

March 18, 2020

Peter Nierengarten, PE
Environmental Director
City of Fayetteville, Arkansas
113 West Mountain Street
Fayetteville, AR 72701

RE: Cultural Arts Corridor Parking Deck – Public/Private Partnership Review

Dear Mr. Nierengarten,

Please accept this letter report summarizing the special Project Analysis Session for the City of Fayetteville (“City”) regarding the proposed Cultural Arts Corridor parking deck and public/private partnership (“partnership”).

ULI Advisory Services – Special Project Analysis Session

The goal of the ULI Advisory Services program is to bring the finest expertise in the real estate field to bear on complex land use planning and development projects, programs, and policies. Since 1947, this program has assembled well over 700 ULI-member teams to help sponsors find creative, practical solutions for issues such as downtown redevelopment, land management strategies, evaluation of development potential, growth management, community revitalization, brownfield redevelopment, military base reuse, provision of low-cost and affordable housing, and asset management strategies, among other matters. A wide variety of public, private, and nonprofit organizations have contracted for ULI’s advisory services. Each panel team is composed of highly qualified professionals who volunteer their time to ULI. They are chosen for their knowledge of the panel topic and are screened to ensure their objectivity.

The City of Fayetteville, AR, engaged with the ULI Advisory Services program to conduct a special Project Analysis Session over a video conference call on February 26, 2020. This special session was approximately three hours long and allowed the ULI panelists to engage with representatives of the City of Fayetteville in a concentrated effort to provide recommendations on key questions proposed by the City. ULI brought together four panelists for the session including, Richard Perlmutter (Chair), Tom Murphy, Dan Anderton, and Paul Bernard. The biographies of the panelists are attached. ULI Advisory Services staff included Tom Eitler and Kelsey Steffen.

Participants in attendance at the invitation of the City of Fayetteville included:

Peter Nierengarten - Environmental Director, City of Fayetteville
Greg House - Houses Inc and Depot LLC (Development Team)
Ted Belden – Old Buildings LLC (Development Team)
Susan Norton – Chief of Staff, City of Fayetteville
Lioneld Jordan – Mayor, City of Fayetteville
Wade Abernathy – Bond Construction Projects Manager, City of Fayetteville
Ryan Hale – Northwest Arkansas ULI Chapter, Board Member

Molly Rawn – Experience, Fayetteville, CEO
Sterling Hamilton – Sage Partners, Broker (Development Team)
Audy Lack – Miller Boskus Lack, Architect (Development Team)
Rob Sharp – Rob Sharp Architect (Development Team)

The Assignment

The City of Fayetteville presented the following questions to the ULI Advisory Services special Project Analysis Session panelists:

1. What do you see as key contractual elements to ensure that this specific project is successful?
2. What are the key elements to ensure that this project can be a model for future Public-Private Partnerships in Fayetteville?
3. What common legal barriers are common for public/private partnerships and should be considered as part of contract negotiations.
4. What contractual provisions should be included in the contract language to protect the City in the event of default or neglect associated with the building on the north end of the civic plaza and the commercial space under the parking deck.
5. How do we ensure an equitable transaction between the City and the Development Team?
6. How do we clearly and simply communicate to elected officials and the public an equitable transaction for all parties?
7. Taking into consideration trading the developer's currently entitled development rights due to the use of the developable area consumed by the public parking deck, plus the air rights over preserved buildings. This is in addition to the value to the community in preserving historic structures and the sacrifice of the developer by conserving these buildings.
8. What are some strategies for reclaiming public support for the vision and purpose of this partnership amidst a controversial community narrative?

Key Observations and Recommendations

Given the City's need to build the garage, the ULI panel agrees with the City in their pursuit of this public/private partnership. Through this partnership, the City can not only deliver the needed parking but also use the garage to leverage redevelopment of additional commercial and mixed-use (proposed hotel) on this site. This site has the potential to be a catalyst for the development and the realization of the City's vision for the Cultural Arts Corridor.

