

January 20, 2006

RECEIVED
D.C. OFFICE OF ZONING
JAN 20 PM 2:55

Chairperson Carol J. Mitten and Members
D.C. Zoning Commission
One Judiciary Square, Suite 210 South
441 4th Street N.W.
Washington, D.C. 20001

**RE: Post-Hearing Submissions Requested by the Zoning Commission, ZC Case No. 05-36
(First Stage & Consolidated PUD & Related Map Amendment-200 K Street N.E.)**

Dear Chairperson Mitten and Members:

This responds to the Zoning Commission's post-hearing submission requirements, stated by Commission members during the hearing January 5, 2005. As recorded by Sharon Schellin, Acting Secretary to the Zoning Commission, the Applicant was directed to submit the following:

- LSDBE agreement;
- Affordable housing covenant;
- More information regarding the plaza area, specifically, if the ZC is to consider it a viable amenity, how is it going to work (to allow the community to use it), what kind of controls will be in place, and what happens at 7:00 pm and the area is closed to the community and non-residents remain in the plaza area?
- Revised drawings of all pages that currently show 15 stories instead of 14 stories.
- Retail space - clarify what is being proffered.
- Floor plans showing the location of the affordable units on floors 1-5.

The Office of Planning ("OP") was directed to submit certain census tract data and a discussion regarding the Applicant's arguments for "the additional .4 FAR being requested; in general for it to be used to pay for an amenity and specifically for it to be used to provide affordable housing."

Our responses are detailed below, including with the Commission's indulgence, our elaboration on our hearing testimony and our January 4th written submission discussing the justification, pursuant to § 2405.3 of the Zoning Regulations, for the requested 5% (0.4) bonus FAR.

Chairperson Carol J. Mitten and Members
D.C. Zoning Commission
January 20, 2006
Page 2

1) LSDBE agreement.

The Applicant's LSDBE Memorandum of Understanding, executed by the Applicant and by the Director of the D.C. Department of Small and Local Business Development is provided as Attachment 1.

2) Affordable housing covenant.

Attachment 2 is the Applicant's draft covenant. The draft blends affordable housing covenant clauses into the standard PUD covenant required by §§ 2409.2 and 2409.3 of the Zoning Regulations.

We believe this is the first PUD case in which the Commission has required a developer to place affordable-housing operational and enforcement details into a land covenant. In reviewing Commission orders and covenants filed in four previous PUD cases involving affordable-housing commitments, we have found no record of an affordable-housing covenant. In these cases, the affordable housing requirements were defined by the Commission in its orders, either explicitly or by reference to case exhibits, and the Commission orders were incorporated by reference in the PUD covenants recorded by the developers.¹

Nevertheless, we are happy to comply with OP's recommendation and the Commission's request that affordable-housing commitments should be incorporated in the land covenant. Realizing that we are charting new territory, we have tried to draft a covenant that incorporates the elements OP and the Commission want, without encroaching upon the administrative and enforcement authority of the D.C. Department of Housing and Community Development ("DHCD") or any successor agency which may be designated to administer and enforce affordable-housing commitments.

We have written the draft to apply to the Consolidated PUD; the additional covenant applying to the Preliminary PUD would be prepared during the course of the second-stage PUD proceedings. Although the Applicant intends to offer the Consolidated PUD units as for-sale units, we have written the draft to allow for the possibility that the Applicant might, in the future, find it necessary to rent some or all of the units rather than selling them.

As models for our draft, we relied upon the PUD covenant template available from the Office of the Attorney General, samples of DHCD covenants with affordable-housing providers receiving federal housing development funding, and the OP document titled *Planned Unit Development Inclusionary Housing Commitment Standards* (the "OP document"), identified as

¹ ZC Order No. 04-22, adopted March 24, 2005, Abdo Development LLC; ZC Order No. 04-13, adopted March 14, 2005, 1200-1224 R Street N.W., Logan Phase II; ZC Order No. 03-04, adopted January 12, 2004, 1437-1451 Belmont Street N.W., Belmont Partners LLC; ZC Order No. 2-17, adopted May 12, 2003, 5401 Western Avenue N.W., now known as Chase Point.

Chairperson Carol J. Mitten and Members
D.C. Zoning Commission
January 20, 2006
Page 3

an exhibit in the Commission's Inclusionary Zoning case (No. 04-33). Also, in drafting the affordable-housing resale restrictions, we have also taken into consideration District of Columbia case law and the common law rule against restraint on alienation.²

Using the terminology of the OP document, our draft includes:

- Affordable Housing-Development Standards, in which the Applicant covenants to provide the number, percentage, and square footage of affordable units as proffered, equitably distributed in relation to market-rate units, with external features "indistinguishable" from market-rate units, and with internal appliances and finishes comparable to market-rate units though they may be of lesser quality.
- Affordable Housing-Household Eligibility Standards, in which the Applicant covenants to provide the affordable units to eligible households with incomes "not exceeding 80% of the Area Median Income", as proffered, and who meet other eligibility criteria established by DHCD and have "an income eligibility certification letter issued by DHCD."

The OP document included additional eligibility criteria³ proposed by OP for Commission consideration in the Inclusionary Zoning case. We did not incorporate these additional criteria in our draft covenant for three reasons: 1) The Applicant cannot covenant to establish rules and criteria for DHCD; 2) To establish such rules and criteria for Union Place units may well conflict with the rules and criteria DHCD applies to affordable housing in general, now and in the future; and 3) To establish such rules and criteria for Union Place units may also conflict with the Commission's forthcoming decision in the Inclusionary Zoning case. Any such conflicts would complicate and confuse monitoring, compliance, and enforcement.

² See *Burdick v. Burdick*, 33 F. Supp 921, 928 (D.C. Cir 1940); *Wisconsin Avenue Associates v. 2720 Wisconsin Cooperative Association Inc.*, 441 A.2d 956,960 (D.C. App 1982); *Ruthel Carter v. Eddie F. Carter*, 516 A.2d 917, 920 (D.C. App 1986); *John Richard Dege v. William Stacy Milford*, 574 A.2d 288, 292 (D.C. App 1990).

³ OP's additional proposed criteria are that eligible households must be "purchasing or renting their primary residence; have no ownership interest in any other housing within the past three years; commit to continuous occupancy per the lease terms or deed covenants; qualify for any necessary mortgage financing and down payment...." While we have no objection to these provisions, we believe these are administrative details best left to DHCD to determine. The OP document also proposes that the Developer "shall hold a lottery of all qualified families to be selected as the Initial Unit Purchasers" and spells out details as to how the lottery shall be conducted. We suggest that if a lottery or any similar mechanism is ever necessary, not only for Union Place but for affordable units generally, it should be conducted by a neutral party, *i.e.*, the responsible government agency, not the developer.

Chairperson Carol J. Mitten and Members
D.C. Zoning Commission
January 20, 2006
Page 4

- **Affordable Housing-Unit Cost**, in which the Applicant covenants that the sales price and terms or the rental rates, as applicable, of the affordable units will be set by DHCD at a level that assures that the buyers/renters' monthly housing costs "shall not exceed thirty percent (30%) of the buyer's or renter's monthly household income."

The OP document proposed that the initial housing cost "shall be determined by the District government" and set forth detailed proposals regarding the method of determining the initial housing cost, the final housing cost, and purchase and rental assumptions. We agree that such details should be left to the appropriate government administrative agency to define, thus have excluded these details from our draft covenant.

- **Affordable Housing-Affordability Period**, in which the Applicant covenants to dedicate for-sale units as affordable for 10 years, and rental units as affordable for 20 years. The start date for the affordability period is the initial unit closing date in the case of for-sale units, and the initial unit lease date in the case of rental units. This is consistent with start-date language in sample DHCD covenants.

The 10-year affordability period for for-sale units is the period recommended in the OP document. The 20-year affordability period in the case of rental units is the period recommended in OP guidance previously provided to the Applicant.

- **Affordable Housing-Resale Restrictions**, in which the Applicant covenants that if the buyer of an affordable unit chooses to sell the unit within the 10-year affordability period, the sale can only be to another eligible affordable-unit buyer and the sale triggers the start of a new 10-year affordability period.

This is consistent with our proffer and consistent with the OP document regarding resale during the affordability period. However, the OP document goes further in proposing restrictions on resale even after the affordability period, requiring the seller to turn over a significant portion of the net proceeds to the D.C. Housing Production Trust Fund.

