



UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

Washington, DC

OFFICE OF
GENERAL COUNSEL

APR - 4 2018

MEMORANDUM

SUBJECT: Record for "Review of Lease Agreement Under the Federal Ethics Regulations Regarding Gifts"

FROM: Kevin S. Minoli *KSE*
Designated Agency Ethics Official &
Principal Deputy General Counsel

TO: Matthew Z. Leopold
General Counsel

On March 30, 2018, I signed a memorandum entitled "Review of Lease Agreement Under the Federal Ethics Regulations Regarding Gifts" (Review). Questions have been raised as to the scope of the Review and the factual basis for it. Today's memorandum explains the factual basis for the conclusion reached in the March 30 Memorandum and explains the scope of that review.

Factual Basis for the Conclusion

Regulations promulgated by the Office of Government Ethics exclude from the definition of gift "Anything for which market value is paid by the employee." The regulations then explain how an ethics official is to establish market value:

(c) *Market value* means the cost that a member of the general public would reasonably expect to incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit is deemed to be the face value of the ticket.

A first step in ascertaining the market value of a gift is to identify and understand the item of value. Here, the item of value is the ability to use the space at 233 C Street as

defined by the terms of the lease. In developing the Review, the ethics office examined the entire lease, which is attached hereto as Exhibit 1, and highlight the following terms that were particularly relevant to the value of the lease:

- **Term:** 39 Days from February 20, 2017, to April 1, 2017
- **Rent:** \$50 per day
 - Rent is “payable on the 1st day of each month of the term, in installments of \$500 on March 1, 2017 and any remaining balance on April 1, 2017 based on days of actual occupancy.” (emphasis removed)
- **Use of Premises:** To be used by Tenant and Tenant’s immediate family
 - “Tenant may store possessions on the premises when he is not occupying the bedroom assigned to him. There will be no charge for storage of limited personal items including clothing.”
- **Tenant’s Hold Over:** Provided for the possibility of new week-to-week tenancies
- **Quiet Enjoyment:** Limited to one bedroom
 - “Enjoyment is limited to one bedroom that cannot be locked. All other space is controlled by landlord. (*sic*) Landlord will attempt to notify Tenant if common space is to be utilized during early or late hours. No notice is required for usage during weekday business hours, 8am-6pm. Tenant shall provide Landlord’s representative (Vicki Hart) with a cell number for this and all required communications.” (emphasis removed)

When there is not a pre-established market, the regulation provides that that the ethics official may “estimate...market value by reference to the retail cost of similar items of like quality.” In order to estimate the market value of the use authorized by the terms of the lease, the ethics office reviewed the following information regarding similar items of like quality:

Daily Rentals for One Private Bedroom

- Because the rent was assessed per day based on days of actual occupancy, we reviewed the availability of a private bedroom available for rent by the day.
- Because the rentals are “similar” and of “like quality,” a cut-off of \$55 per day was used and rooms not suitable for an adult were removed from the list.
 - Within a six-block radius of 233 C St, NE, there were seven (7) private bedrooms that could be rented for \$55 or less/day (Exhibit 2)
 - Across a broader section of Capitol Hill, there were thirty-eight (38) private bedrooms that could be rented for \$55 or less/day (Exhibit 3)

Monthly Rental Units

- While the lease created something less than a month-to-month tenancy and did not provide exclusive use to the entire property, we reviewed available monthly rental units as potentially similar units to ensure thoroughness of the evaluation.
 - Capitol Hill is the 19th most expensive neighborhood for renting in Washington, DC with an average cost of a rental apartment of \$2,361/month
 - Source: <https://www.rentcafe.com/average-rent-market-trends/us/dc/washington/>

- Rental units currently available within three blocks (less than 1/3 mile) of the location of the lease (Exhibit4) include:
 - Eight (8) 1BR units with an average price of \$2,173/month
 - Three (3) 2BR units with an average price of \$3,695
 - Source: Zillow.com