In order to achieve its vision, the City needs to shift the existing narrative from a partnership to develop a single use parking structure to a shared placemaking redevelopment which has the potential to unlock economic development for the area. The City should also look to attract outside funding sources to preserve municipal dollars and improve public perception of this endeavor. The City should show extra care in the selection of a private partner and in the drafting of all binding agreements so as to reinforce trust and transparency, ensure equitable outcomes, and increase the probability that the project meets and/or exceeds community expectations.

Recommendations

During the Project Analysis Session, the panelists discussed and provided answers and recommendations to the questions asked by the City of Fayetteville. Through this discussion of the questions posed by the City, three major topic areas emerged in which the panel provided more specific recommendations. These recommendations are weaved amongst the various questions but ultimately

provide guidance to the City of Fayetteville on how to create a clear, fair, and mutually beneficial development partnership with a private entity or entities, what legal barriers or other provisions to be mindful of, and how to improve public perception of this partnership throughout the process of this project. The recommendations are detailed in the section below.

Public/Private Partnership Agreement Elements (Addresses questions 1,2,4,5)

This section provides recommendations related to the contractual elements that will ensure the project's success, that it can be used as a model for future public/private partnerships, and that will be equitable and protect the City in the event that the developer doesn't fulfill their contractual obligations.

- **Detailed Contract** – First and foremost the contract that is drawn up for the partnership needs to clearly delineate roles and responsibilities, project scope, milestone and performance metrics/requirements, as well as other standard guarantees, remedies, representations and reversionary clauses if appropriate. The contract must also include some of the elements described below, including, what the agreed-upon long-term vision of the project will be, such as what programming elements are expected or should occur on-site and what the quality should be of the buildings and open space of the site. All phases of the project should also be included as part of the contract. The contract should also include an agreed upon contingency plan for the City in the event their development partner fails to uphold their portion of the contract.
- **Phase the Project** – Given the deadline to build the parking structure the panel recommends the City break the project into three digestible phases, the first being the garage. As the City doesn't have its development partner in place for the future hotel (or other use) building, breaking this project into multiple phases allows Fayetteville to focus on the garage building while continuing to work out the details of the remaining site. If the liner building needs to be built with the garage, the developer will need to prepare to fund its development and negotiate the leasing terms of the commercial space.
- **Create an Unwind and Mutual Release Agreement** – Creating an Unwind and Mutual Release Agreement will ensure that there is a contingency plan agreed upon by both parties that explores "what happens if" scenarios. For example, if the economy slows down. Can the garage stand on its own? What is the developer still responsible for a given condition where redevelopment of the other portions of the site is not possible? Whatever this plan is, make sure it's clear and captured as part of the detailed contract.
- **Long Term Vision** – Fayetteville needs to iron out the details of the long-term vision of this entire site. The panelists stated that the City needs to think about the programming of the site as well as the quality of the project. This needs to be figured out early on so that the programming isn't thrown together or just passive. These elements should be reflected in the contract in some capacity to ensure that the City and the developer(s) have clear expectations about the desired product.
 - **Programming** - Reach out the community for recommendations on what they would like to see. This element can also be included in the RFP to help identify potential development partners that have ideas. It's also worth considering early on what will

become of the garage as parking needs decrease with the continued development of autonomous vehicles.