We have not included OP's proposed restrictions on resale after the affordability period because these types of restrictions have not been legally vetted. If the Zoning Commission imposes such restrictions, there are likely to be legal challenges if they result in an unreasonable restraint on alienation.

Chairperson Carol J. Mitten and Members
D.C. Zoning Commission
January 20, 2006
Page 5

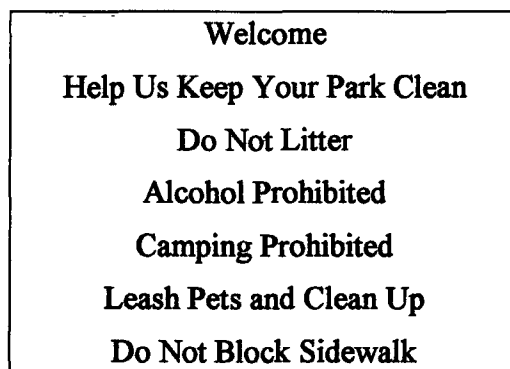
3) Union Place Plaza – operations and management as a public benefit.

The Zoning Commission asked that we provide details of the operation and management of Union Place's central plaza (referenced hereinafter as the "Plaza") in sufficient detail, satisfactory to the Commission, to justify the Applicant's proffer of this facility as not only a Project Amenity but also as a Public Benefit, pursuant to § 2403.6 of the Zoning Regulations. ZC Members commented favorably on the Applicant's proffer of private space for the use, benefit, and enjoyment of the general public, in addition to the residents of Union Place, but questioned how such shared use could be made to work effectively and harmoniously on an everyday basis.

In written submissions, the Applicant has stated that the Plaza would be open to the public until 7:00 p.m. daily. In testimony at the January 5th hearing, Applicant witnesses reaffirmed the 7:00 p.m. closing time for public access and, in response to Commission questions, affirmed an 11:00 a.m. daily opening time for public access.

The Applicants agrees to the following operational details:

- Signs will be posted permanently at the public entrance to the Plaza to welcome visitors and state the basic rules. In size and type of material, the signs will be similar to those used by the National Park Service ("NPS") at its urban pocket parks, such as the one located at 6th and I Streets S.W. The basic rules stated on the signs will be similar to the NPS signs, which state:



- At the 2nd Street walkway entrance to the Plaza, a lockable gate of iron scrollwork or similarly attractive design will be permanently installed. At 11:00 a.m. daily, the gate will be opened to allow public access. At 7:00 p.m. daily, the gate will be closed. During the locked period from 7:00 p.m. to 11:00 a.m., Union Place residents will have access through the gate with the same keys or security keycards with which they access the building interiors.

Chairperson Carol J. Mitten and Members
D.C. Zoning Commission
January 20, 2006
Page 6

- On a daily basis, Union Place security personnel, properly identified by insignia on their clothing, will monitor Plaza activities by line-of-sight observations from the Union Place security station located in the administrative area adjacent to the building lobby, and by periodic Plaza walk-arounds.
- Security personnel will be trained to treat all Plaza users courteously.
- The daily routine for closing the Plaza to public access at 7:00 p.m. will include pre-closing notification to Plaza users at fifteen (15) minutes before closing, and again at five (5) minutes before closing, by means of blinking lights, or walk-around announcements by security personnel. Security personnel may ask individuals remaining in the Plaza after 7:00 p.m. to show their resident keycards as evidence that they are Union Place residents.
- If non-residents remain in the Plaza after 7:00 p.m. and refuse to leave after several security-personnel requests extending over thirty (30) minutes, security personnel will contact a designated representative of the Union Place management who may authorize security personnel to call the Metropolitan Police Department for assistance in removing non-residents from the Plaza.
- In the event security personnel observe impermissible Plaza activities – from littering to more serious misconduct – they will be trained to first politely request the individual(s) to cease such activities. If the individual does not do so, one or more security personnel may then request the individual(s) to leave the Plaza. This would apply in the case of Union Place residents as well as non-residents.
- In the event that individuals engaging in misconduct refuse to leave the Plaza when requested, security personnel will then call for Metropolitan Police Department assistance.
- In general, the Plaza is designed for use by both the public and Union Place residents for passive recreation activities in the same manner as NPS and D.C. Department of Recreation pocket parks.
- Other activities may be authorized by action of the Union Place condominium board of directors or by the Union Place management, in consultation with Advisory Neighborhood Commission 6C, the Near Northeast Citizens Against Crime and Drugs, the Public Citizen Civic Association, and other community organizations.

Chairperson Carol J. Mitten and Members
D.C. Zoning Commission
January 20, 2006
Page 7

4) Revised drawings to clarify and confirm that the Preliminary PUD building is comprised of 14 stories.

The revised drawings are provided as Attachment 3. The elevations (Sheets A2.10, A2.11, and A2.12) supersede and replace all previous drawings that show a Phase 2 elevation. The landscape drawings (Sheets L1, L7, and L8) supersede and replace the identically-numbered landscape sheets previously submitted. On the landscape drawings, the only revisions are in text labels, changing "15 stories" to "14 stories".

The Union Place Phase 2 elevations and layout have been designed to coordinate with the Phase 1 elevations and layout, and the project acts as one building. The design has been created to provide some contrast between Phases 1 and 2 in order to provide interest but does so in a manner in which there is consistency with many design elements.

The measuring point for the building is taken from the mid-point of Third Street, which has an elevation of 51.63 feet. The Phase 2 building has no more than fourteen (14) stories above the measuring point. The floor-to-floor measurement of approximately 9' 6" will result in floor-to-ceiling heights of at least 8' 6". Ceiling heights may not be equal for each floor; in fact, we currently anticipate a 9' 10" floor-to-ceiling dimension for the top floor of the building. However, under all circumstances, there is ample height to provide an 8' 6" floor-to-ceiling dimension. After surveying the market and working with David Mayhood of the Mayhood Company, one of the region's preeminent authorities on the multifamily market, it is clear that the 8' 6" floor-to-ceiling height has been accepted by the market and is somewhat of an industry standard for luxury multifamily developments currently being marketed in the District.

The initial design for the opening to the Union Place Plaza is depicted in the 2nd Street elevation, on the ground floor at the mid-point of the 2nd Street block between K and L Streets. The entrance will provide an inviting pedestrian-friendly access to the Plaza during the hours when the Plaza is open to the public. Materials and the exact design for this entrance are still being developed but we anticipate providing a gate of iron scrollwork or similarly attractive design. As discussed in the hearing, this area will be further developed, but as already depicted in the elevation, it is a prominent design element and an important component of the overall design.

5) Retail space.

The Applicant was asked to clarify the intended use of the Union Place retail space, particularly in case it is not quickly leased. As stated by Chairperson Mitten: "Are you proposing any kind of alternative use of the retail space in the event that it can't be leased immediately, or is that just going to be reserved exclusively for retail until it can be leased?"⁴

⁴ Transcript, January 5, 2006, Zoning Commission hearing, p. 139.

Chairperson Carol J. Mitten and Members
D.C. Zoning Commission
January 20, 2006
Page 8

For the Applicant, Ronald Cohen testified in response: "The idea is that this space has been designed, is being planned as a retail component. If there needs to be an interim use, a quasi-office use, some type of community use in a quasi-office, it will be because, rather than have something whited out, boarded up, I'd rather have people in there."

To clarify and elaborate, the Applicant affirms:

- During the construction period of approximately 18 months, the Applicant will aggressively market the retail space to suitable retail tenants, based upon consultations with ANC 6C and other neighborhood organizations regarding the types of retail tenants the community would like to have. The marketing will be conducted nationally, regionally, and locally by an experienced and respected commercial leasing firm.
- The Applicant will offer rent incentives, up to and including periods of rent-free use, in order to attract one or more suitable retail tenants for 20-year leases.
- If no suitable retail tenant is identified during the 18-month period, the Applicant will recruit one or more interim tenants for lease periods of up to five (5) years. Acceptable interim tenants may include quasi-office or small-office uses by for-profit or nonprofit entities or community-based organizations.
- The Applicant will not, in any case, allow the retail space to sit unused as a neighborhood eyesore. In the event there is any noticeable lapse between completion of construction and occupancy by a tenant, the Applicant will assure the use and attractiveness of the vacant retail space by creating display windows to showcase the art work of local school students or events and commemorations sponsored by community groups or agencies such as the D.C. Commission on Arts and Humanities. This is similar to the approach taken in the case of the old Woodward & Lothrop building until tenants occupied the space.