The information demonstrates that there are several private rooms available to be rented on a per day basis for \$55 or less that are in close proximity to the exact location the leased space. Within the Capitol Hill neighborhood, there are multiple private rooms available at a per day rate equal to or less than the one included in the lease. When checked against the price of traditional month-to-month rentals that would most likely offer increased privacy and exclusivity of use, a converted amount of \$1,500 for Tenant's portion of the rent under the lease is within the range of amounts charged for locations no further than three blocks away. Based on the foregoing, the ethics office estimated \$50/day to be a reasonable market value of the use authorized by the terms of the lease. As such, the use of the property according to the terms of the lease would not constitute a gift under the Federal ethics regulations.

Scope of Review Under Ethics Regulations Regarding Gifts

The Review addressed the terms of the lease as they were written in the lease agreement only. Some have raised questions whether the actual use of the space was consistent with the terms of the lease. Evaluating those questions would have required factual information that was not before us and the Review does not address those questions.

The memorandum concluded, after considering the factual record, that the use of the property authorized by the terms of the lease would not constitute a gift. Individuals have noted that the Review used the words "did not" constitute a gift instead of "would not" constitute a gift, and understood that language to imply that the Review had evaluated the actual use that occurred; to be clear, despite use of the words "did not," the Review only addressed the terms of the lease as written.

Ethics Regulations Other than Those Regarding Gifts

The Review addressed those parts of the Federal ethics regulations that regard gifts, but was not intended to and did not address other portions of the Federal ethics regulations such as the impartiality rule. It is important to note that the Federal ethics regulations regarding impartiality apply regardless of whether something involves receiving a prohibited gift. A federal employee must comply with the Standards of Ethical Conduct, including those relating to impartiality, at all times.

Exhibit 1

District of Columbia Residential Lease Agreement

THIS LEASE AGREEMENT (hereinafter referred to as the "Agreement") made and entered into this 15th day of February 2017 by and between **223 C Street LLC** (hereinafter referred to as "Landlord") and **Scott Pruitt** (hereinafter referred to as "Tenant").

WITNESSETH:

WHEREAS, Landlord is the fee owner of certain real property being, lying and situated in the City of Washington, District of Columbia, such real property having a street address of 223 C Street, NE (hereinafter referred to as the "Premises").

WHEREAS, Landlord desires to lease the Premises to Tenant upon the terms and conditions as contained herein; and

WHEREAS, Tenant desires to lease the Premises from Landlord on the terms and conditions as contained herein;

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **TERM.** Landlord leases to Tenant and Tenant leases from Landlord the above described Premises together with any and all appurtenances thereto, for a term of **39 days**, such term beginning on **February 20, 2017** and ending at 11:59 PM on **April 1, 2017**.
2. **RENT.** The total rent for the term hereof is the sum of **fifty dollars (\$50.00)** per day payable on the **1st** day of each month of the term, in installments of **\$500.00 on March 1, 2017 and any remaining balance on April 1, 2017 based on days of actual occupancy**. All such payments shall be made to Landlord at premises address as set in this Agreement on or before the due date and without demand.
3. **USE OF PREMISES.** The Premises shall be used and occupied by Tenant and Tenant's immediate family, consisting of tenant, spouse and children exclusively, as a **private single family dwelling**, and no part of the Premises shall be used at any time during the term of this Agreement by Tenant for the purpose of carrying on any business, profession, or trade of any kind, or for any purpose other than as a private single family dwelling. Tenant shall not allow any other person, other than Tenant's immediate family or transient relatives and friends who are guests of Tenant, to use or occupy the Premises without first obtaining Landlord's written consent to such use. Tenant shall comply with any and all laws, ordinances, rules and orders of any and all governmental or quasi-governmental authorities affecting the cleanliness, use, occupancy and preservation of the Premises. Tenant may store possessions on the premises when he is not occupying the bedroom assigned to him. There will be no charge for storage of limited personal items including clothing.
4. **CONDITION OF PREMISES.** Tenant stipulates, represents and warrants that Tenant has examined the Premises, and that they are at the time of this Lease in good order, repair, and in a safe, clean and tenantable condition. Landlord has the option of providing cleaning services but must obtain Tenant permission for cleaning staff to enter the Tenant's bedroom.
5. **ASSIGNMENT AND SUB-LETTING.** Tenant shall not assign this Agreement, or sub-let or grant any license to use the Premises or any part thereof without the prior written consent of Landlord. A consent by Landlord to one such assignment, sub-letting or license shall not be deemed to be a consent to any subsequent assignment, sub-letting or license. An assignment, sub-letting or license without the prior written consent of Landlord or an assignment or sub-letting by operation of law shall be absolutely null and void and shall, at Landlord's option, terminate this Agreement.