- **Quality** - This part of the project needs to be momentous and memorable as the rest of the Cultural Arts Corridor. Use this as an opportunity to establish clear expectations on quality at the beginning of the process and ensure a development partner can achieve that quality.
- **Vertical Condo Negotiation** – The garage and liner building will likely need a vertical condo regime that sets out priorities and responsibilities with respect to condemnation and casualty loss.
- **Trust (City and Developer(s))** – There needs to be a strong sense of City and their development partner. The partnership needs to be fair and transparent between both parties and detailed in a way that ensures that both parties have a shared responsibility in the success of this project.
- **Trust (City and the Public)** – Another important element is the trust between the public and the City (discussed in more detail below). By incorporating many of the elements described throughout this section, the City can regain faith and credit from the community by demonstrating how they have reduced potential risks associated with a partnership.
- **Hire Outside Consultant to Evaluate the Partnership** – The panelists recommend that the City engage a third-party consultant to evaluate the proposed partnership terms as they related to land economics and equity. Some companies with land economics expertise include RCLCO Real Estate Advisors, HR&A Advisors, Inc., and JLL. This evaluation can review the existing terms and take into consideration the air rights and potential future land use/zoning conditions of the site. Not only would this evaluation provide the City with peace of mind, but this information could be used to provide peace of mind to the public that has concerns over the equity of the proposed partnership.
- **Use Outside Funding Sources** – The panel strongly recommends Fayetteville pursue additional funding beyond their General Obligation Bonding capacity. There are multiple funding sources that this project could qualify for, possibly reducing the City’s direct contribution for this project. Preserving City funding is also an excellent talking point for City officials regarding this project. The panel recommended the City explore the following funding sources:
 - **Local and Federal Historic Tax Credits**
 - **New Market Tax Credits**
 - **Transportation Infrastructure Finance Innovation Act Credits (TIFIA) or Railroad Rehabilitation & Improvement Financing (RRIF)**
 - Union Station in Denver, CO was able to get TIFIA funds and is similarly located adjacent to a privately owned railroad. Consider contacting Christine Barnett, who was instrumental in helping Denver get these funds.
 - **Section 108 Loan Guarantee Program**
 - **Federal/State Small Business Grant/Loan Programs**
 - **Other Federal Tax Credit Programs**
- **Leasing Strategies** – Consider alternative leasing strategies

- **Reverse Ground Lease** - This could be structured to provide an incentive to the developer to hold the asset for a long time. For example, a ground lease could be bought out by the developer starting at FMV in year one and declining by 10% per year until it reaches \$1 in year 10.
- **Pre – Leasing** - The city could require 35% pre-leasing requirement before building permits are released.
- **Review Similar Projects** – Greenville, SC is a very successful city of about 100,000. Through a very creative public/private partnership and great design the City was able to revitalize its Downtown. It is, along with Lancaster, PA and Loveland, CO models for Fayetteville's proposed Cultural Corridor Developments. In each case the City had a clear strategic vision about what they wanted to happen and how it might catalyze additional investment.

The financing in the three cities was multilayered with funds coming from private, public, and philanthropic sources. In each place the quality of the design of the development was very high and seen as important for the success of the development. In each city the relationship between the developer and public officials was characterized by trust and strong confidence.

In Greenville, SC the City partnered with a developer on a vacant piece of property along the Reedy River in Downtown. The development known as RiverPlace is a mixed-use development of offices, condo, artist studios, and retail. About 20 percent of the cost of the development was public funds, much of which was invested into public space.

In Loveland, CO, the City created a public/private partnership with a local foundation, which provided the seed funds, to restore and expand a vacant theater in downtown. The restoration and expansion of the theater, catalyzed hundreds of millions of dollars in additional investment in the city.

In Lancaster, PA the revitalization of the old Farmer's Market using public funds and a public/private partnership that restored surrounding buildings has led to millions of additional private investments and a very vibrant downtown.

ULI is in the process of developing a report that includes case studies on the three cities mentioned above. This report is expected to be published in May 2020. ULI will share this report with the sponsor once the report is finalized.

Legal Considerations (addresses Question 3)

The panel made the following recommendations to the City of Fayetteville related to potential legal conditions that could complicate the public/private partnership or other contractual elements the City should be aware of in order to avoid risk with the partnership.