6) Floor plans showing the location of the Phase 1 affordable units on floors one (1) through five (5).

The Mayhood Company letter, the table, and the floor plans provided as Attachments 4, 5, and 6 show and describe the placement of the 28 affordable units comprising 24,532 net square feet, as proffered. The table itemizes the affordable units by floor and net square feet ("nsf") of each. The Mayhood Company letter attests to the "fair location and allocation of unit types" in relation to the market-rate units.

In sum, there are seven affordable units on Floor 1, six on Floor 2, seven on Floor 3, four on Floor 4, and four on Floor 5. Although some individuals may be predisposed to think of

Chairperson Carol J. Mitten and Members
D.C. Zoning Commission
January 20, 2006
Page 9

units on higher floors as more “desirable,” we suggest that this is a subjective judgment, depending on individual tastes and personal preferences which may not be shared by others in the pool of prospective buyers.

The desirability of particular units also depends, to a considerable extent, on the design of a specific project. Union Place is designed with specific intent and specific features to enhance the attractiveness, convenience, and desirability of Floors 1 and 2 where all units face an attractive streetscape, have green space in front, and have steps leading from the street to their front doors. The design intent is that the building exterior, at the levels of Floors 1 and 2, matches the rowhouse design of the nearby residential neighborhood. Thus, 13 of the 28 affordable units are located on Floors 1 and 2 to provide equitable distribution of affordable units on these floors that we and the Mayhood Company rank as highly desirable in the market.

Regarding unit types, there are ten one-bedroom units, eleven one-bedroom-plus-den units, and seven two-bedroom units. We note that the term “one-bedroom-plus-den” is merely a standard label in the residential real estate industry, and by no means implies that the “den” will or must be used as a “den”.

By dictionary definition, a den is “a comfortable usually secluded room”. Buyers of Union Place one-bedroom-plus-den units may choose to use the “den” space as a bedroom, nursery, children’s play room, home office, study area, library area, exercise room, home theater area, or whatever other residential use meets their needs.

In net square feet, the unit-type breakdown is as follows:

1 BR units:	5,987 total nsf	24.4% of total affordable nsf
1 BR+den units:	10,197 total nsf	41.6% of total affordable nsf
2 BR units:	8,348 total nsf	34.0% of total affordable nsf
All affordable units:	24,532 total nsf, as proffered	

7) Bonus FAR.

Finally, we would like to elaborate on our testimony and the written submission of January 4, 2006, with regard to the Applicant’s justification for the requested 0.4 bonus FAR. We stress once again that the 0.4 bonus density is essential for the Applicant to provide the affordable housing units at the level proffered – 11.07% of the project’s total residential gross square feet (“gsf”). As stated in our January 4th submission, the 0.4 bonus translates to approximately 40,433 square feet, enough for approximately 37 residential units.

Chairperson Carol J. Mitten and Members
D.C. Zoning Commission
January 20, 2006
Page 10

If the 0.4 bonus is not approved, the project's residential gsf would be reduced to 791,408. At 11.07%, the affordable housing residential gsf would drop to 87,608 – a reduction of 4,437 gsf, or approximately four or five affordable units.

The question before the Commission is whether it is worthwhile to the city to allow a very minimal increase in density at a site within the NoMa area, already targeted for higher-density developments, in order to gain four or five additional affordable units at a time when the District Government is using all its ingenuity to generate more affordable units?

Section 2405.3 of the Zoning Regulations authorizes the Commission to approve the bonus if “the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards” of Chapter 24. Setting aside the issue of whether the bonus can be used to “pay for” a proffered public benefit, it is a matter of simple arithmetic. A key element of this project is the affordable housing commitment at 11.07% of residential gsf.

From the city's point of view, “successful functioning” of the project with the maximum number of affordable units requires approval of the bonus. Without the bonus, the project functions at less than complete success in contributing to the city's need for affordable units.

We turn now to the Chairman's question as to whether approving the bonus in this case would set a precedent for Commission action in similar future cases. We submit that it would not, because the Commission has already set that precedent in at least two previous cases.

In ZC Order No. 02-17, adopted May 12, 2003, the Commission approved a 5% height increase and a 5% density increase, pursuant to § 2405.3, for the 5401 Western Avenue N.W. Consolidated PUD now known as Chase Point. The project included an affordable housing commitment of 5% of bonus density square feet, translating to four-to-six units. In the Order, the Commission wrote: “OP concluded that the additional five percent (5%) flexibility was essential to the successful functioning of the project, especially in light of the addition of affordable housing. OP concluded that the public benefits of the project more than justified the zoning flexibility requested.... The Commission finds that the Applicant's proffered project amenities and public benefits sufficiently offset any potential adverse effects of the project... **The Commission finds that the Applicant's request for additional height and density is sufficiently offset by the proffered project amenities and public benefits.**” *Emphasis added.*

The Chase Point developer also cited the necessity of adjusting to geographic conditions at the site to provide building setbacks and open space as a justification for the bonus density. Similarly, we referred in hearing testimony to the necessity of the bonus density in order to provide the extensive central Plaza for the benefit of residents and the public.

The significance of the Chase Point order is that it demonstrates that the Commission specifically weighed the value of the developer's public benefits and amenities, including

Chairperson Carol J. Mitten and Members
D.C. Zoning Commission
January 20, 2006
Page 11

affordable housing, in finding that the Chase Point applicant met the regulatory burden of proof to justify the bonus density and, in that case, bonus height.⁵

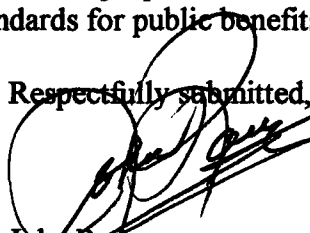
The Commission applied the same balancing test in ZC Order No. 831,⁶ adopted September 15, 1997, approving a Consolidated PUD and Map Amendment for redevelopment of the Kennedy-Warren residential condominium building at 3133 Connecticut Avenue N.W. The Kennedy-Warren applicant sought a density increase pursuant to § 2405.3. The Commission approved, measuring the relief sought against the proffered public benefits and amenities to determine whether the bonus density would be “consistent with the purpose and evaluation standards” of the PUD regulations. As stated in the Order:

“The Commission finds that the applicant has met its burden of proof. **In order for the Commission to approve the increase in density above the PUD guidelines, the applicant had to meet its burden of demonstrating the public benefits and other meritorious aspects of the proposal.** Those benefits include the high level of architectural design, the provision of housing in close proximity to two Metrorail stations, the enhancement of a historic landmark, site planning, parking well in excess of zoning requirements and increased real estate tax revenues for the District.” *Emphasis added.*

In *Chase Point* and *Kennedy-Warren*, the Commission has established precedents for approving § 2405.3 bonuses based on balancing tests weighing the presumed “cost” to the city of granting the bonus against the value to the city of the public benefits and amenities to be achieved with the bonuses. That is all we ask the Commission to do here.

We do not ask you to grant the bonus for the purpose of “paying for” the affordable housing and other public benefits and amenities. We ask you to grant the bonus to assure the “successful functioning of the project” in providing the full complement of proffered affordable housing units the city urgently needs “consistent with the purpose and evaluation standards” of the PUD regulations, specifically the evaluation standards for public benefits and amenities.

Respectfully submitted,



John Bay
MANATT PHELPS & PHILLIPS
Counsel to the Applicant

⁵ A subsequent PUD Modification eliminated the need for the bonus density, but not the bonus height.

⁶ *Kennedy-Warren* was later overturned and remanded by the D.C. Court of Appeals, but the litigation issues did not involve the justification for the bonus density.

