

**Metro**Los Angeles County
Metropolitan Transportation AuthorityOne Gateway Plaza
Los Angeles, CA 90012-2952213.922.2000 Te
metro.net**PLANNING AND PROGRAMMING COMMITTEE
OCTOBER 16, 2013****SUBJECT: WILSHIRE WESTERN – JOINT DEVELOPMENT****ACTION: AUTHORIZE EXECUTION OF AMENDMENTS TO AN EXISTING
GROUND LEASE WITH SOLAIR MARKETING, LLC AND RELATED
DEVELOPMENT DOCUMENTS****RECOMMENDATION**

Authorize the Chief Executive Officer to execute and enter into:

- A. An amendment to MTA's existing ground lease (Ground Lease) with Solair Marketing, LLC (Solair) of MTA property situated adjacent to the Wilshire/Western station portal (and, as is necessary or prudent, amendments to related development documents) to allow and provide for the installation, maintenance and placement (at no cost to Solair or its successors and assigns) of a memorial to former California State Senator Alfred Hoyun Song in the street-level plaza surrounding the station portal in the location generally indicated on Attachment A, and in accordance with the plans and renderings included as Attachment B; and
- B. A separate Amended and Restated Ground Lease (and, as is necessary or prudent, amendments to related development documents) with a prospective buyer (Buyer) of the commercial portion of Solair's mixed-use Wilshire/Western transit oriented development that will replace the Ground Lease and will contain key terms and conditions substantially in accordance with the following, each of which is detailed more fully in Attachment C: (1) require Buyer make a Base Rent prepayment (Rent Prepayment) to MTA ranging from \$3,153,623 to \$3,291,627 (depending on when the prepayment is made during the November 1, 2013 to July 31, 2014 prepayment window) and, as a result, reduce the Ground Lease's current Base Rent from \$34,084 per month to \$18,750 per month and eliminate the Ground Lease's requirement that the tenant post a letter of credit as security to MTA for tenant's Base Rent obligations; (2) require Buyer to construct and install a canopy over the Wilshire/Western station portal (Portal Canopy) consistent with the portal canopy design that is intended to be used on the Metro Purple Line Extension; and (3) require that all or a portion of the Rent

Prepayment plus the Ground Lease's combined \$433,140 in cap funds. If the Portal Canopy does cost \$1.6 million, MTA would receive between \$1.9 and \$2.1 million of the Rent Prepayment to use for other purposes, after paying for the Portal Canopy and applying Solair's \$433,140 commitment.

Solair is currently in breach of their obligations under the Ground Lease with respect to Portal Canopy design and construction deadlines set forth therein. However, staff will not pursue available remedies with respect to this breach until the earlier of (a) consummation of the proposed sale without execution of the Amended and Restated Ground Lease, or (b) July 31, 2014 (the expiration of MTA's agreement to enter into the Amended and Restated Ground Lease with a Buyer). The hope is that Solair will sell the commercial component prior to July 31, 2014 and will select a Buyer willing to enter into the Amended and Restated Ground Lease.

DISCUSSION

The Solair project was substantially completed in spring 2009. In fall 2009, Solair's construction lender Corus Bank was placed into FDIC receivership. Shortly thereafter, the FDIC sold the project's construction loan to Corus Construction Venture, LLC (CCV), an entity owned by the FDIC and a consortium of private equity investors. Around the time that the sale was being completed, KOAR Wilshire Western, LLC, the original project developer, defaulted on the construction loan, and, in the summer of 2010, Solair Marketing, LLC, a CCV created, single-purpose development entity, took ownership of the project via a deed in lieu of foreclosure from KOAR.

At present, all the project's 186 condominium units have been sold (8 are still in escrow), but the project continues to have trouble securing and maintaining retail tenants. The proposed sale is intended to secure a strong commercial operator that can breathe life into the project's commercial component.

Policy Implications

The recommended actions are generally consistent with the goals of MTA's Joint Development Policies and Procedures.

DETERMINATION OF SAFETY IMPACT

Approval of this item will have no impact on safety.

FINANCIAL IMPACT

Funding for joint development activities related to the proposed agreements and the Solair project is included in the FY14 budget in Cost Center 2210 (New Business Development), under Project 610011 (Economic Development).

Since the proposed Ground Lease amendment and Amended and Restated Ground Lease will be a multi-year contracts, the Chief, Real Property Management & Development, will be accountable for budgeting any costs associated with these agreements in future years.

Impact to Budget

The source of funds for this project is local right-of-way lease revenues, which are eligible for bus/rail operating and capital expenses. Execution of the Ground Lease amendment and Amended and Restated Ground Lease will not impact ongoing bus and rail operating and capital costs, the Proposition A and C and TDA administration budget or the Measure R administration budget.

ALTERNATIVES CONSIDERED

The Board could choose not to proceed with the recommended actions. If the Ground Lease amendment is rejected, MTA would not have the right, under the existing Ground Lease, to place the memorial to former California State Senator Alfred Hoyun Song in the street-level plaza surrounding the Wilshire/Western station portal. If the Amended and Restated Ground Lease is rejected, MTA would miss out on an opportunity to get a functional and attractive portal canopy constructed over the station portal at no out-of-pocket cost, along with the net proceeds of a large prepayment of Base Rent under the Ground Lease. Staff does not recommend either of these alternatives.

NEXT STEPS

Upon approval of the recommended actions, the Ground Lease amendment allowing placement of the Senator Song memorial on the Wilshire/Western plaza will be drafted and executed. In addition, the Amended and Restated Ground Lease will be drafted and held for execution by the Buyer (at Buyer's election) at the closing of the sale of the project's commercial component.

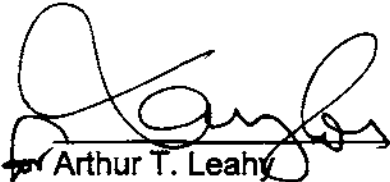
ATTACHMENTS

- A. Site Plan showing location of memorial to former California State Senator Alfred Hoyun Song
- B. Plans and Renderings for the memorial to former California State Senator Alfred Hoyun Song
- C. Term Sheet regarding an Amended and Restated Ground Lease
- C1. Portal Canopy Plans and Specifications