- **Bond Type** – There could be private use limitations on the garage depending on the type of bond issued for financing (taxable v. tax-exempt). For example, the hotel may not be able to secure spaces in the garage as envisioned by the agreement, because the bond was tax-exempt. The panel recommends that the City investigate this limitation and consult with a public finance advisor to help determine if the proposed hotel use triggers any private activity bond issue. If it

does, and the City wishes to move forward, the consultant should be able to advise on possible refunding/restructuring options or other remedies. Given the current interest rate environment, it's likely the taxable bond rate isn't much more than the tax-exempt rate.

- **Stick to Your Role** – The panel stated that the greatest conflicts arise when the public entity ties the hands of the developer. The best strategy is for the City to set up the agreement that is clear on the role of the City and the role of the developer(s). Good partnerships happen when the roles of the City and the developer(s) are agreed upon from the get-go and everyone sticks to their role. If the developer can do their job, then the City has set the stage right and has done its job. However, the City should feel empowered to establish performance criteria for the developer(s) with penalties for not reaching milestones included in the agreement.
- **Uncomplicate the Deal** – Keeping the deal as simple as possible will help avoid potential legal or contractual complications that could hold the project up. The panel's general feedback was that the deal is too complicated in terms of ownership. Less complication will also about the City to know how efficiently unwind a transaction in the event of an issue with the partnership.
- **Building the Garage First** – As mentioned above, if the City needs to meet its deadline for building the garage and the parking is needed then they should move forward with getting all the pieces in place to accomplish this. With this strategy, however, the developer needs to be held accountable for their portion of the parking in the garage in the event they do not immediately deliver their portion of the project by providing a performance guaranty or by posting a performance bond for their obligation. The City should require the developer to get an insurance policy for their cut of the parking so that they can pay their fair share of the bond back.

Improving Public Perception and Support for Public/Private Partnerships (addressed Questions 6,7)

Much of the panel discussion focused on the public perception issue with this type of partnership. The panel offered the following recommendations to try and shift this perception and communicate the benefits of the City entering this type of partnership.