Chairperson Carol J. Mitten and Members
D.C. Zoning Commission
January 20, 2006
Page 12

Attachments:

- 1) LSDBE Memorandum of Understanding
- 2) DRAFT PUD Covenant with Affordable Housing Provisions
- 3) Elevations and landscape drawings, revised to show 14 stories
- 4) Letter from The Mayhood Company
- 5) Table of affordable units
- 5) Floor plans showing placement of affordable units

Chairperson Carol J. Mitten and Members
D.C. Zoning Commission
January 20, 2006
Page 13

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document and its attachments were served upon the following by E-MAIL AND/OR HAND-DELIVERY on or before January 22, 2006 to:

Ellen McCarthy, Director
D.C. Office of Planning
801 North Capitol Street NE, Fourth Floor
Washington, D.C. 20002

Commissioner Mark Dixon, Chairman
Advisory Neighborhood Commission 6C
80 New York Avenue N.W., # 402
Washington, D.C. 20001

ANC 6C03 Commissioner Lena A. Brown
lbrown3117@aol.com

ANC 6C04 Commissioner Daniel Pernell
ccoroutreach@aol.com

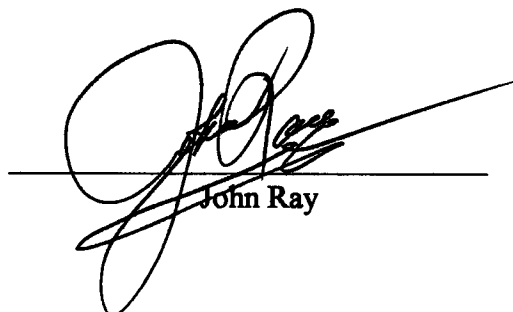
ANC 6C05 Commissioner Anthony Rivera
arivera268@aol.com

ANC 6C06 Commissioner Mike Sherman
mikesherman7@gmail.com and msherman@sand2.com

ANC 6C07 Commissioner William Sisolak
wsisolak@gvpi.com

ANC 6C08 Commissioner Karen J. Wirt
kwirt@toward.com and kwirt@crs.loc.gov

ANC 6C09 Commissioner Charles A. Docter
charleydocter@yahoo.com



John Ray

ATTACHMENT 1.

LSDBE MEMORANDUM OF UNDERSTANDING

**Between THE DISTRICT OF COLUMBIA
DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT
and
K STREET DEVELOPERS, LLC**

K Street Developers, LLC, an entity of Cohen Companies (the **“Developer”**), in accordance with D.C. Law 1-95 (as amended), D.C. Code Section 2-215.03 et seq. (2001 Ed.) and 2-217.01 et seq. (2001 Ed.), the statutes regarding **“Equal Opportunity for Local, Small and Disadvantaged Business Enterprises** and in consideration of the agreements made between the DISTRICT OF COLUMBIA, a municipal corporation c/o the Office of Zoning (the **“Zoning Commission”**), with offices at 441 4th Street, N.W., Suite 210, Washington, D.C. 20001 and K Street Developers, LLC, a District of Columbia Limited Liability Company, with Offices located at 2701 Tower Oaks Boulevard, Suite 200, Rockville, MD 20852 (the **“Developer”**), for approval of a Planned Unit Development Modification and Time Extension known as Zoning Commission Case No. 05-36 (the **“PUD”**), for development of a residential and retail project located at 200 K Street N.E., in the District of Columbia (the **“Union Place project”**), in Square 749 and bounded by K Street on the south, 2nd Street on the west, L Street on the north, and 3rd Street on the east (the **“Project Site”**), in accordance with Final Pre-Hearing Supplemental submission originally filed May 14, 2004 and resubmitted January 17, 2005 to the Zoning Commission of the District of Columbia by the Developer but effective as of **September 13, 2005**, between the Corporation and the Developer (the **“Zoning Order”**), does hereby covenant and agree to make a bona fide effort to contract and subcontract with Local, Small and Disadvantaged Business Enterprises certified by the D.C. Local Business Opportunity Commission (**“LSDBEs”**) to achieve a contracting and subcontracting goal of thirty-five percent (35%) LSDBEs participation in the K Street Developers, LLC’s, adjusted development budget in the amount of **\$145.22 million** (the **“35% Goal”**). The 35% Goal in the amount of **\$50.83 million** is to be achieved in the contracted development costs in connection with the architectural and design, development, construction (including but not limited to, excavation, provision of construction materials, interior design and improvements, purchase of goods and supplies and equipment, janitorial and refuse collection services and other pre and post construction activities, maintenance and security for the development project being created (the **“Project”**), in accordance with the following provisions.

- A. The **Developer** by entering into this Memorandum of Understanding Agreement (the **“MOU”**) agrees to develop a master procurement plan inclusive of LSDBEs for redeveloping of the Site, including implementation of all design, pre-development and development activities contemplated by such master plan, and the demolition and/or construction of all improvements (as defined in the MOU) to be located at the Site (collectively, the **“Project”**). The **Developer**, on its behalf and/or on behalf of its successors and assigns (if any), hereby agrees to use bona fide efforts (as defined herein) to achieve, at a minimum, LSDBE participation in professional/technical services, construction management, construction trade subcontracting, and construction trade suppliers for the Project equivalent to a value of **\$50.83 million**, or 35% of the adjusted development budget in the amount of **\$145.22 million**.

- B. The **Developer** shall utilize the resources of the Department of Small and Local Business Development (“DSLBD”), including the Local Business Opportunity Commission’s Directory of Certified Local, Small and Disadvantaged Business Enterprises, and periodic updates, as the primary referral sources for LSDBEs. The primary contact for such referrals shall be the Director of the Department of Small and Local Business Development (the “**Director**”).
- C. The **Developer** shall designate one or more representatives (the “**Representatives**”) who shall be duly authorized to negotiate, sign, and implement this MOU, and the **Developer** shall provide the name(s) of the Representatives to DSLBD promptly upon their selection together with reasonably satisfactory evidence of their authority to act as Representatives. The Representatives shall meet with DSLBD officials to explore and develop ways for achieving the 35% Goal.
- D. The **Developer** agrees to make a continuing bona fide effort to utilize LSDBEs for certain goods and services as may be required by the **Developer** to conduct its daily operations during the Project, and understands that such efforts will accrue toward the 35% Goal.
- E. Not later than 60 days following the filing of application for a building permit pursuant to the approved PUD, the Developer agrees to submit a local business plan, in the form of **Attachment A** to DSLBD for approval, which plan shall be incorporated in and made a part of this MOU.
- F. Not later than 45 days after the local business plan has been approved by DSLBD, the **Developer** will submit to DSLBD a more extensive plan listing all of the projected procurement items, quantities and estimated costs, bid opening and closing dates, and start-up and completion dates. This plan should indicate whether any items will be bid without restriction in the open market, or limited to LSDBEs certified by the Local Business Opportunity Commission.
- G. The parties hereto understand and agree that the means of achieving the 35% Goal may vary according to the types of goods and services contracted for and the current availability of Certified LSDBEs. However, the **Developer** agrees to make a bona fide effort to achieve, at minimum, the 35% Goal.
- H. The **Developer** further agrees to submit quarterly LSDBE contracting and subcontracting reports, in the form of **Attachment B**, to DSLBD no later than fifteen (15) days after the end of each calendar quarter; the quarterly report periods shall begin on **January 1, April 1, July 1, and October 1**. These reports should include detailed documentation of outreach efforts to LSDBEs in order for DSLBD to determine whether the Owners have made bona fide efforts.

- I. The Representatives of **Developer** shall meet quarterly with DSLBD staff on a mutually agreeable schedule to discuss LSDBE participation during the construction phase(s) of the Project.
- J. The **Developer** further agrees to include in the terms of its contractual agreements with the general/prime contractor(s) and/or construction manager (any such general contractor or construction manager, the (“**General Contractor**”), language that requires the General Contractor to make a bona fide effort to achieve the 35% Goal in (1) in its own contracting with respect to the Project, and (2) engaging subcontractors to perform work on the Project, and the General Contractor will require that the any of its contractors include in all lower-tier contracts a provision requiring such lower-tier subcontractors make bona fide efforts to achieve the 35% Goal.

The **Developer** shall take responsibility for training the General Contractor and any subcontractors to ensure that they understand the economic development commitments made by the **Developer** to certified Local, Small and Disadvantaged Business Enterprises.

The **Developer** shall employ and maintain an aggressive contract tracking and monitoring program, along with a prescribed and detailed means of dealing with inconsistent, incorrect and/or tardy reports. To the extent that the **Developer** experience or discover non-compliance with this MOU, the **Developer** may request additional retainage be withheld from non-complying subcontractors (including the General Contractor) until complete and correct documentation reflecting bona fide efforts to achieve the 35% Goal is submitted. Contractors shall be advised that any and all non-compliance with this MOU may negatively impact all future opportunities with the **Developer** or the General Contractor, as applicable.