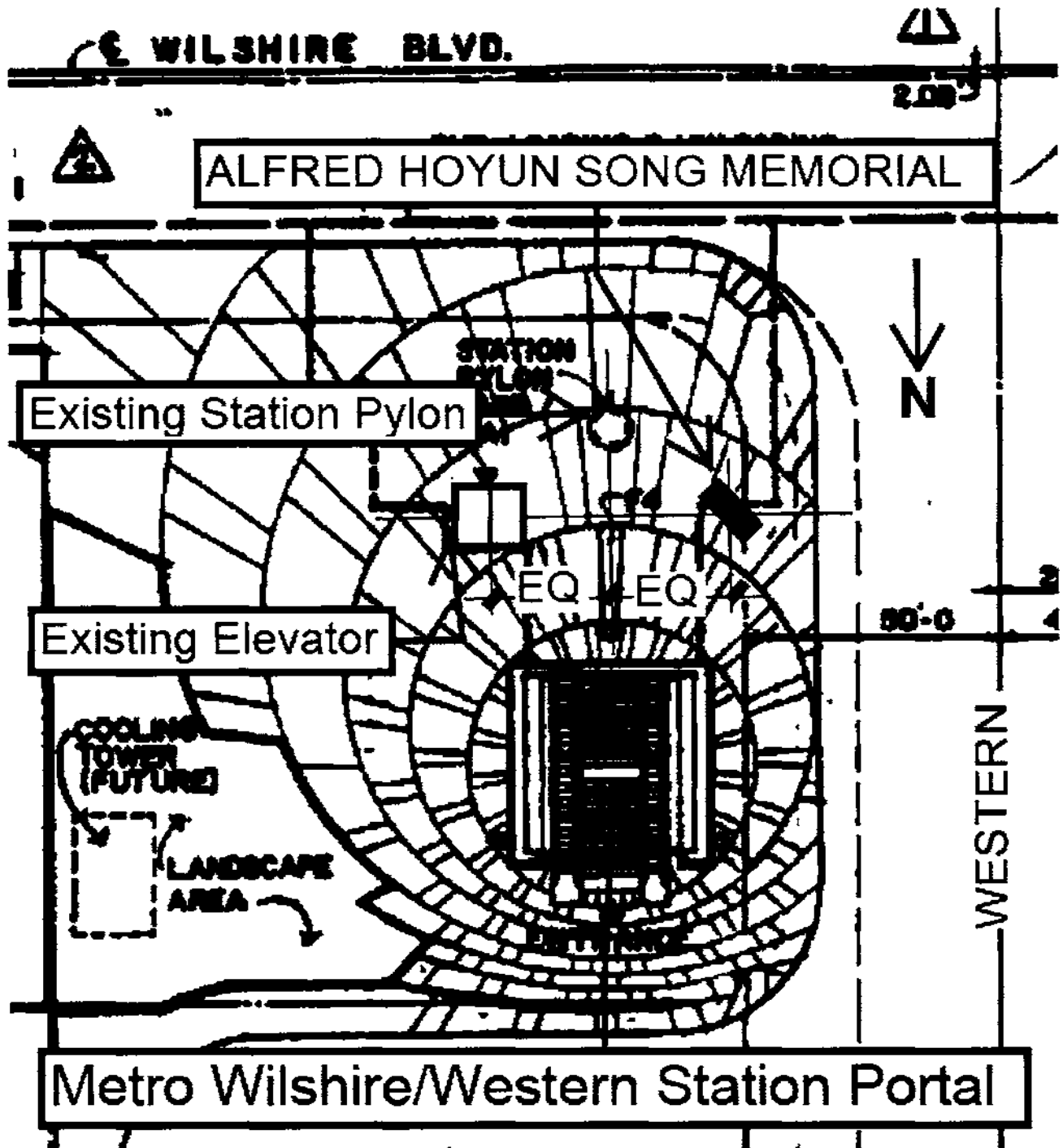
Prepared by: Greg S. Angelo
Director of Real Property Management & Development
(213) 922-3815

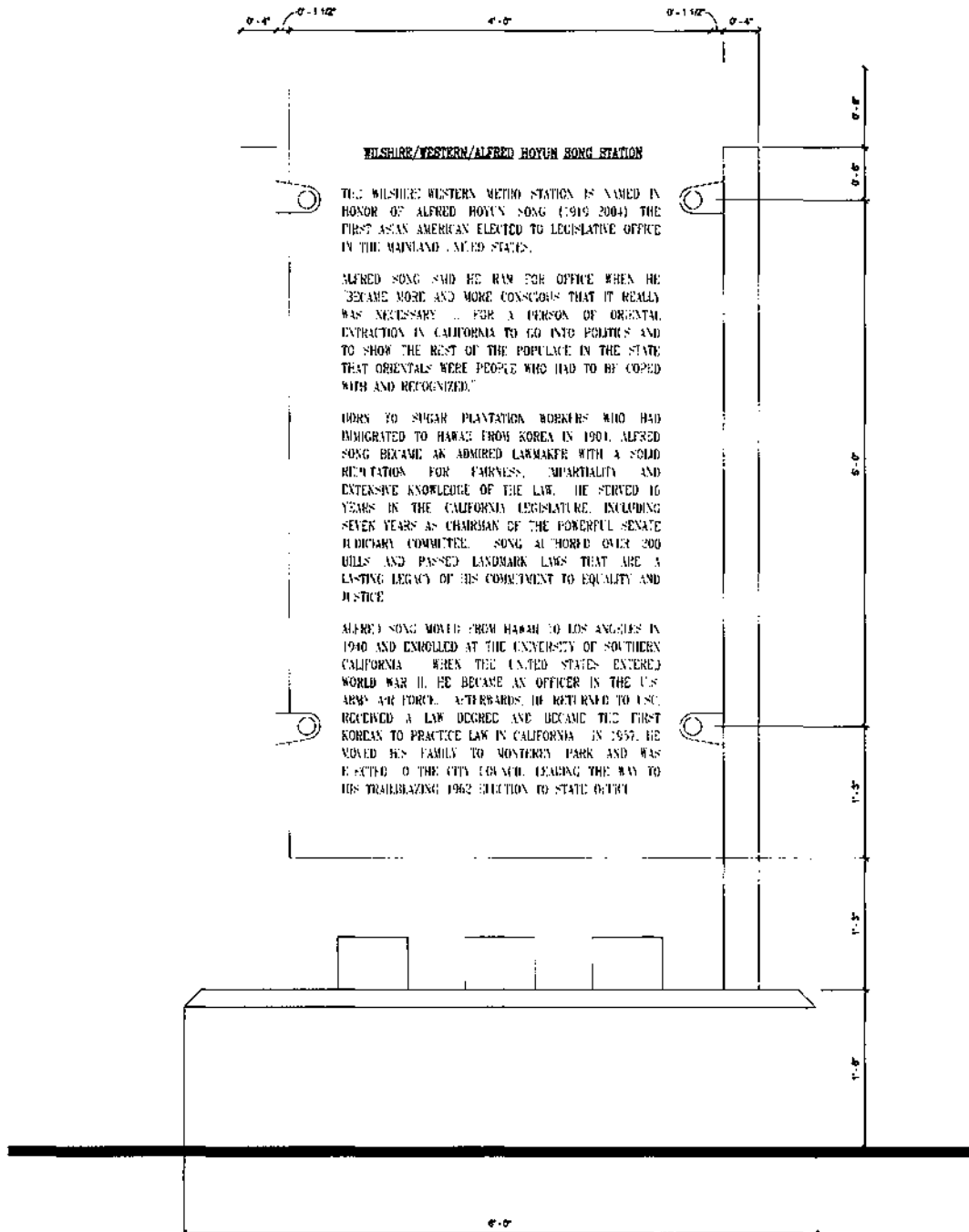


Roger S. Mollere
Chief, Real Property Management & Development



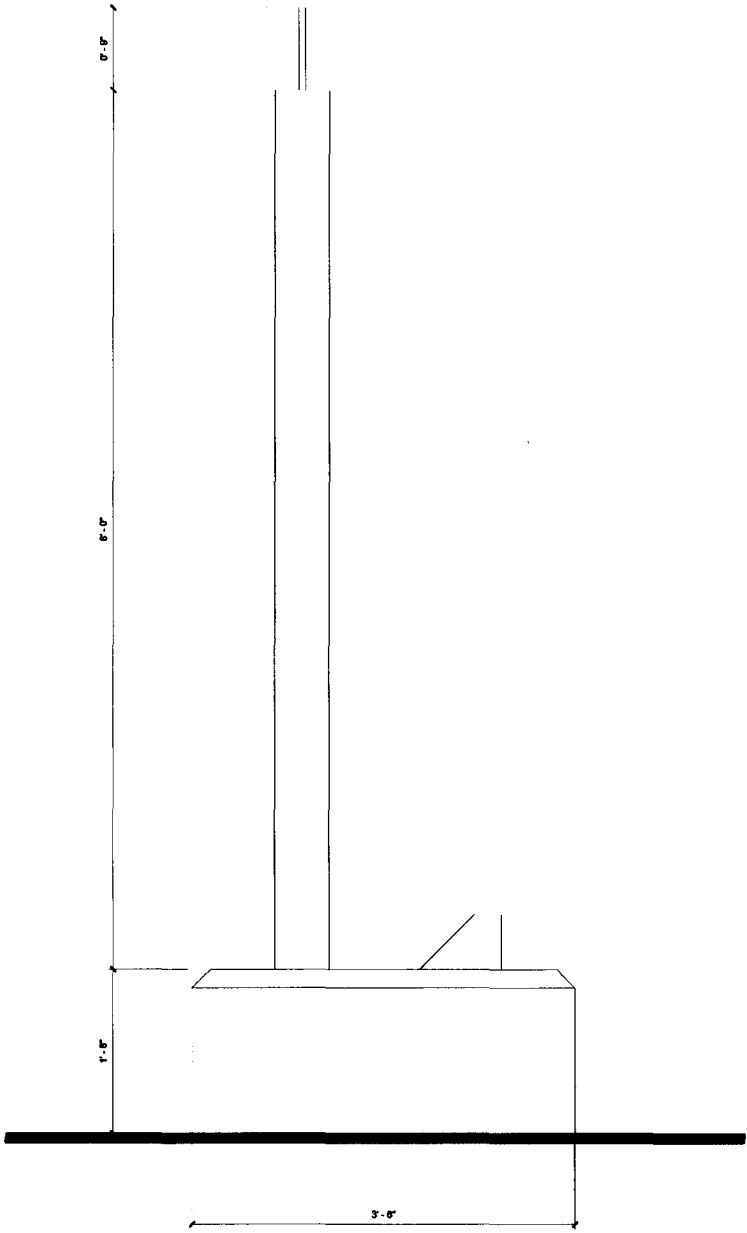
for Arthur T. Leahy
Chief Executive Officer