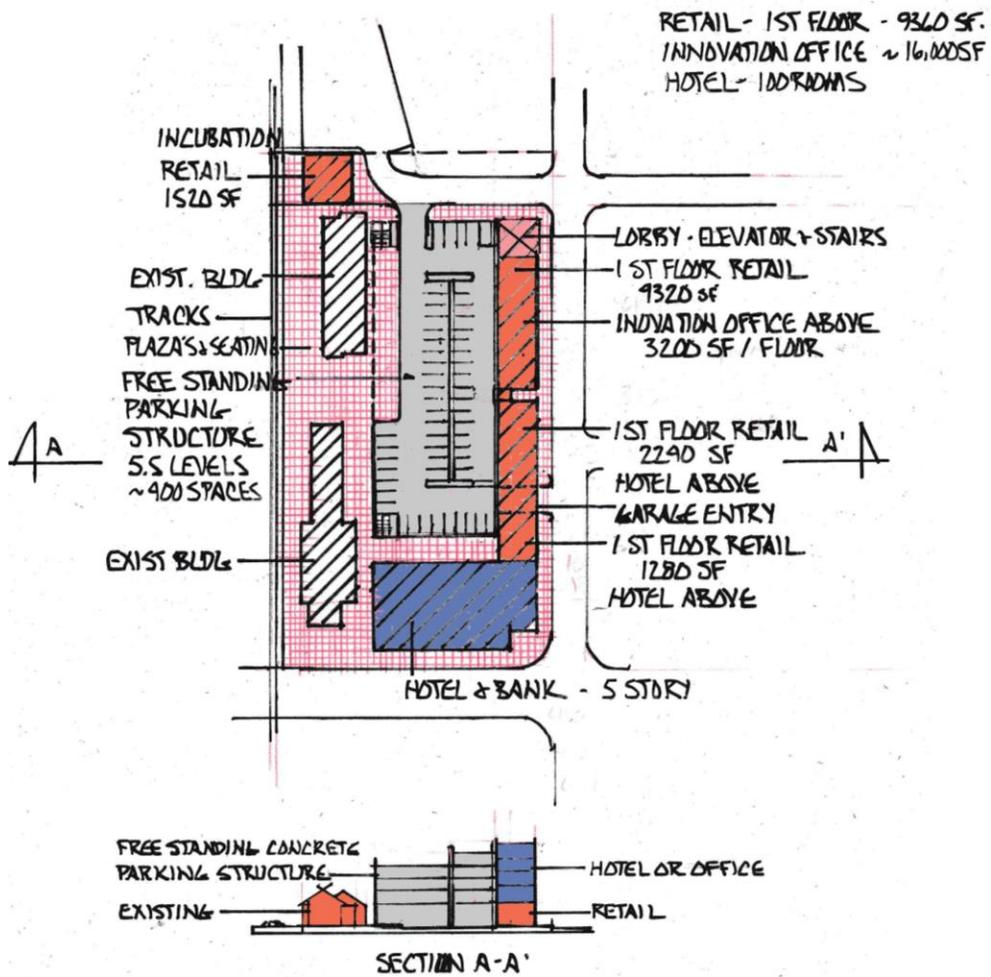
- **Change the Narrative** – Rather than focusing on the public/private partnership the City should change the narrative of this project. The City should communicate to the public that this project is an economic catalyst for the rest of the Cultural Arts Corridor. One way to get the public's support in this is to utilize an economic opportunity index. Enterprise Community Partners offers this type of assessment and could provide the City with the information to explain to the community how this investment will impact the community positively.
- **Clearly Show the Phases** – As mentioned above, breaking this entire project into three distinct phases creates an easier explanation of the planned execution of the project for the public. Especially given that the developer who will ultimately have to deliver isn't currently at the table the conversation with the public needs to be simplified and start with this first phase, involving the garage. This will help the City clearly articulate what everyone is putting on the table and here is what the City anticipates getting. The rest of this conversation should focus on the ultimate quality of the project and what the City is aspiring to accomplish.

Site Design Considerations

Throughout the panel session, the following design recommendations were made.

- Consider looking at the block as an urban city block and focusing circulation on the outside v. the inside. The shared alley concept could be limiting what design options could exist on the block. If the City were to need to build the garage independently, this solution could give the City a way to create more space on the block for other future buildings.
- Most of the open spaces in the Cultural Arts Corridor appear to be predominantly passive. This site is an opportunity to create an activated northern anchor to compliment some of the passive spaces including maker & creative innovation activity spaces.
- Focus on the available transit elements and make sure they all tie together as part of the block design. This is a great opportunity to create a good node to tie all the transportation modes together in this area.
- Don't block W. Watson Street with buildings or parking so as not to limit the possibility for a creative use of the triangular parking area along the tracks to the north of the site.
- The Design alternative shown below reflects the idea that the parking garage could be an independent prestressed concrete span parking garage and have an external liner. This would allow for a less expensive initial garage construction but would limit habitable construction on top of the garage.

Potential Design Alternative



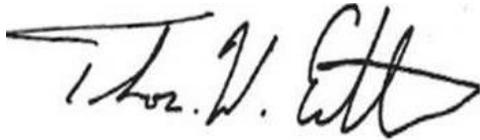
Credit: Dan Anderton, Dewberry, February 26, 2020

Conclusion

In conclusion, we hope these suggestions will help you as you move forward with the development of the Cultural Arts Corridor parking deck. It's clear that the City has been diligent and attentive in approaching this effort as a mutually beneficial undertaking with the private sector; an approach that has long been encouraged by the Urban Land Institute.

Please let us know if there is anything we can do to be of assistance.

Sincerely

A handwritten signature in black ink, appearing to read "Thomas N. Eitler". The signature is stylized with a large, sweeping initial "T" and a long horizontal line extending to the left.

