construction of the Archives Building; (ii) the configuration or square footage of the UDC Areas; or (iii) the operations of the Van Ness Campus.

UDC will vacate Building 41 by December 31, 2023.

OPR shall move, store and return, at its cost, the UDC Jazz Archives materials.

The District expects that the Archives Building will be occupied by December 31, 2026 and will notify UDC if completion or the Archive Building occupation is delayed;

Section 2.03 – The agreement shall terminate if the District does not get all Entitlements (permits and approvals) and demolition will not begin until Entitlements are obtained.

Article III

Section 3.01 – A logistics plan, approved by UDC, will be developed which shall show any access and use rights on the Van Ness Campus required by the District during the Project.

Article IV

Section 4.01 - UDC has sole and exclusive use of approximately eight hundred eighty (880) square feet of space on the first (1st) floor and approximately one thousand fifteen (1,015) square feet of space on the second (2nd) floor of the Archives Building.

Section 4.02 – The parking areas for UDC and the OPR will have separate entrances and the parking areas will be separated by a mesh or similar barrier. UDC and OPR are each responsible for the operation and maintenance of their respective parking areas.

Article V

Section 5.02 – UDC can request use of the exhibit space so long as the exhibit is consistent with the collections of the UDC Felix E. Grant Jazz Archives or the UDC University Archives housed in the Archives Building. UDC may also request use of the multi-purpose room and the main research room.

Section 5.03 – UDC will have dedicated workspace and in the cool storage and paper storage rooms.

Section 5.06 – The District will construct the area outside the Archives building that connects with Dennard Plaza at its cost and after acceptance by UDC, UDC will maintain the area at its cost.

Section 5.07 – The District is responsible for all costs related to the operation and maintenance of the Archives building. UDC may request extended hours and will be required to pay for security and HVAC personnel.

Section 5.08 – The District and UDC will collaborate on internal signage and UDC approves the external signage.

Section 5.09 - OPR agrees to (a) share OPR announcements of employment opportunities within OPR with the UDC Office of Career Services; and (b) provide opportunities to UDC students to apply for work study and to allow for UDC students with an interest in archives or cultural heritage to apply for a practicum or field study with the DC Archives within OPR. In addition, UDC students may attend UDC portions of design and construction meetings and Project walkthroughs with the UDC representative(s) at the meeting or walkthrough if coordinated through the UDC representative(s) with the DGS Project manager in advance, so long as such student participation in walkthroughs does not pose a risk to life or property, in the District's reasonable discretion.

Section 5.10 – In the event of partial or total damage to the building, the District will determine whether to repair or reconstruct the building. If the District decides not to repair or reconstruct the building, the parties will meet to discuss.

TO: The Board of Trustees
FROM: Managing Director of Finance *David A. Franklin*
DATE: July 13, 2023
SUBJECT: DC Archives Facilities - Use and Development Agreement

Conclusion

It is concluded that there is no fiscal impact associated with the University entering into an agreement with the Office of the Secretary of the District (OS) to allow for the relocation of the DC Archives facility to the Van Ness Campus at the site of Building 41. The Archives Building will support the educational mission of UDC to produce lifelong learners who are transformative leaders in the workforce, government, nonprofit sectors and beyond by providing opportunities for research and learning by UDC students, District of Columbia residents and the public.

Background

The District began initial feasibility studies for the consolidation of the DC Archives facilities under the management of DGS in 2015. In 2018, the OS and UDC entered into an agreement to study the feasibility of relocating the DC Archives to the Van Ness Campus. The approved 2020 UDC Campus Plan also identified Building 41 as a possible future site for a consolidated DC Archives facility. The District has concluded that the Van Ness campus is the best location and has begun designing a new facility at the site which includes the demolition of the existing building. The new DC Archives will include opportunities for synergies with the University and the campus and will include shared records and collection storage with the UDC Jazz and Historical Archival Collections.

Fiscal Impact

As the University continues to raise the quality of support provided to our students, faculty, staff, and District residents, the relocation of the DC Archives to the Building 41 site is an opportunity for the University to further showcase the mission with a new state of the art facility on the main campus. The building will also include spaces for the University's Archive collections and will also allow students and staff to take advantage of the vast resources within the District's records.

The request is approved based on the information provided.