- K. The **Developer** will publish, at a reasonable time period prior to any bid opening henceforth, a public notice in a newspaper of general circulation in the District of Columbia and in one or more other newspapers serving the District of Columbia local business community, to inform the business community as a whole of the overall project including a general description of projected phases of the development and anticipated time tables.
- L. For purposes of this MOU agreement, the term “bona fide effort” shall mean good faith efforts designed to meet all applicable requirements with consideration for the particular facts and circumstances of any given situation. Furthermore, “bona fide efforts” shall include, among other things, the following actions, together with a commitment from the **Developer** that it shall enforce the same:
 1. The General Contractor subject to this MOU will publish a public notice in a newspaper of general circulation in the District of Columbia, and in other newspapers serving the District of Columbia local business community, designed to inform the business community as a whole of specific contracting and subcontracting procurement opportunities.

2. The General Contractor subject to this MOU will publish public notices in a newspaper of general circulation in the District of Columbia and in one or more other newspapers serving the District of Columbia local business community, soliciting bids for products or services being sought, and will allow a reasonable time for all bidders to respond to the invitation for bid.
 3. The General Contractor subject to this MOU will contact DSLDB to obtain a current listing of all LSDBEs qualified to bid on procurements as they arise.
 4. The General Contractor subject to this MOU will negotiate with each bidder pre-qualified by the **Developer** and the General Contractor, including LSDBEs, to obtain such bidder's best and final price as understood in the marketplace.
 5. The General Contractor will not require that LSDBEs provide bonding on contracts with a dollar value less than \$100,000, provided that in lieu of bonding the General Contractor may accept a job specific certificate of insurance.
 6. The General Contractor will design and include in all contracts and subcontracts a process for dispute settlement. This process shall incorporate an opportunity for the presentation of documentation involving the work performed and invoices regarding requests for payments. Included in such contracts shall be a provision for selecting a mutually agreed upon mediator or provisions for arbitration in accordance with the rules of the **American Arbitration Association**.
 7. The General Contractor and subcontractors shall strictly adhere to their contractual obligations to pay all subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the General Contractor, the General Contractor is to immediately notify any affected subcontractor as to the date on which payment can be expected.
 8. The General Contractor commits to pay all subcontractors, including LSDBEs, in accordance with the terms of the relevant subcontract, within thirty - (30) days following the General Contractor's receipt of a payment, which includes funds for such subcontractors, from the **Developer**. The **Developer** agrees to require the General Contractor to establish a procedure for giving notice to the subcontractors of the Developer's payment to the General Contractor.
- M. In order to encourage the **Developer** to develop creative, cost competitive ways in which to meet its 35% Goal, DSLBD will give credit for new opportunities created by the **Developer** in areas not traditionally made available to LSDBEs and expansion of opportunities in existing areas.
- N. If at the end of the first calendar quarter following the issuance of a building Permit, the **Developer** is unable to comply with the LSDBE utilization plan for the Project as presented by the **Developer**, the Representatives of the **Developer** and the Director of DSLBD shall meet and discuss the possibilities for adjusting goals and strategies to extend the time of performance based on facts and circumstances.

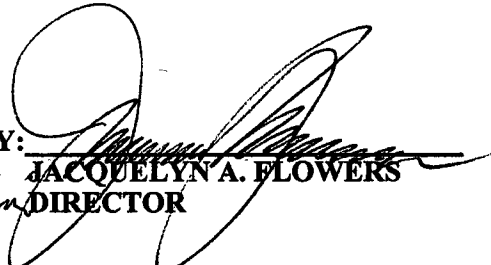
This Memorandum of Understanding shall be construed in accordance with the laws of the District of Columbia.

DATE THIS 18th DAY OF January, 2006

**DEPARTMENT OF SMALL AND LOCAL
BUSINESS DEVELOPMENT**

K STREET DEVELOPERS, LLC
-a District of Columbia Limited Liability
Company

By: K Street Manager, Inc
By: Ronald J. Cohen, President

BY: 
JACQUELYN A. FLOWERS
DIRECTOR

By: 
RONALD J. COHEN, PRESIDENT
K STREETMANAGER, INC.

Contact Information:

Department of Small and Local Business Development
441 4TH Street, N.W., Suite 750N
Washington, DC 20001
Attn: Contract and Compliance Division
Ph. 202-727-3900
Fax: 202-724-3786

Office of Zoning
441 4th Street, N.W., Suite 210
NW, Washington, DC 20001
Attn: Compliance Division
Ph.: (202) 727-56311
Fax: (202) 727-6072

ATTACHMENT 2.

**PLANNED UNIT DEVELOPMENT AND
AFFORDABLE HOUSING COVENANT**

THIS COVENANT, made as of this ____ day of ____ 2006, by and between K Street Developers, LLC, a District of Columbia limited liability company, successor in interest to 200 K Street LP; Casco, Incorporated, a Maryland corporation.; Three Cee Investors, LLC, a Maryland limited liability company; and Union North Corporation, a District of Columbia corporation, (hereinafter referenced collectively as the "Developer") and the DISTRICT OF COLUMBIA, a municipal corporation (the "District").

W I T N E S S E T H:

WHEREAS, the Developer is the owner of Lots 32-43, 64-65, 2-4, 27-29, 44-46, and 57-59 in Square 749, which in whole or in part are more fully described as the Consolidated Planned Unit Development in Zoning Commission Case No. 05-36, and in Exhibit A attached hereto and made a part of this Covenant (the "Subject Site"); and

WHEREAS, the Developer intends to develop the Subject Site for use as a Planned Unit Development (the "Project") under Chapter 24 of the Zoning Regulations of the District of Columbia in accordance with Zoning Commission Order No. ____ effective ____, 2006, in Zoning Commission Case No. 05-36;

WHEREAS, the Developer has agreed to set aside a portion of the residential units in the Project as affordable units as defined by the District;

WHEREAS, the Zoning Commission of the District of Columbia (the "Zoning Commission") requires the Developer to enter into this Covenant with the District assuring that the Developer (and its respective successors in title) reserve and administer the affordable units

as approved by the Zoning Commission in Order No. _____, and all modifications, alterations or amendments thereto; and

WHEREAS, said Chapter 24 further requires the Developer to enter into this Covenant with the District to assure that the Developer (and its respective successors in title) will develop and use the Project as approved by the Zoning Commission in Order No. _____ and all modifications, alterations or amendments thereto.

NOW, THEREFORE, in consideration of the foregoing recitals, which are a material part hereof, it is agreed among the parties hereto as follows:

1. Approved Plans. The terms and conditions of the Zoning Commission's approval of the Consolidated Planned Unit Development and Amendment to the Zoning Map under Order No. _____ effective _____, 2006, in Zoning Commission Case No. 05-36 as the same may be amended and/or modified from time to time (the "Order"), are incorporated herein by reference and made a part hereof as Exhibit B and shall be considered a part of this Covenant. The Subject Site will be developed and used in accordance with the plans approved by said Order and in accordance with the conditions and restrictions contained in said Order, subject to such changes thereto as the Zoning Commission and/or the Zoning Administrator of the District of Columbia may authorize pursuant to 11 DCMR §§ 2409.6 and 2409.9, respectively. Developer covenants that it will use the Subject Site only in accordance with the terms of the Order, as the same may be further amended and/or modified from time to time by the Zoning Commission, subject to the terms and conditions contained herein and the provisions of Chapter 24 of the Zoning Regulations.

2. **Affordable Housing-Development Standards.** Developer covenants that the Project will contain 233,206 gross square feet devoted to residential use apportioned among 202 residential units, of which 13.8% or 32,182 gross square feet apportioned among 28 units shall be set aside as affordable to households within the targeted income range (hereinafter referred to as “affordable units”). Developer further covenants that:

- a. The mixture of affordable units shall be comparable to the mixture of market-rate unit types, and the proportion of affordable one-bedroom, one-bedroom-plus-den, and two-bedroom units shall be consistent with the proportional mix of market-rate one-bedroom, one-bedroom-plus-den, and two-bedroom units, respectively;
- b. The internal square footage of affordable units shall be comparable to the internal square footage of market-rate units;
- c. The affordable units shall be fairly and equitably distributed vertically and horizontally throughout residential floors one (1) through five (5) of the Project;
- d. In external design and materials, the affordable units shall be indistinguishable from market-rate units; and
- e. Internally, appliances and finishes of affordable units shall be comparable to appliances and finishes of market-rate units but may be of different quality.