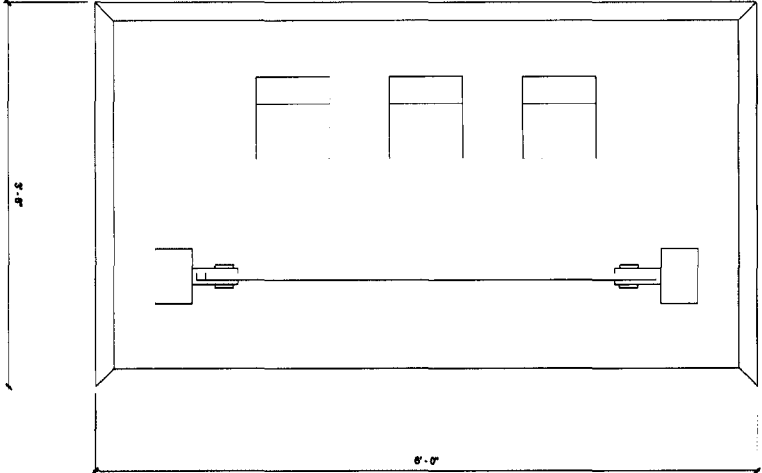
FRONT ELEVATION
SCALE: 1 1/2" = 1'-0"

Attachment B



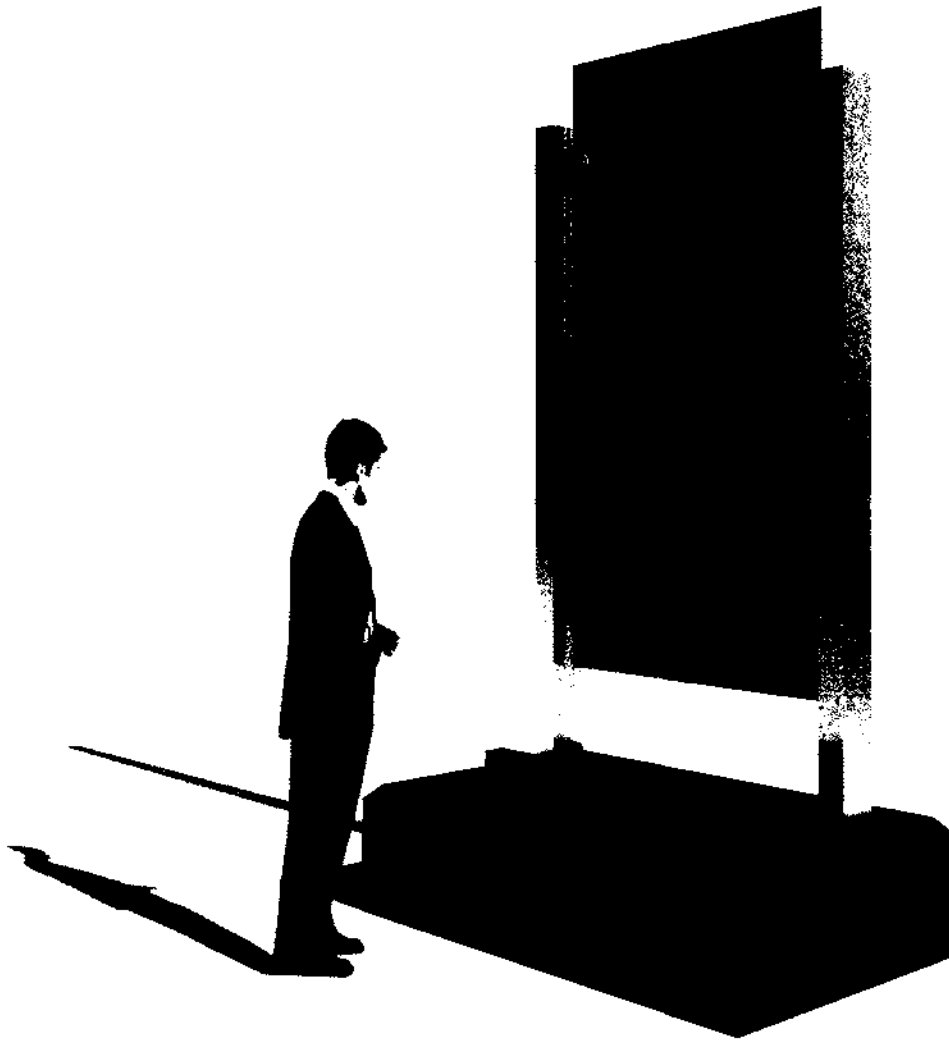
**SIDE ELEVATION
SCALE: 1 1/2" : 1'-0"**

Attachment B



PLAN
SCALE: 1 1/2" : 1'-0"

Attachment B



TERM SHEET
regarding
An Amended and Restated Wilshire/Western Ground Lease

This term sheet ("**Term Sheet**") sets forth the material terms and conditions to be included in an amended and restated Wilshire/Western Ground Lease (the "**Amended and Restated Ground Lease**") that may be entered into by the Los Angeles County Metropolitan Transportation Authority ("**MTA**") and a third-party Buyer (defined below) of the commercial portion (the "**Commercial Property**") of the mixed-use Solair project developed and owned by Solair Marketing, LLC ("**Solair**") and situated at the Metro Purple Line's Wilshire/Western station. The Amended and Restated Ground Lease would amend and restate (A) that certain Wilshire/Western Ground Lease, dated as of July 31, 2006 (the "**Original Ground Lease**"), by and between MTA and Solair, and (B) any amendments to the Original Ground Lease occurring prior to execution of the Amended and Restated Ground Lease, including those certain terms and conditions set forth in the Assignment, Assumption and Consent Agreement (Wilshire/Western), dated as of July 2, 2010 ("**Assumption Agreement**"), between MTA, Solair, KOAR Wilshire Western, LLC, and Corus Construction Venture, LLC that amend and modify the terms and conditions of the Original Ground Lease. The Original Ground Lease, as amended, shall be referred to herein as the "**Ground Lease**". All capitalized terms not defined in this Term Sheet shall have the meanings ascribed to them in the Ground Lease.

A. Sale of Commercial Property:

MTA acknowledges that Solair intends to sell the Commercial Property to a Buyer (the "**Sale**"), but the ability to enter into an Amended and Restated Ground Lease pursuant to the terms set forth in Section B, below, will expire at the end of the day on July 31, 2014. MTA further acknowledges that Solair currently intends that the Sale occur no later than December 31, 2013. The Commercial Property includes 41,000 square feet of commercial space and associated parking and is a part of the larger Solair project, which also contains 186 residential condominiums and associated parking. The Commercial Property runs along the length of the Solair project on the east side of Western Avenue between Wilshire Boulevard and Sixth Street. A portion of the Commercial Property (11,360 square feet of commercial space) is adjacent to the Wilshire/Western Metro Purple Line station portal and is situated on the Premises under the Ground Lease. A portion of the project's parking is also situated on the Premises under the Ground Lease.