11. **DAMAGE TO PREMISES.** In the event the Premises are destroyed or rendered wholly uninhabitable by fire, storm, earthquake, or other casualty not caused by the negligence of Tenant, this Agreement shall terminate from such time except for the purpose of enforcing rights that may have then accrued hereunder. The rental provided for herein shall then be accounted for by and between Landlord and Tenant up to the time of such injury or destruction of the Premises, Tenant paying rentals up to such date and Landlord refunding rentals collected beyond such date. Should a portion of the Premises thereby be rendered uninhabitable, the Landlord shall have the option of either repairing such injured or damaged portion or terminating this Lease. In the event that Landlord exercises its right to repair such uninhabitable portion, the rental shall abate in the proportion that the injured parts bears to the whole Premises, and such part so injured shall be restored by Landlord as speedily as practicable, after which the full rent shall recommence and the Agreement continue according to its terms.
12. **INSPECTION OF PREMISES.** Landlord and Landlord's agents shall have the right at all reasonable times during the term of this Agreement and any renewal thereof to enter the Premises for the purpose of inspecting the Premises and all buildings and improvements thereon. And for the purposes of making any repairs, additions or alterations as may be deemed appropriate by Landlord for the preservation of the Premises or the building. Landlord and its agents shall further have the right to exhibit the Premises and to display the usual "for sale", "for rent" or "vacancy" signs on the Premises at any time within forty-five (45) days before the expiration of this Lease. The right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations or additions that do not conform to this Agreement or to any restrictions, rules or regulations affecting the Premises.
13. **SUBORDINATION OF LEASE.** This Agreement and Tenant's interest hereunder are and shall be subordinate, junior and inferior to any and all mortgages, liens or encumbrances now or hereafter placed on the Premises by Landlord, all advances made under any such mortgages, liens or encumbrances (including, but not limited to, future advances), the interest payable on such mortgages, liens or encumbrances and any and all renewals, extensions or modifications of such mortgages, liens or encumbrances.
14. **TENANT'S HOLD OVER.** If Tenant remains in possession of the Premises with the consent of Landlord after the natural expiration of this Agreement, a new tenancy from week-to-week shall be created between Landlord and Tenant which shall be subject to all of the terms and conditions hereof except that rent shall then be due and owing at fifty dollars (\$50.00) per day and except that such tenancy shall be terminable upon three (3) days written notice served by either party.
15. **SURRENDER OF PREMISES.** Upon the expiration of the term hereof, Tenant shall surrender the Premises in as good a state and condition as they were at the commencement of this Agreement, reasonable use and wear and tear thereof and damages by the elements excepted.
16. **QUIET ENJOYMENT.** Tenant, upon payment of all of the sums referred to herein as being payable by Tenant and Tenant's performance of all Tenant's agreements contained herein and Tenant's observance of all rules and regulations, shall and may peacefully and quietly have, hold and enjoy said Premises for the term hereof. Enjoyment is limited to one bedroom that cannot be locked. All other space is controlled by landlord. Landlord will attempt to notify Tenant if common space is to be utilized during early or late hours. No notice is required for usage during weekday business hours, 8am-6pm. Tenant shall provide Landlord's representative (Vicki Hart) with a cell number for this and all required communications.
17. **INDEMNIFICATION.** Landlord shall not be liable for any damage or injury of or to the Tenant, Tenant's family, guests, invitees, agents or employees or to any person entering the Premises or the building of which the Premises are a part or to goods or equipment, or in the structure or equipment of the structure of which the Premises are a part, and Tenant hereby agrees to indemnify, defend and hold Landlord harmless from any and all claims or assertions of every kind and nature.