Thomas Eitler

Senior Vice President

The Urban Land Institute



**Urban Land
Institute**

Advisory Services Program

Special Project Analysis Session
Video Conference Panel
Fayetteville, Arkansas

February 2020
Biographies

Panel Chair

Richard L. Perlmutter
Principal and Co-Founder
Argo Development Company
Rockville, MD

Mr. Perlmutter co-founded Argo Development Company in 1996. The firm has expertise in developing retail, office, residential, and urban mixed-use projects. Since its inception, Argo has acquired or developed over three million square feet of commercial and residential space in the Washington, New York, and Boston metropolitan areas. Over Mr. Perlmutter's professional career, he has developed, and managed property valued at over \$2 billion. The firm is strategically aligned with the Foulger-Pratt Companies and develops and acquires real estate primarily for its own account.

One of the firm's noteworthy projects is Downtown Silver Spring, a one million square foot mixed-use development in Montgomery County, Maryland. The development includes retail, office, hotel, multifamily, and civic venues. The project received the U.S. Environmental Protection Agency's 2008 National Award for Smart Growth Achievement. The development is a public-private partnership with Montgomery County, Maryland.

Prior to founding Argo, Mr. Perlmutter held numerous positions in government and the private sector, including Bank of America and U.S. Senate. He is a frequent speaker and participant on ULI panels and workshops and is a member of numerous boards and the District of Columbia Bar.

Panelists

Daniel Anderton
Senior Associate, Community Design & Planning
Dewberry
Rockville, MD

Dan Anderton has a design career of more than 30 years and has been directly involved in the creation of communities both nationally and internationally covering all aspects of Land Use Planning and Physical Design including: comprehensive and master planning, urban and mixed-use design, entitlement site planning, redevelopment planning, affordable housing, re-zoning, subdivision planning, community revitalization, main street retail design, wayfinding and signage, placemaking, parks and recreation design & Landscape Architecture. He has proven project design experience in the applicability of planning, zoning, subdivision and he also has extensive experience working with stakeholders, local and state government development review processes and in creating effective working relationships with jurisdictional agencies, boards, commissions and the public.

Mr. Anderton has a goal to create community environments that are memorable, comfortable, sustainable and inclusive to a wide demographic of visitors, residents and business owners while also

being marketable for both public and/or private developers. He takes care to ensure that a conceptual design's integrity, density, and sense of place is maintained through the planning process. By carefully planning FAR and densities, providing for a mix of diverse building and product types and phasing, and by incorporating traditional and neo-traditional design styles, his community developments are poised to fulfill the needs of the market and a wide cross section of prospective renters, buyers, visitors and shop owners.

Mr. Anderton has been involved with, and completed, hundreds of projects involving direct interaction with citizens, developers, architects, planning boards, County Councils, Mayors, public utilities, Transportation officials, and other involved parties. The juggling of everyone's interests throughout the completion of a plan or project is extremely important. The desire being to go through the design and planning process with the majority of stakeholders feeling as though they have succeeded in having their personal vision incorporated into the community.

Mr. Anderton graduated with a Bachelor of Landscape Architecture and Environmental Planning from Utah State University in 1983 and with a Masters of Landscape Architecture from the University of Illinois in 1985 with an emphasis on Behavioral Design and Placemaking.

Dan is currently employed by Dewberry, a national planning, engineering, and architectural firm, and is responsible for Community Planning and Urban Design within the company. He has worked for architects, engineers, landscape architects, and horticulturalists throughout his career giving him a unique and holistic perspective of community planning, urban design and Landscape Architecture.

Tom Murphy

Senior Resident Fellow, ULI/Klingbeil Family Chair for Urban Development

ULI – the Urban Land Institute

Washington, D.C.