As a condition to closing the Sale transaction, one or the other of the following shall occur: (A) Solair shall assign, transfer and convey to Buyer all of Solair's right, title, interest and obligations in, to and under the Ground Lease (collectively, the "**Ground Lease Obligations**"), and Buyer shall assume all of

the Ground Lease Obligations and such Ground Lease Obligations shall be binding on Buyer and Buyer's successors and assigns from and after the closing of the Sale, or (B) Buyer shall execute the Amended and Restated Ground Lease with MTA in material accordance with this Term Sheet. Regardless, the Buyer shall be approved by MTA pursuant to the transfer provisions under the Ground Lease. In addition, any assignment and assumption pursuant to Subsection A of the prior sentence shall be performed in accordance with the Ground Lease.

B. Amended and Restated Ground Lease Terms and Conditions:

If the Buyer elects to execute the Amended and Restated Ground Lease, Solair, Buyer and MTA shall have the rights and obligations set forth below. The rights and obligations of Buyer and MTA will be set forth in the Amended and Restated Ground Lease, which shall contain all of the terms and conditions of the Ground Lease, except as set forth below.

1. Portal Canopy:

The Portal Canopy shall be designed, permitted, constructed, and installed in accordance with the following:

- a. Prior to the Sale, Solair shall prepare design development documents for the Portal Canopy and shop drawings for the Portal Canopy's steel components that each Logically Evolve from the plans and specifications attached hereto as **Attachment C-1** and that have been approved in writing by MTA (the "**Solair Portal Canopy Design Documents**"). The preparation of such Solair Portal Canopy Design Documents shall be at Solair's sole cost and expense; provided that, all reasonable costs related thereto that are approved by MTA and billed and paid since January 1, 2013 shall be considered Construction Costs and shall be reimbursed dollar for dollar to Solair pursuant to Sections B.2 and B.3, below.
- b. Within three (3) months after the Sale, subject only to Unavoidable Delay, Buyer shall execute a fully-negotiated, MTA-approved, guaranteed maximum price contract ("**GMAX Contract**") with a general contractor for the construction of the Portal Canopy that (A) includes, without limitation, a guaranteed maximum price ("**GMAX Price**"), a construction work plan, a job hazard analysis and a construction schedule, and (B) requires, without limitation (1) construction of the Portal Canopy by the general contractor in accordance with (y) complete Final Construction Documents that have been approved in writing by MTA and that will, when complete (if not then already complete), Logically Evolve from the Solair Portal Canopy Design Documents (the "**Portal Canopy Construction Documents**") and (z) building permits to be obtained

from the City of Los Angeles by the general contractor, as and when necessary through the construction process, for the construction and installation of the Portal Canopy; and (2) completion of the Portal Canopy Construction Documents by the general contractor and design professionals, if not then complete, within a time frame reasonably approved by MTA.

- c. After execution of the MTA-approved GMAX Contract, Buyer shall construct and install the Portal Canopy in accordance with the GMAX Contract and the Portal Canopy Construction Documents, and shall diligently prosecute construction and installation activities to Completion (defined below) prior to the date occurring twelve (12) months after such execution, subject only to Unavoidable Delay.
- d. **"Completion"** of the construction and installation of the Portal Canopy shall mean (i) the complete and final construction of the Portal Canopy in accordance with the GMAX Contract and the Portal Canopy Construction Documents, including the completion of all MTA punch list items; (ii) delivery to MTA from Buyer of final unconditional lien waivers reasonably acceptable to MTA (or bonds reasonably acceptable to MTA for any amounts not covered by lien waivers) covering the entire GMAX Contract amount; and (iii) delivery to MTA of any applicable final permits, final sign offs, occupancy permits or other acknowledgements of completion that are to be issued by any applicable governmental authority indicating that the final construction of the Portal Canopy is acceptable to such governmental authority and/or unconditionally authorizing use of the Portal Canopy as constructed.
- e. Buyer's failure to comply with the provisions of Sections B.1.b through B.1.d, above, shall be a Buyer breach under the Amended and Restated Ground Lease and, if not cured within a reasonable period after receipt of a written notice to cure from MTA, shall be a Buyer default under Amended and Restated Ground Lease.
- f. Sections 10(a) through 10(d), Section 10(f) and Sections 10(h) through 10(o) of the Assumption Agreement shall be deleted and shall have no further effect.
- g. Notwithstanding anything to the contrary in the Ground Lease, Sections 10.3.2, 10.8, and 10.14 (including Sections 10.14.1 through 10.14.4) of the Ground Lease shall not apply to the design, construction, and installation of the Portal Canopy.

2. Prepayment/Adjusted Base Rent/Release of Letter of Credit:

a. In the event the Buyer elects to execute the Amended and Restated Ground Lease, then, as a condition to closing the Sale and MTA's execution of the Amended and Restated Ground Lease, the following amounts shall be deposited into an interest bearing escrow that is separate from the Sale escrow, and is acceptable to MTA and over which MTA has sole control ("**Escrow**"):

- i. \$433,140 (the "**Portal Canopy Construction Obligation**"); and
- ii. "**Prepaid Rent**" of \$3,291,627, if the Sale closes on November 1, 2013, which amount shall be reduced by \$15,333.76 for every month thereafter (until July 31, 2014) that current monthly Base Rent is owed and paid by Solair to MTA under the Ground Lease (prorated as necessary).

The amount to be deposited into Escrow shall be reduced dollar for dollar by the amount of those Construction Costs incurred by Solair prior to the Sale that have been approved in writing by MTA after timely receipt of sufficient evidence therefor from Solair.

b. Contingent upon MTA's receipt of reasonable evidence from the Escrow agent that the Portal Canopy Construction Obligation and the Prepaid Rent have been deposited into Escrow:

i. Base Rent under the Amended and Restated Ground Lease shall be reduced to \$18,750 per month (\$225,000 per annum) subject to (x) appropriate proration, (y) the terms of Section 4.4 of the Original Ground Lease (as amended by Subsection B.2.b.ii, below), and (z) the terms of Section 4.5 of the Original Ground Lease.

ii. At the option of Buyer at the time of the Sale and prior to execution of the Amended and Restated Ground Lease, Buyer may choose one or the other of the following:

- (x) Change the FMLV Adjustment to be performed on the 25th Anniversary of the Commencement Date pursuant to Section 4.4 of the Original Ground Lease to a CPI Adjustment (as defined in Section 4.4 of the Original Ground Lease), with the remaining CPI Adjustments, and the FMLV Adjustment to be performed on the 50th Anniversary of the Commencement Date, to remain unchanged; or

- (y) Change each remaining CPI Adjustment and the FMLV Adjustment to be performed on the 25th Anniversary of the Commencement Date pursuant to Section 4.4 of the Original Ground Lease to a fixed 15% increase (i.e.; Base Rent on the day preceding an Adjustment Date shall be multiplied by 1.15 to arrive at the new Base Rent as of the Adjustment Date).
- iii. With the closing of the Sale, MTA shall release any existing Letter of Credit provided to MTA by or on behalf of Buyer or Solair in accordance with Section 4.6 of the Original Ground Lease and such Section 4.6 shall have no further force and effect.

3. Escrow/Payment of Portal Canopy Design, Construction and Installation Costs:

- a. From time to time and upon request from Buyer or Solair, as applicable, the Escrow agent shall release monies from Escrow pursuant to a typical and commercially reasonable funds control disbursement for construction projects to pay for reasonable Solair, Buyer and third party costs approved by MTA and billed and paid since January 1, 2013 with respect to the design, construction, and installation of the Portal Canopy (collectively the "**Construction Costs**"), which disbursements shall require MTA approval and which costs shall include, among other things and without limitation, the GMAX Price and all Construction Costs incurred by Solair with respect to the preparation of the Solair Portal Canopy Design Documents.
- b. Upon the Completion of the Portal Canopy, Escrow agent shall distribute to MTA any funds remaining in Escrow in excess of Construction Costs.