6. **ALTERATIONS AND IMPROVEMENTS.** Tenant shall make no alterations to the buildings or improvements on the Premises or construct any building or make any other improvements on the Premises without the prior written consent of Landlord. Any and all alterations, changes, and/or improvements built, constructed or placed on the Premises by Tenant shall, unless otherwise provided by written agreement between Landlord and Tenant, be and become the property of Landlord and remain on the Premises at the expiration or earlier termination of this Agreement. Tenant shall not hang pictures or otherwise attach any object to the walls
7. **NON-DELIVERY OF POSSESSION.** In the event Landlord cannot deliver possession of the Premises to Tenant upon the commencement of the Lease term, through no fault of Landlord or its agents, then Landlord or its agents shall have no liability, but the rental herein provided shall abate until possession is given. Landlord or its agents shall have thirty (30) days in which to give possession, and if possession is tendered within such time, Tenant agrees to accept the demised Premises and pay the rental herein provided from that date. In the event possession cannot be delivered within such time, through no fault of Landlord or its agents, then this Agreement and all rights hereunder shall terminate.
8. **HAZARDOUS MATERIALS.** Tenant shall not keep on the Premises any item of a dangerous, flammable or explosive character that might unreasonably increase the danger of fire or explosion on the Premises or that might be considered hazardous or extra hazardous by any responsible insurance company.
9. **UTILITIES.** Landlord shall be responsible for arranging for and paying for all utility services required on the Premises. No phone service is provided. Tenant agrees to use his private cell number for all telephone communications
10. **MAINTENANCE AND REPAIR; RULES.** Tenant will, at its sole expense, keep and maintain the Premises and appurtenances in good and sanitary condition and repair during the term of this Agreement and any renewal thereof. Without limiting the generality of the foregoing, Tenant shall:
 - (a) Not obstruct the driveways, sidewalks, courts, entry ways, stairs and/or halls, which shall be used for the purposes of ingress and egress only;
 - (b) Keep all windows, glass, window coverings, doors, locks and hardware in good, clean order and repair;
 - (c) Not obstruct or cover the windows or doors;
 - (d) Not leave windows or doors in an open position during any inclement weather;
 - (e) Not hang any laundry, clothing, sheets, etc. from any window, rail, porch or balcony nor air or dry any of same within any yard area or space;
 - (f) Not cause or permit any locks or hooks to be placed upon any door or window without the prior written consent of Landlord;
 - (g) Keep all air conditioning filters clean and free from dirt;
 - (h) Keep all lavatories, sinks, toilets, and all other water and plumbing apparatus in good order and repair and shall use same only for the purposes for which they were constructed. Tenant shall not allow any sweepings, rubbish, sand, rags, ashes or other substances to be thrown or deposited therein. Any damage to any such apparatus and the cost of clearing stopped plumbing resulting from misuse shall be borne by Tenant;
 - (i) And Tenant's family and guests shall at all times maintain order in the Premises and at all places on the Premises, and shall not make or permit any loud or improper noises, or otherwise disturb other residents;
 - (j) Keep all radios, television sets, stereos, phonographs, etc., turned down to a level of sound that does not annoy or interfere with other residents;
 - (k) Deposit all trash, garbage, rubbish or refuse in the locations provided therefor and shall not allow any trash, garbage, rubbish or refuse to be deposited or permitted to stand on the exterior of any building or within the common elements;
 - (l) Abide by and be bound by any and all rules and regulations affecting the Premises or the common area appurtenant thereto which may be adopted or promulgated by the Condominium or Homeowners' Association having control over them.