Tom Murphy is Senior Resident Fellow, ULI/Klingbeil Family Chair for Urban Development. Murphy, former mayor of Pittsburgh, joins other ULI senior resident fellows who specialize in public policy, retail/urban entertainment, transportation/infrastructure, housing, real estate finance and environmental issues. His extensive experience in urban revitalization-what drives investment, what ensures long-lasting commitment-is a key addition to the senior resident fellows' areas of expertise.

Prior to his appointment as senior resident fellow, Murphy had served as ULI's Gulf Coast liaison, helping to coordinate with the leadership of New Orleans and the public to advance the implementation of rebuilding recommendations made by ULI's Advisory Services panel. In addition, he worked with Louisiana state leadership, as well as with leadership in hurricane-impacted areas in Mississippi, Alabama and Florida to identify areas appropriate for ULI involvement.

Prior to his service as the ULI Gulf Coast liaison, Murphy served three terms as the mayor of Pittsburgh, from January 1994 through December 2005. During that time, he initiated a public-private partnership strategy that leveraged more than \$4.5 billion in economic development in Pittsburgh. Murphy led efforts to secure and oversee \$1 billion in funding for the development of two professional sports facilities, and a new convention center that is the largest certified green building in the United States. He

developed strategic partnerships to transform more than 1,000 acres of blighted, abandoned industrial properties into new commercial, residential, retail and public uses; and he oversaw the development of more than 25 miles of new riverfront trails and urban green space.

From 1979 through 1993, Murphy served eight terms in the Pennsylvania State General Assembly House of Representatives. He focused legislative activities on changing Western Pennsylvania's economy from industrial to entrepreneurial, and authored legislation requiring the Commonwealth of Pennsylvania pension fund to invest in venture capital. In addition, he authored legislation creating the Ben Franklin Technology Partnership, which is dedicated to advancing Pennsylvania's focus on technology in the economy; and he authored legislation to encourage industrial land reuse and to transform abandoned rail right-of-ways into trails and green space.

Murphy served in the Peace Corps in Paraguay from 1970 through 1972. He is a 1993 graduate of the New Mayors Program offered by Harvard University's Kennedy School of Government. He holds a Master of Science degree in Urban Studies from Hunter College, and a Bachelor of Science degree in Biology and Chemistry from John Carroll University.

He is an honorary member of the American Society of Landscape Architects; a board member of the Pennsylvania League of Cities and Municipalities; and a board member of the National Rails to Trails Conservancy. He received the 2002 Outstanding Achievement of City Livability Award from the U.S. Conference of Mayors and was awarded the 2001 Pittsburgh Man of the Year Award by Vectors Pittsburgh.

Paul Bernard
Executive Vice President, Advisory Services
ULI – the Urban Land Institute
Washington, D.C.

Paul is an Executive Vice President for the Urban Land Institute (ULI), a nonprofit education and research institute that focuses on issues of land use, real estate and urban development. The mission of the Institute is to provide leadership in the responsible use of land and in creating and sustaining thriving communities worldwide. Mr. Bernard recently joined ULI and manages the Advisory Services, Urban Plan, Professional Development and the Awards programs.

Prior to joining ULI, Mr. Bernard served as Vice President at Enterprise Community Partners, Inc., where he led the organization's national public-sector and community development advisory practice. Previously, Paul held several senior roles in government and the private sector, including Senior Vice President at Walker & Dunlop (NYSE: WD) where he led the company's Investment Advisory practice. He was also a Principal and Division Head at MunieMae (NYSE: MMA), managing the growth and operations for approximately \$1.0 billion in institutional capital. Mr. Bernard also held senior positions at the City of Detroit, where he was appointed by Mayor Dennis Archer as the Director of Planning and Development and a Member of the Economic Development Cabinet, and at Public Financial Management (PFM), where he was a Senior Managing Consultant for federal, state and local municipalities and public authorities on traditional and alternative financing initiatives. Mr. Bernard holds a master's in Public Policy from Harvard University, an MBA and a bachelor's degree in Foreign Service from Georgetown University.