4. Use of the MTA Plaza:

Notwithstanding anything to the contrary set forth in any Reciprocal Easement Agreement or other development document between MTA and Buyer, Buyer may use the MTA Plaza to conduct or allow events and activities, which use includes, without limitation, vendor kiosks and farmer's markets, provided that such use shall be pursuant to MTA's written approval, which written approval may require, (a) revenue sharing with MTA, if such use or event is expected to generate net revenue to Buyer, (b) coverage, payment or reimbursement by Buyer of all additional costs that are incurred by or accrue against MTA as a direct result of any

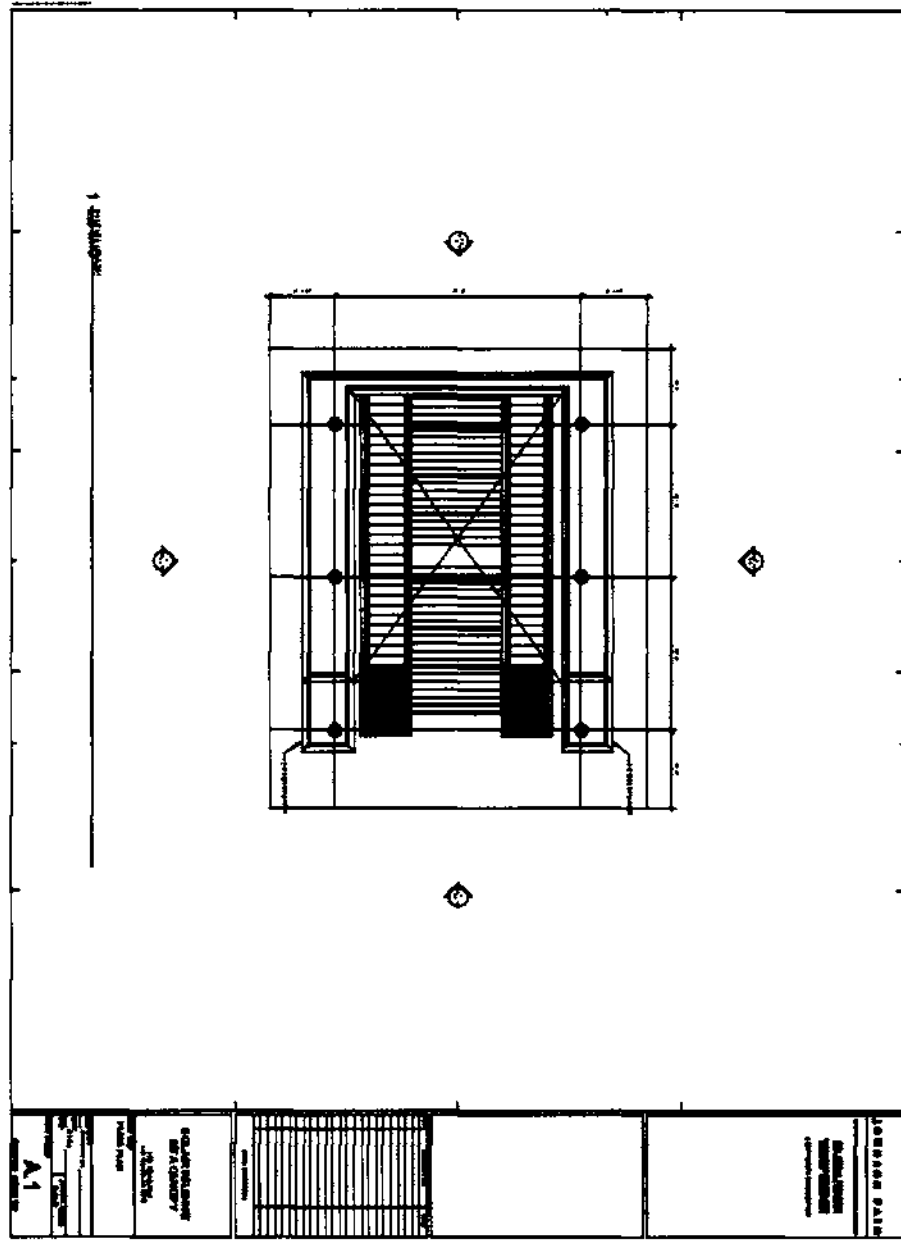
such use, and (c) that such events or activities shall in no way materially impact, or have the reasonable potential to materially impact in a negative manner, (i) MTA facilities or operations, (ii) public health and safety, or (iii) access to and from MTA facilities and operations. MTA facilities shall include, but not be limited to, the Wilshire/Western subway portal and subway elevators.

This Term Sheet is not a commitment or agreement to enter into the Amended and Restated Ground Lease or to otherwise modify the Ground Lease on the part of Buyer, Solair or MTA, but is only a summary of the terms and conditions that Solair and MTA desire to include in the Amended and Restated Ground Lease. The terms and conditions set forth in this Term Sheet shall not be effective and binding on the parties unless and until the Amended and Restated Ground Lease is executed by the parties. It is understood by the parties that MTA has no authority to execute the Amended and Restated Ground Lease until it has authorization to do so from the MTA Board of Directors. It is understood that the parties shall utilize legal counsel to translate terms and conditions set forth in this Term Sheet into the Amended and Restated Ground Lease (and related documents, as is necessary or prudent). This Term Sheet does not obligate Solair, the Buyer or MTA to negotiate further or to enter into any modification of the Ground Lease, including the Amended and Restated Ground Lease.