18. **DEFAULT.** If Tenant fails to comply with any of the material provisions of this Agreement, other than the covenant to pay rent, or of any present rules and regulations or any that may be hereafter prescribed by Landlord, or materially fails to comply with any duties imposed on Tenant by statute, within seven (7) days after delivery of written notice by Landlord specifying the non-compliance and indicating the intention of Landlord to terminate the Lease by reason thereof, Landlord may terminate this Agreement. If Tenant fails to pay rent when due and the default continues for seven (7) days thereafter, Landlord may, at Landlord's option, declare the entire balance of rent payable hereunder to be immediately due and payable and may exercise any and all rights and remedies available to Landlord at law or in equity or may immediately terminate this Agreement.
19. **ABANDONMENT.** If at any time during the term of this Agreement Tenant abandons the Premises or any part thereof, Landlord may, at Landlord's option, obtain possession of the Premises in the manner provided by law, and without becoming liable to Tenant for damages or for any payment of any kind whatever. Landlord may, at Landlord's discretion, as agent for Tenant, relet the Premises, or any part thereof, for the whole or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all rent payable by virtue of such reletting, and, at Landlord's option, hold Tenant liable for any difference between the rent that would have been payable under this Agreement during the balance of the unexpired term, if this Agreement had continued in force, and the net rent for such period realized by Landlord by means of such reletting. If Landlord's right of reentry is exercised following abandonment of the Premises by Tenant, then Landlord shall consider any personal property belonging to Tenant and left on the Premises to also have been abandoned, in which case Landlord may dispose of all such personal property in any manner Landlord shall deem proper and Landlord is hereby relieved of all liability for doing so.
20. **ATTORNEYS' FEES.** Should it become necessary for Landlord to employ an attorney to enforce any of the conditions or covenants hereof, including the collection of rentals or gaining possession of the Premises, Tenant agrees to pay all expenses so incurred, including a reasonable attorneys' fee.
21. **RECORDING OF AGREEMENT.** Tenant shall not record this Agreement on the Public Records of any public office. In the event that Tenant shall record this Agreement, this Agreement shall, at Landlord's option, terminate immediately and Landlord shall be entitled to all rights and remedies that it has at law or in equity.
22. **GOVERNING LAW.** This Agreement shall be governed, construed and interpreted by, through and under the Laws of the District of Columbia.
23. **SEVERABILITY.** If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.
24. **BINDING EFFECT.** The covenants, obligations and conditions herein contained shall be binding on and inure to the benefit of the heirs, legal representatives, and assigns of the parties hereto.
25. **DESCRIPTIVE HEADINGS.** The descriptive headings used herein are for convenience of reference only and they are not intended to have any effect whatsoever in determining the rights or obligations of the Landlord or Tenant.
26. **CONSTRUCTION.** The pronouns used herein shall include, where appropriate, either gender or both, singular and plural.
27. **NON-WAIVER.** No indulgence, waiver, election or non-election by Landlord under this Agreement shall affect Tenant's duties and liabilities hereunder.

28. **MODIFICATION.** The parties hereby agree that this document contains the entire agreement between the parties and this Agreement shall not be modified, changed, altered or amended in any way except through a written amendment signed by all of the parties hereto.

29. **NOTICE.** Any notice required or permitted under this Lease or under state law shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to Landlord to:

Vicki
Steve Hart
223 C Street LLC
223 C Street NE
Washington, DC 20002

If to Tenant to:
Scott Pruitt

[Tenant's Address]

Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

30. ADDITIONAL PROVISIONS; DISCLOSURES.

As to Landlord this 17 day of _____, 20____.

LANDLORD:

Sign: Vicki Hart Print: Vicki Hart

As to Tenant, this _____ day of _____, 20____.