3. **Affordable Housing-Household Eligibility Standards.** Developer covenants that the affordable units shall be reserved for purchase by or rental to eligible households. Eligible households are defined as those households which:

- a. Have household income not exceeding 80% of the Area Median Income for the Washington, D.C., Metropolitan Statistical Area and adjusted for family size, as

determined and published annually by the U.S. Department of Housing and Urban Development;

b. Meet other eligibility criteria established by the D.C. Department of Housing and Community Development or any successor entity (referenced hereinafter as “DHCD” to include any successor entity) for participation in the District’s Affordable Housing Program; and

c. Have an income eligibility certification letter issued by DHCD.

4. Affordable Housing-Unit Cost. Developer covenants that the sale price and terms or the rental rate, as applicable, of the affordable units shall be determined by DHCD, in accordance with the regulations and procedures applicable to the District’s Affordable Housing Program, so as to assure that the monthly housing payment of the buyer or renter shall not exceed thirty percent (30%) of the buyer’s or renter’s monthly household income, as defined by DHCD.
5. Affordable Housing-Affordability Period. Developer covenants that the affordable units, if offered for sale, shall be dedicated as affordable units for a period of ten (10) years and, if offered for rent, shall be dedicated as affordable units for a period of twenty (20) years, beginning on the date of the initial sale (“Initial Unit Closing Date”) or rental (“Initial Unit Lease Date”) of each unit. The ten (10)-year and twenty (20)-year periods described above are referenced hereinafter as the “affordability period”.
6. Affordable Housing-Resale Restrictions. Developer covenants that deeds and covenants executed in the sale of affordable units shall include restrictions on resale of the affordable units as follows:

- a. During the ten (10)-year affordability period, the buyer of an affordable unit may sell the unit only to another eligible buyer identified by DHCD through the District's Affordable Housing Program;
- b. The sale price and terms of resale of an affordable unit during the affordability period shall be determined by DHCD in accordance with the regulations and procedures of the District's Affordable Housing Program; and
- c. The resale of an affordable unit during the ten (10)-year affordability period shall create a new ten (10)-year affordability period beginning on the closing date of the resale ("Resale Closing Date").

- 7. Affordable Housing-Application and Enforcement of Covenants. The covenants herein for the provision of affordable housing as required by the Zoning Commission in Order No. _____ shall apply to Developer, its successors, heirs, executors, administrators, assigns, sub-lessees, and any purchaser or nominee at foreclosure, except as may be otherwise provided in the laws and regulations of the District. The District has the right to specifically enforce the affordable housing covenants contained herein.
- 8. Affordable Housing-Expiration of Covenants. The covenants herein for the provision of affordable housing shall terminate, as to each unit, at the end of ten (10) years from the Unit Closing Date or the Resale Closing Date, as applicable, in the case of units offered for sale, or at the end of twenty (20) years from the Initial Lease Date in the case of units offered for rent.
- 9. Additional Time To Construct Consolidated Planned Unit Development. If Developer should fail to file for a building permit and to commence construction of the approved Planned Unit Development within the time specified in the Order, the Zoning

Commission may duly consider an application for an extension of time in accordance with 11 DCMR § 2408.10.

10. **Default.** In the event that Developer fails to file for a building permit and to commence construction of the approved Consolidated Planned Unit Development within the time specified in the Order or within any extension of time granted by the Zoning Commission for good cause shown pursuant to 11 DCMR § 2408.10, the benefits granted by the Order shall terminate pursuant to Section 2400.7 of the Zoning Regulations.
11. **Future Conveyance.** Developer covenants that if any conveyance of all or any part of the Subject Site takes place, such conveyance shall contain a specific covenant binding the grantee, its successors and assigns to develop and use the Subject Site in accordance with the terms and conditions of this Covenant.
12. **Successors and Assigns.** The covenants and restrictions contained herein shall be deemed real covenants running with the land, and shall bind the parties hereto, their successors and assigns, and shall inure to the benefit of the parties hereto, their successors and assigns. Such covenants are not binding upon any party who no longer has a property interest in the Subject Site. The District shall have the right to enforce all covenants, conditions and restrictions contained herein.
13. **Recordation.** Developer shall record this Covenant, as fully executed by the parties hereto, among the Land Records of the District of Columbia, and shall file a certified copy of this Covenant with the Zoning Administrator and the Zoning Commission.
14. **Counterparts.** This Covenant may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

15. Rescission/Alteration of Chapter 24 Covenant. The covenants hereby created may not be modified or extinguished without the prior approval of the Zoning Commission and the written consent of the District. In the event any amendment, modification, rescission or alteration of the Order is adopted or authorized by the Zoning Commission, or in the event of a lapse of said Order by its terms, the District shall, upon the request of Developer, execute an instrument, in recordable form, evidencing such action or lapse, which instrument shall amend, modify, rescind, nullify or alter this Covenant, as the case may be.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, K STREET DEVELOPERS LLC, CASCO INC., THREE CEE INVESTORS, AND UNION NORTH CORPORATION, all District of Columbia corporations, have, as of the day and year first above written, caused this Covenant to be signed by K Street Manager, Inc., Ronald J. Cohen, President, and do hereby appoint the said Ronald J. Cohen to be their attorney-in-fact, for them and in their name to acknowledge and deliver this Covenant according to law.

K STREET DEVELOPERS LLC,
a District of Columbia limited liability company

CASCO, INCORPORATED,
a Maryland corporation

THREE CEE INVESTORS LLC,
a Maryland limited liability company

UNION NORTH CORPORATION,
a District of Columbia corporation

By: K Street Manager, Inc.
By: Ronald J. Cohen, President

Signed: _____
RONALD J. COHEN, PRESIDENT
K STREET MANAGER, INC.

_____, ss:

I, _____, a Notary Public in and for _____, do hereby certify that _____, _____ of K Street LP, a District of Columbia limited partnership, party to the foregoing Covenant bearing date as of the ____ day of _____ 2006, the said _____ being named as attorney-in-fact for said limited partnership in the foregoing and annexed Covenant, personally appeared before me and, being

personally well known to me as such attorney-in-fact, acknowledged said Covenant to be the act and deed of said limited partnership and that he delivered the same as such.

GIVEN under my hand and seal this ____ day of _____2006.

Notary Public

My Commission expires: _____

[ADDITIONAL SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Mayor of the DISTRICT OF COLUMBIA, having first considered and approved the foregoing Covenant, has directed the execution thereof in the name of said DISTRICT OF COLUMBIA, by the Secretary, D.C., who has hereunto set her hand and affixed the seal of the District of Columbia hereto under authority of the Act of Congress entitled "An Act to Relieve the Commissioners of the District of Columbia of Certain Ministerial Duties," approved February 11, 1932.

WITNESS:

DISTRICT OF COLUMBIA
a Municipal Corporation

By: _____
Secretary, D.C.

(Corporate Seal)

DISTRICT OF COLUMBIA, ss:

I, _____, a Notary Public in and for the District of Columbia, do hereby certify that _____, who is personally well known to me as the person named as Secretary of the DISTRICT OF COLUMBIA in the foregoing Covenant bearing date of the ____ day of _____, 2006, and hereunto annexed, personally appeared before me in said District and, as Secretary of the DISTRICT OF COLUMBIA aforesaid, and by virtue of the authority in her vested, acknowledged the same to be the act and deed of the Mayor of the DISTRICT OF COLUMBIA.

GIVEN under my hand and seal this ____ day of _____ 2006.

Notary Public, D.C.

My commission expires: _____

APPROVED:

**Zoning Division, Department of
Consumer and Regulatory Affairs**

APPROVED AS TO LEGAL SUFFICIENCY:

**Assistant Attorney General
for the District of Columbia**

EXHIBIT A

[NOTE: These property descriptions include the entire PUD site and will be edited prior to recordation to properly identify the Consolidated PUD properties.]