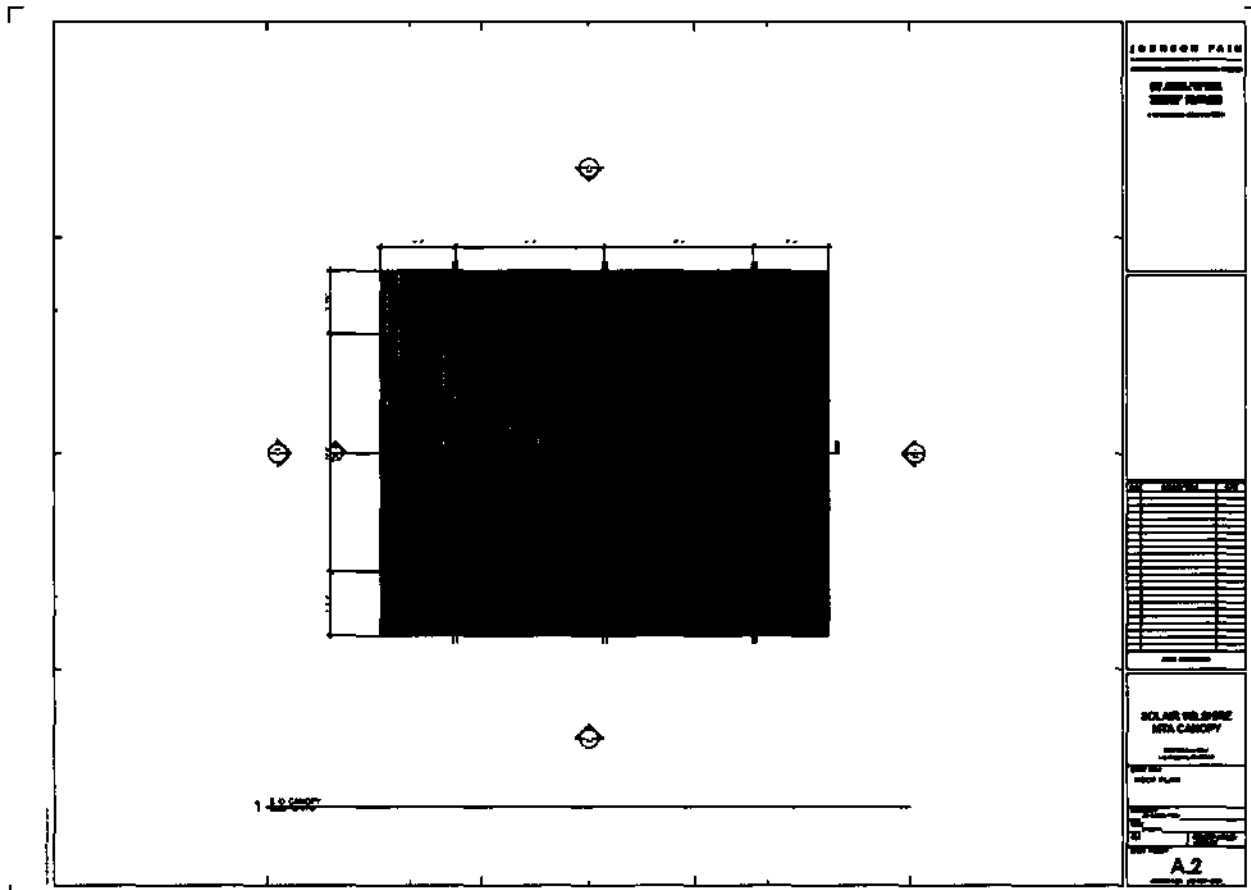
Portal Canopy Plans and Specifications

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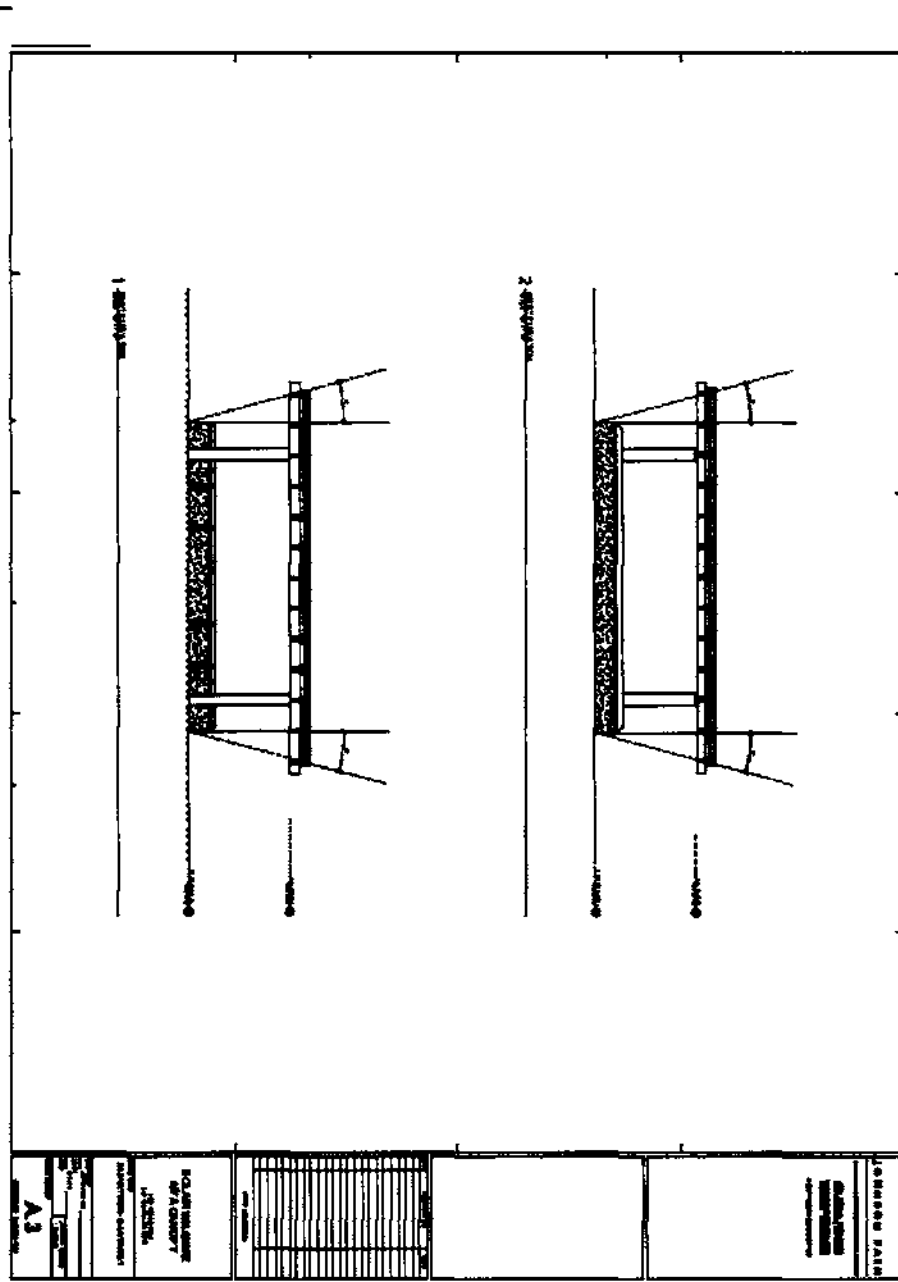
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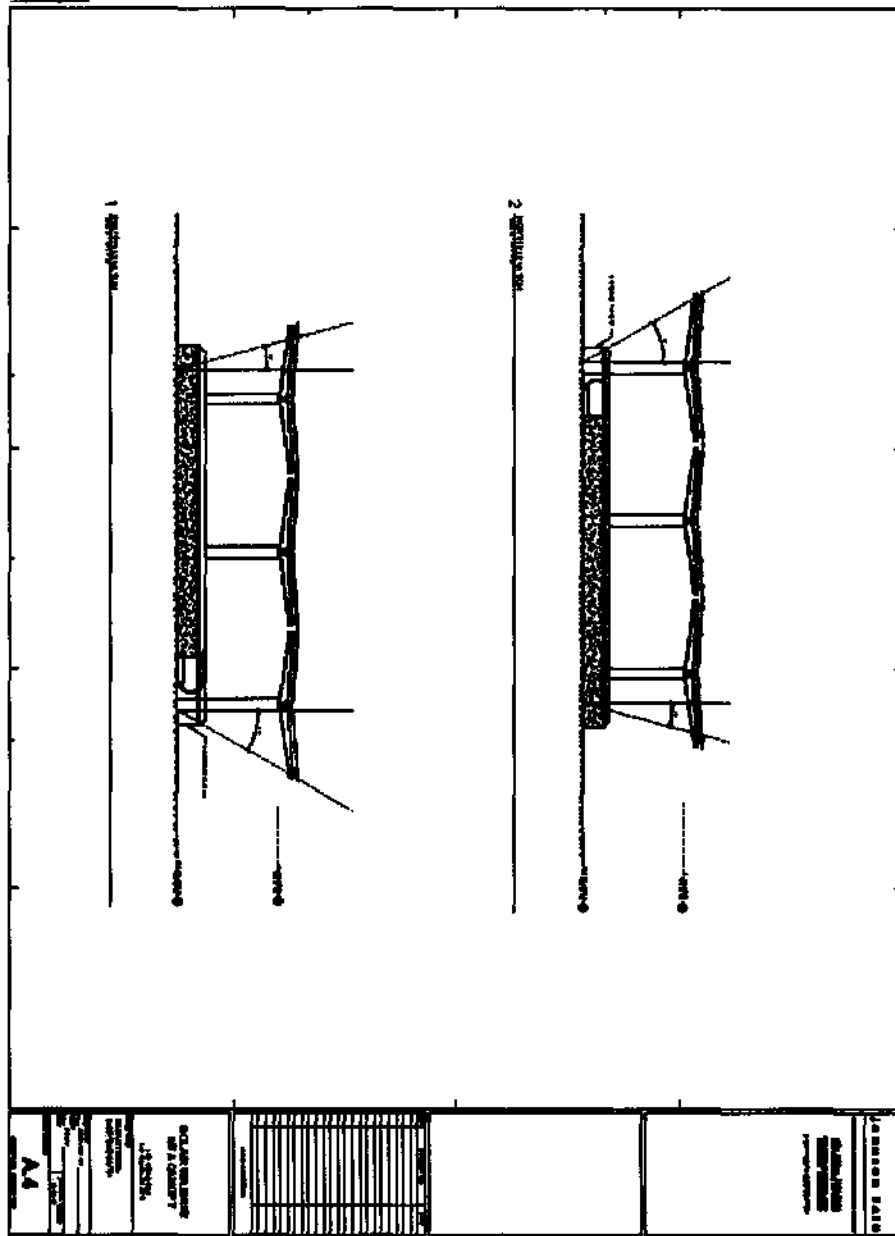
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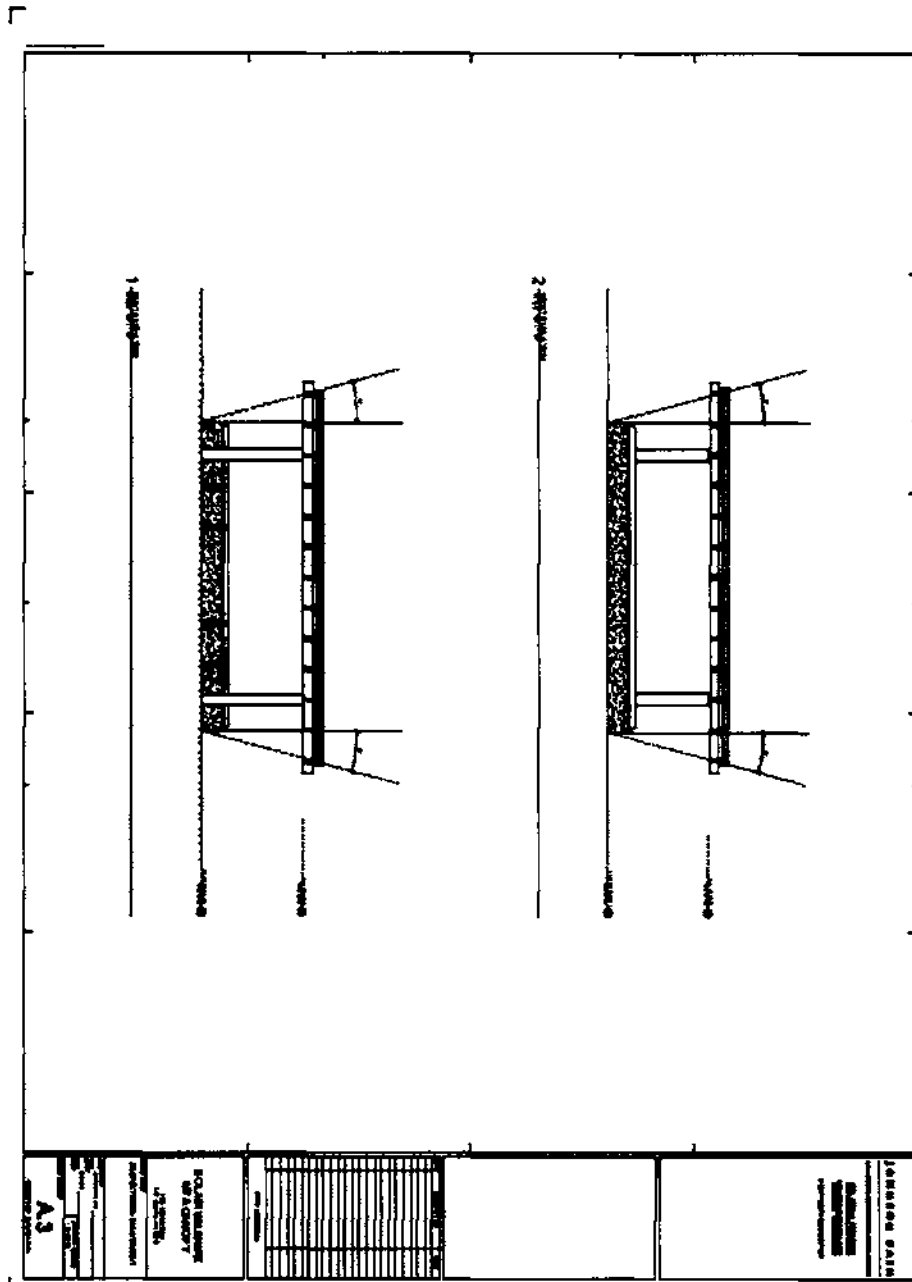
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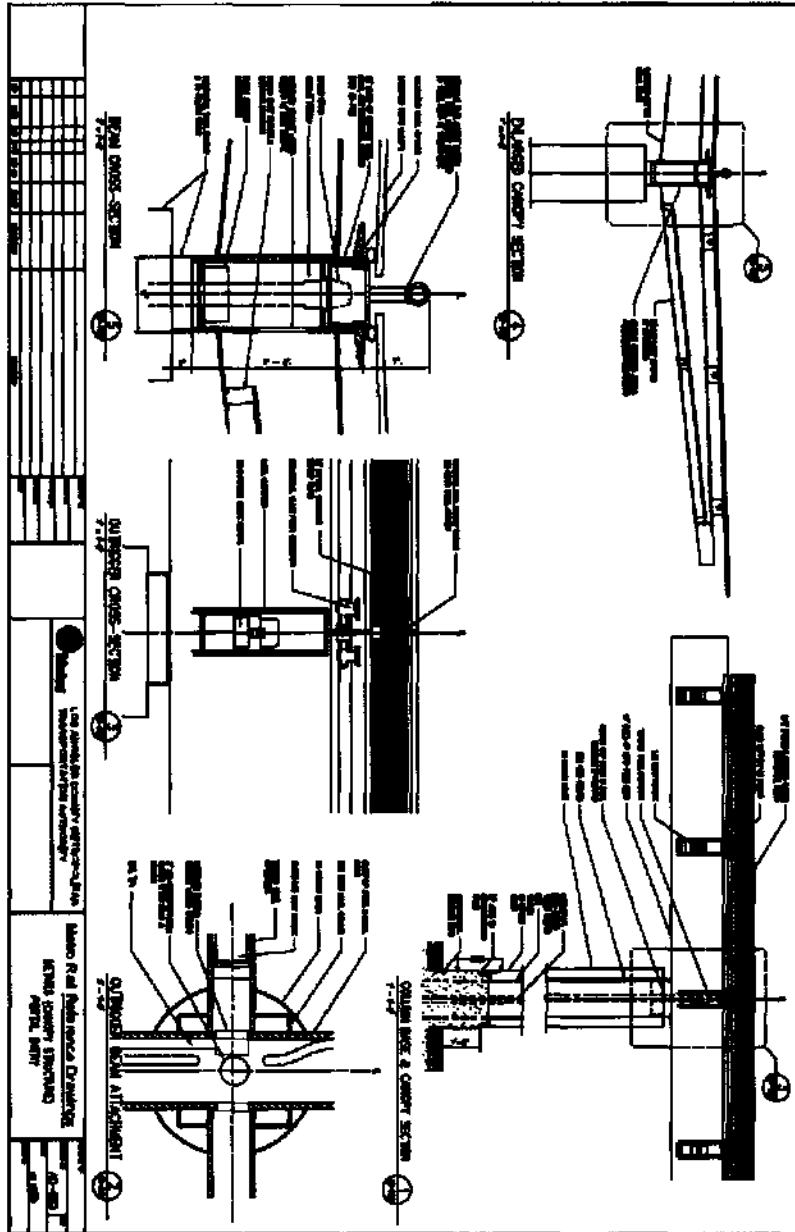