TENANT ("Tenant"):

Sign: [Signature] Print: _____

TENANT:

Exhibit 2

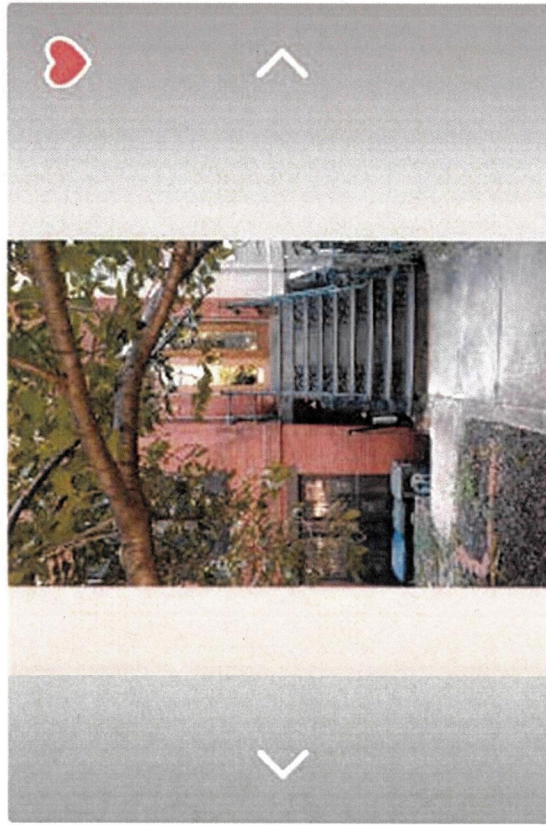


Search was initially conducted on March 30, 2018, repeated on March 31 and April 1. This version was printed on April 2. This map documents rooms closest to 233 C St. Source: www.airbnb.com