Three Cee Investors, LLC

Lot numbered Forty (40) in Patrick O'Donnoghue's subdivision of Square numbered Seven Hundred Forty-nine (749) as per Plat recorded in Liber C.H.B., at folio 137, in the Office of the Surveyor for the District of Columbia.

AND

Lots numbered Sixty-four (64) and Sixty-five (65) in Square numbered Seven Hundred Forty-nine (749) in the subdivision made by Rose K. Wallerstein and Harry Wallerstein, as per Plat recorded in Liber 122, at folio 135, in the Office of the Surveyor for the District of Columbia.

NOTE: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 820 in Square 749.

K Street Developers, LLC

Lots 2, 3, 4, 5, 6, 7, 8, 18, 23, 24, 25, 26, 34, 42, 57, in Square 749 in a subdivision made by Patrick O'Donnoghue, as per plat recorded in Liber C.H.B. at Folio 137 among the Land Records of the Office of the Surveyor of the District of Columbia.

AND

Lot 63 in Square 749 in a subdivision of combination made by Wilbur F. Nash, as per plat recorded in Liber 107 at Folio 168 among the Land Records of the Office of the Surveyor of the District of Columbia.

AND

Lot 66 in Square 749 in a subdivision made by The Union Group, as per plat recorded in Liber 181 at Folio 31 among the Land Records of the Office of the Surveyor of the District of Columbia.

AND

Lots 52, 53, 54, 55, 56, 58 and 59 in Square 749 in a subdivision made by Patrick O'Donnoghue, as per plat recorded in Liber C.H.B. at Folio 137 among the Land Records of the Office of the Surveyor of the District of Columbia.

Note: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lots 807, 808, 809, 812, 813 and 814 in Square 749.

AND

Lots 27, 28 and 29 in Square 749 in a subdivision made by Patrick O'Donnoghue, as per plat recorded in Liber C.H.B. at Folio 137 among the Land Records of the Office of the Surveyor of the District of Columbia.

Note: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 815 in Square 749.

AND

Lot 15 and part of Lot 16 in Square 749 in a subdivision made by Patrick O'Donnoghue, as per plat recorded in Liber C.H.B. at Folio 137 among the Land Records of the Office of the Surveyor of the District of Columbia. Said part of Lot 16 being described as follows:

BEGINNING for the same in the East line of 2nd Street at the Southwest corner of said Lot 16 and running thence North along the East line of 2nd Street, 2.96 feet, more or less, to the center of a brick partition wall between premises 1017 and 1019 – 2nd Street, N.E.; thence East along the center line of said brick partition wall, 32.60 feet to the East end of said wall; thence North along the East face of said wall and a northerly prolongation thereof, .68 feet, more or less, to the South face of a one-story frame addition on the rear of premises 1019 2nd Street, N.E.; thence East along the south face of said one-story frame addition, 40.65 feet; thence South, 3.75 feet, more or less, to the South line of said Lot 16; thence West along the South line of said Lot 16, 73.25 feet to the point of beginning.

Note: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 818 in Square 749.

AND

Lot 17 part of Lot numbered 16 in Square 749 in a subdivision made by Patrick O'Donnoghue, as per plat recorded in Liber C.H.B. at Folio 137 among the Land Records of the Office of the Surveyor of the District of Columbia. The said part of Lot 16 being described as follows:

BEGINNING for the same at the Northwest corner of said Lot 16 and running thence South along the West line of said lot to a point 2.96 feet, more or less, North of the South

line of said lot, said point being the center of a brick partition wall between premises 1017 and 1019 – 2nd Street, N.W.; thence East along the center line of said brick partition wall, 32.60 feet to the East end of said wall; thence North along the East face of said wall and a northerly prolongation thereof, 0.68 feet, more or less, to the South face of the one-story frame addition on the rear of premises 1019 – 2nd Street, N.E.; thence East along the South face of said one-story frame addition, 40.65 feet; thence South 3.75 feet, more or less, to the South line of said lot; thence East along said South line to the Southeast corner of said lot; thence North along the East line of said lot to the Northeast corner thereof; thence West along the North line of said lot to the place of beginning.

Note: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 819 in Square 749.

AND

Lots 44 through 51 inclusive in Square 749 in a subdivision made by Patrick O'Donnoghue, as per plat recorded in Liber C.H.B. at Folio 137 among the Land Records of the Office of the Surveyor of the District of Columbia.

Note: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 822 in Square 749.

Union North Corporation

Lot 35, 39 and 41 in Square 749 in a subdivision made by Patrick O'Donnoghue, as per plat recorded in Liber C.H.K. at Folio 137 among the Land Records of the Office of the Surveyor of the District of Columbia.

CASCO, Inc.

Lot 32, 33, 36, 37 and 38 in Square 749 in a subdivision made by Patrick O'Donnoghue, as per plat recorded in Liber C.H.B. at Folio 137 among the Land Records of the Office of the Surveyor of the District of Columbia.

AND

The South half fronting 18 feet on 3rd Street, N.E. by the full depth thereof of Lot 30 in Square numbered 749 in a subdivision made by Patrick O'Donnoghue, as per plat

recorded in Liber C.H.B. at folio 137 among the Land Records of the Office of the Surveyor for the District of Columbia.

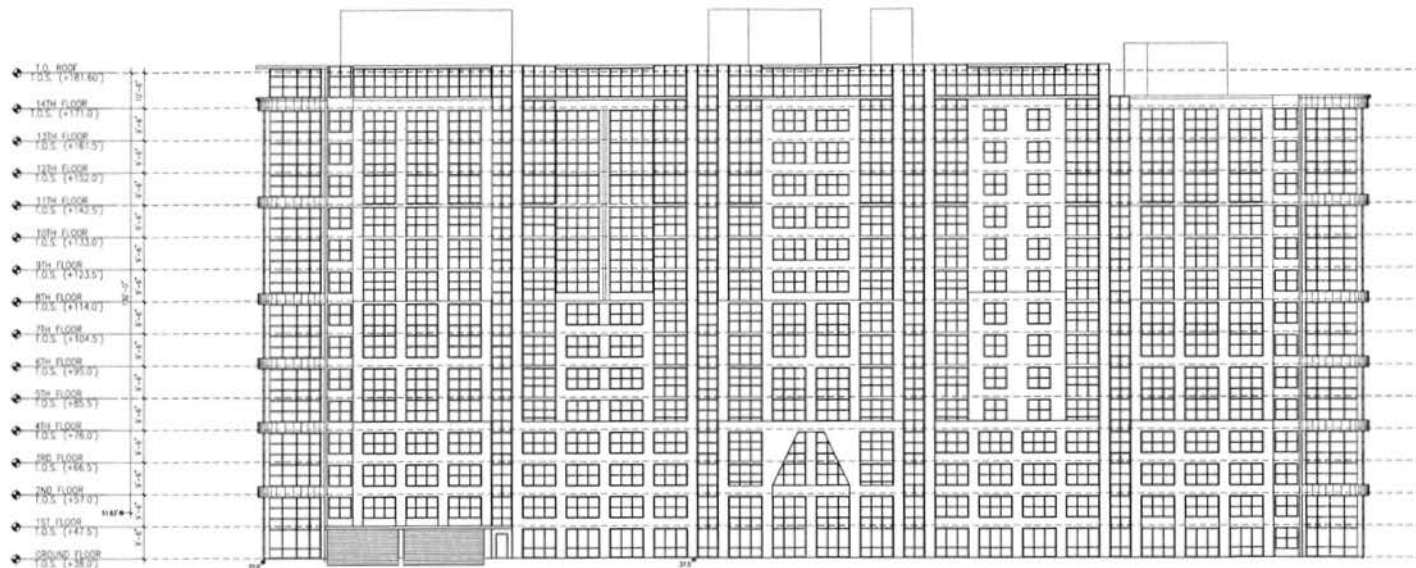
Note: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 805 in Square 749.

AND

The North 18 feet front on Third Street, N.E. by the full depth thereof of Lot 43 in Square 749 in a subdivision made by Patrick O'Donnoghue, as per plat recorded in Liber C.H.B. at folio 137 among the Land Records of the Office of the Surveyor of the District of Columbia.

Note: At the date hereof the above described land is designated on the Records of the Assessor of the District of Columbia for assessment and taxation purposes as Lot 806 in Square 749.