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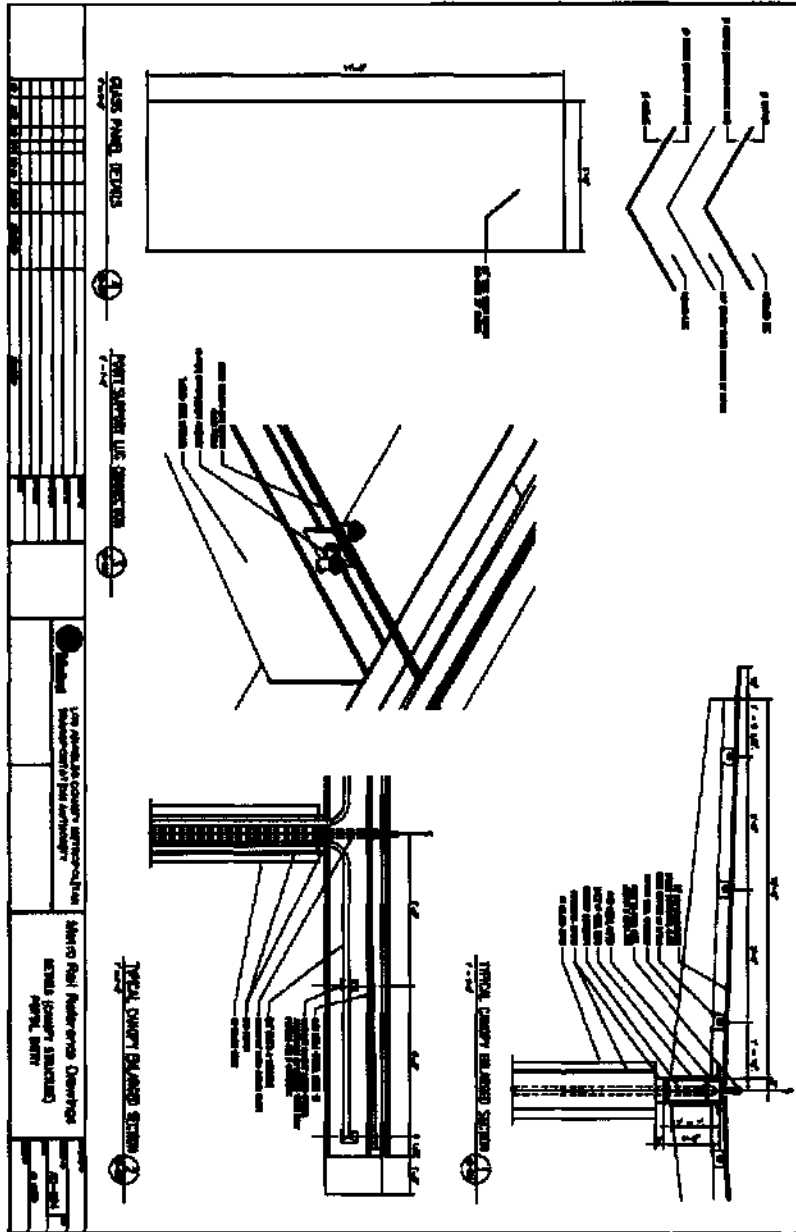