Capitol Hill Rooms for \$55 Or Less

No dates · 1 guest

7 homes



PRIVATE ROOM • 1 BED

Stanton Park Place 3F

\$39 per night

★★★★★ 13 - Superhost

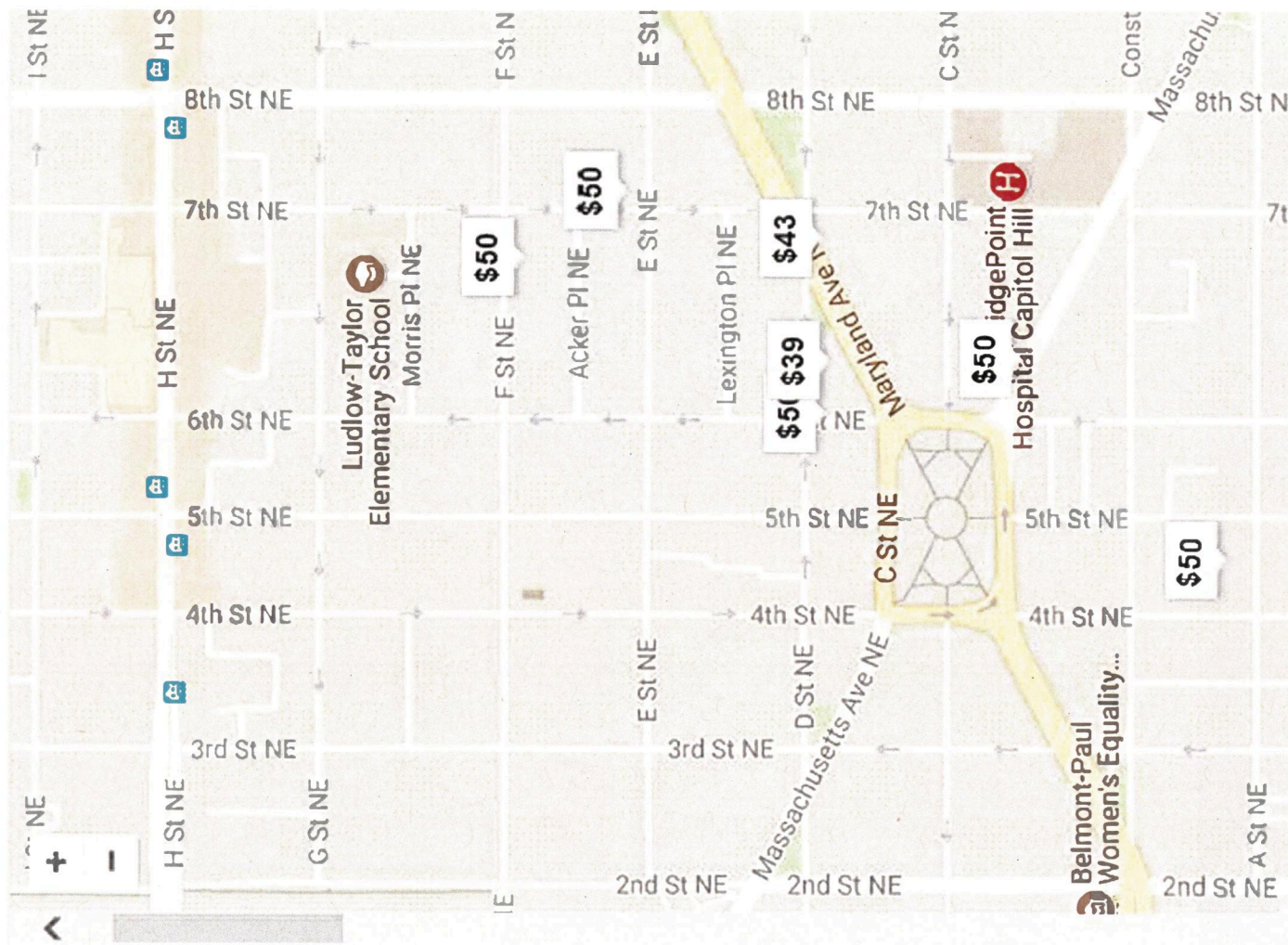


Exhibit 3

Search was initially conducted on March 30, 2018, repeated on March 31 and April 1. This version was printed on April 2.
 This map documents rooms across Capitol Hill broadly. For the area closest to 233 C St, please see the map entitled "Capitol Hill Rooms for \$55 Or Less"

All lists

Broader Capitol Hill Rooms for \$55 or Less

No dates · 1 guest

38 homes

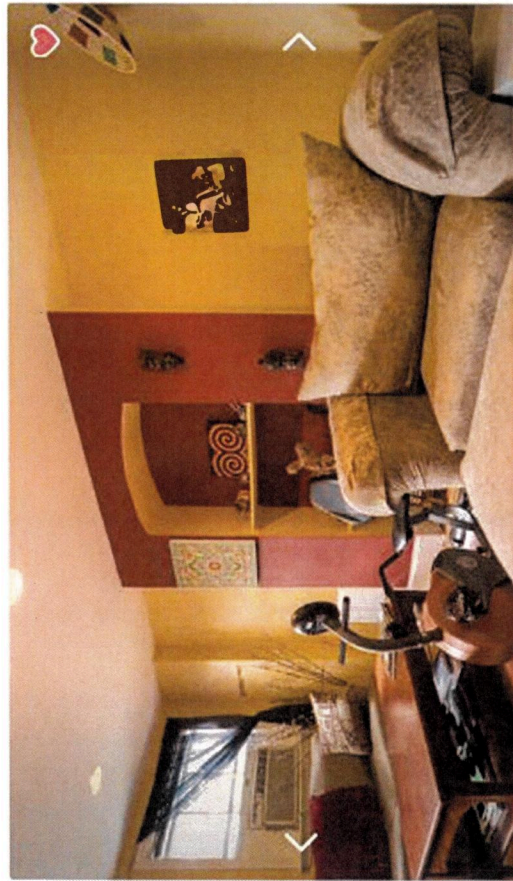
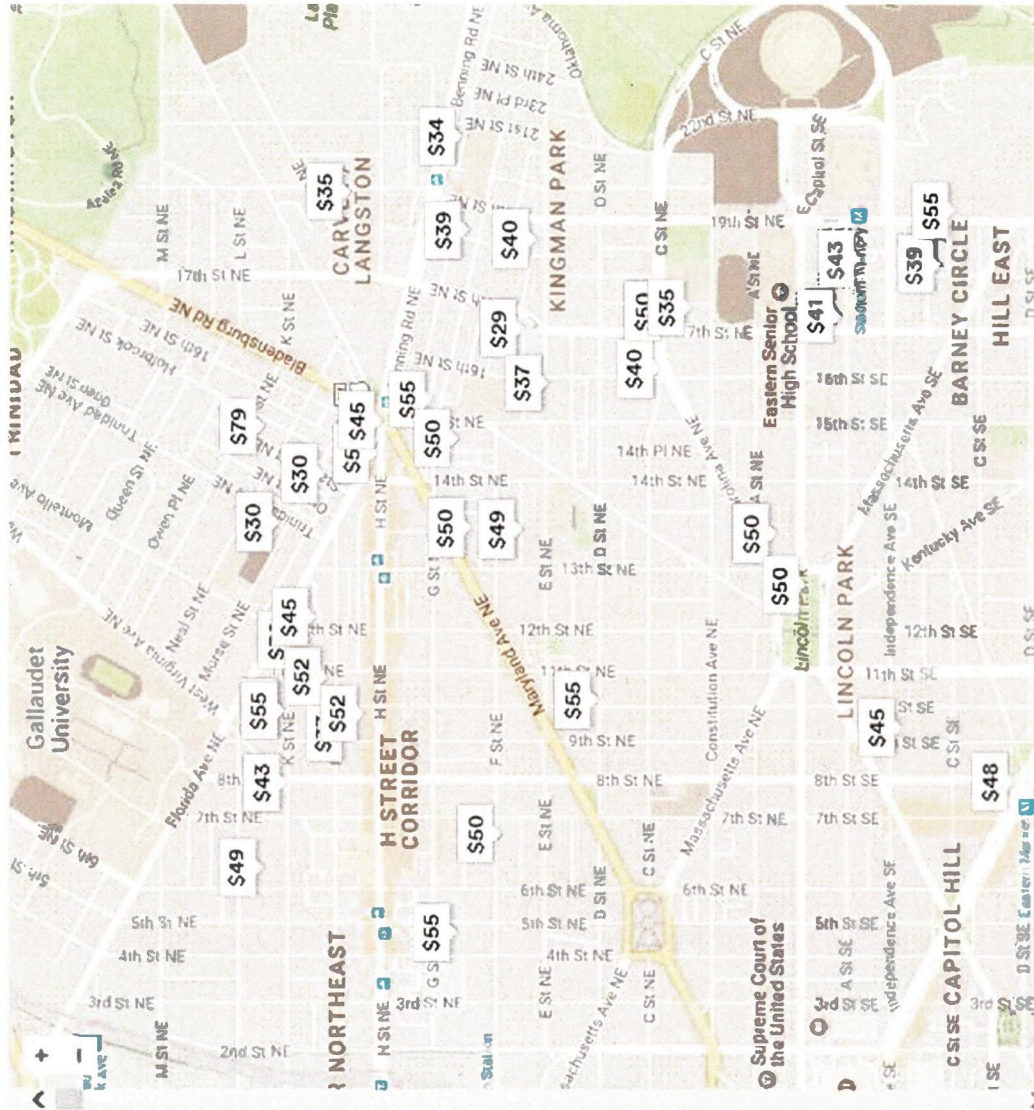


Exhibit 4

Availabe 1BR and 2BR Rental Units

1 Bedroom Apartments

- 1 1BR \$1600
- 2 1BR \$1875
- 3 1BR \$2200
- 4 1BR \$1975
- 5 1BR \$2100
- 6 1BR \$3240
- 7 1BR \$2400
- 8 1BR \$1995

2 Bedroom Units

- 1 2BR \$2595
- 2 2BR \$3750
- 3 2BR \$4740

Leased Property



233 C St NE: Site of Leased Space

Apartments listed on Zillow
March 30, 31, or April 1.

Scope of consideration limited
to eight blocks bordered by D Street, 4th Street, East Capitol Street, and 2nd Street.

Source: Listed on Zillow