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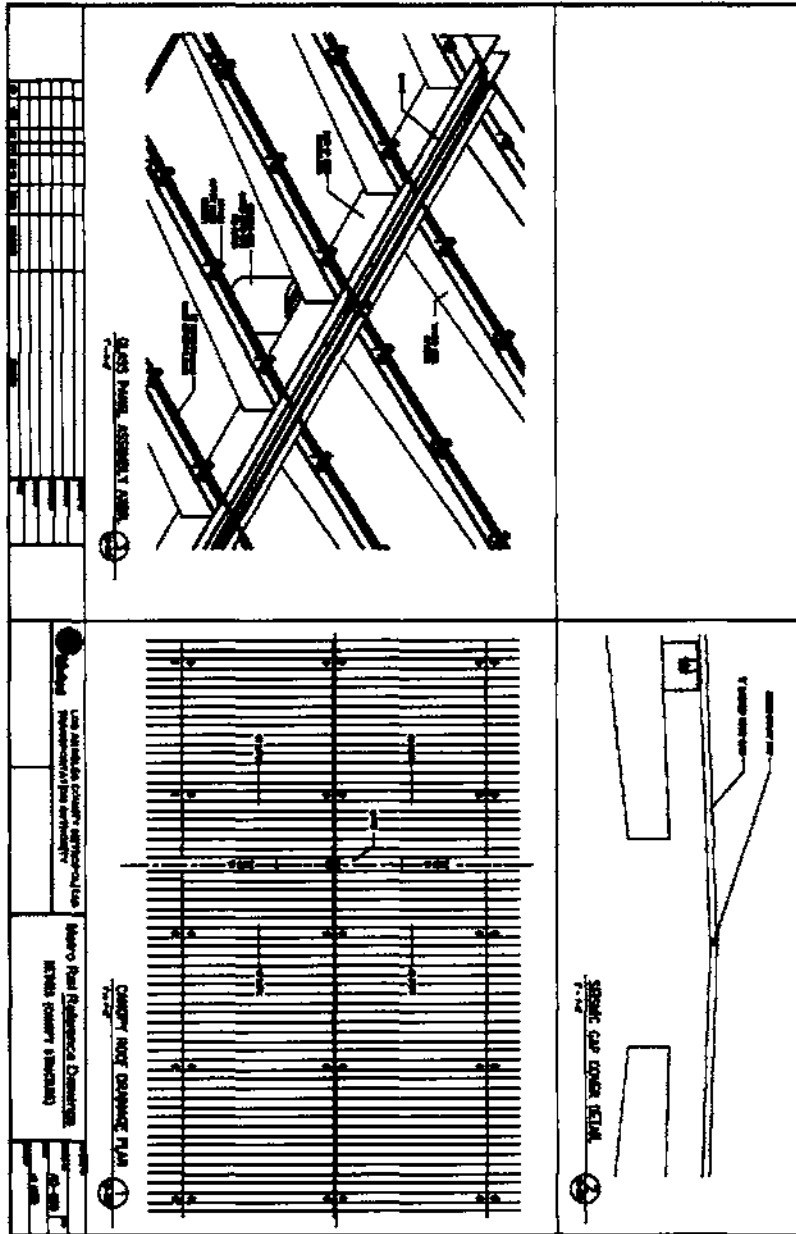
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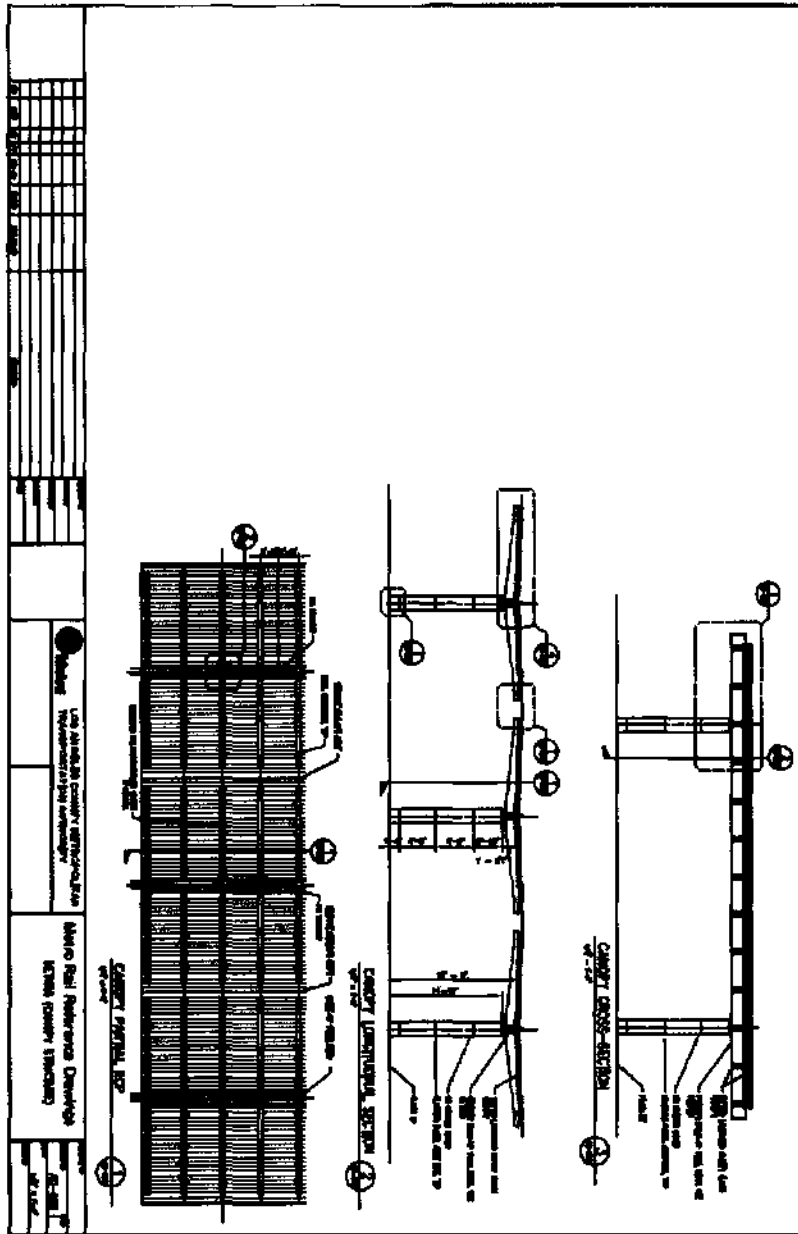
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