ATTACHMENT 3.



2ND STREET ELEVATION

MICHAEL GRAVES
& ASSOCIATES

341 NATIONAL STREET
FARMINGTON, NJ 08430
T: (908) 824-6400
F: (908) 824-1799

Bowman
CONSULTANTS

Bowman Consulting Group, LLC
2111 Eastman Avenue
Suite 200
Huntsville, Virginia 22094
Phone: (703) 440-7180
Fax: (703) 440-6191
www.bowmanconsulting.com
© Bowman Consulting Group, LLC

ZOM MID-ATLANTIC,
INC.

1130 WILSON BOULEVARD,
SUITE 120
ARLINGTON, VA 22208
T: (703) 475-0270
F: (703) 475-0274

2ND STREET ELEVATION
UNION PLACE

DISTRICT OF COLUMBIA

WASHINGTON

REVISIONS:

SCALE:

PRELIMINARY
01-17-06

DRAWN BY:

CHECKED BY: MC

SCALE: AS SHOWN

DATE: 01-17-06

PROJECT NO:

20508

DRAWING NO:

A2.10

MICHAEL GRAVES
& ASSOCIATES
341 NASSAU STREET
PRINCETON, NJ 08540
T: (609) 524-6400
F: (609) 524-1700

Bowman
CONSULTING
Bowman Consulting Group, LLC
2111 Chestnut Avenue
Suite 202
Baltimore, Maryland 21201
Phone: (708) 548-5100
Fax: (708) 460-5101
www.bowmanconsulting.com
© 2006 Bowman Consulting Group, LLC

ZOM MID-ATLANTIC,
INC.
1330 WILSON BOULEVARD,
SUITE 100
ARLINGTON, VA 22208
T: (703) 874-0500
F: (703) 875-0574

"K" STREET ELEVATION
UNION PLACE
WASHINGTON
DISTRICT OF COLUMBIA

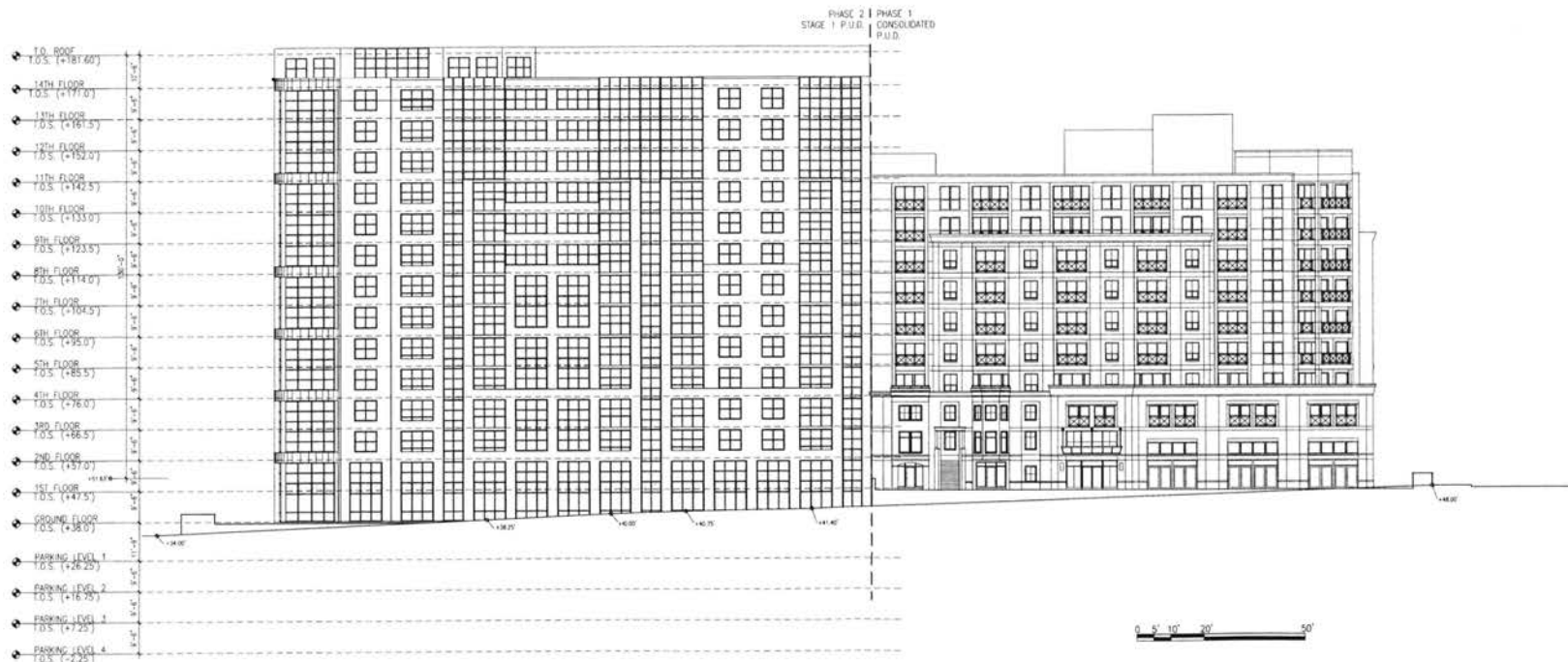
REVISIONS:

SEAL:

PRELIMINARY
01-17-06

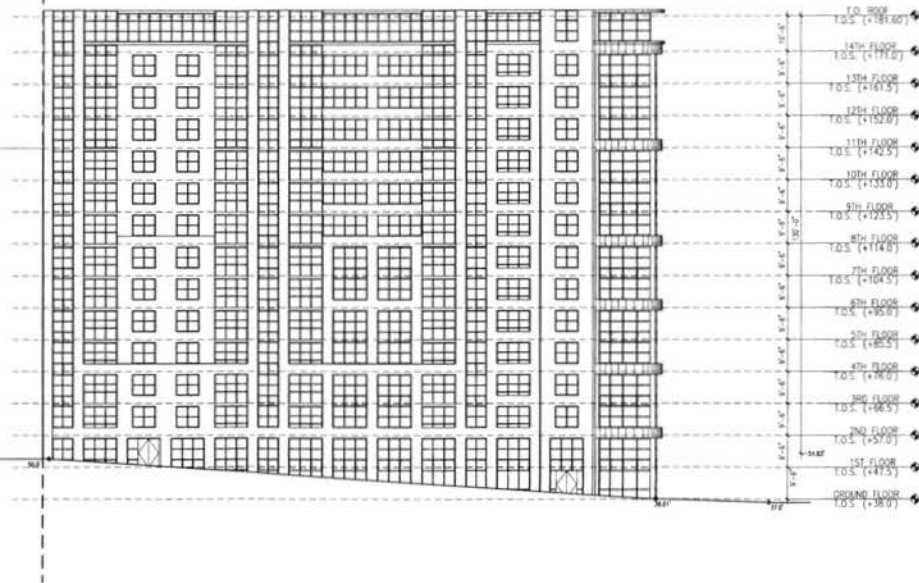
DRAWN BY: +
CHECKED BY: MC
SCALE: AS SHOWN
DATE: 01-17-06
PROJECT NO: 20638
DRAWING NO:

A2.11



"K" STREET ELEVATION

PHASE 1/PHASE 2
CONSOLIDATED STAGE 1 P.U.D.
P.U.D.



"L" STREET ELEVATION

MICHAEL GRAVES
& ASSOCIATES
341 MARSHAL STREET
ALEXANDRIA, VA 22304
T: (703) 524-6400
F: (703) 524-1795

Bowman
CONSULTANTS

Bowman Consulting Group, LLC
1111 Eastman Avenue
Suite 300
Falls Church, Virginia 22044
Phone: (703) 546-7100
Fax: (703) 546-7175
www.bowmanconsulting.com
© Bowman Consulting Group, LLC

ZOM MID-ATLANTIC,
INC.

1330 WILSON BOULEVARD, SUITE 130
ARLINGTON, VA 22209
T: (703) 475-0070
F: (703) 475-0074

"L" STREET ELEVATION
UNION PLACE
DISTRICT OF COLUMBIA
WASHINGTON

REVISIONS:

SCALE:

PRELIMINARY
01-17-06

DRAWN BY:

CHECKED BY:

MC

SCALE:

AS SHOWN

DATE:

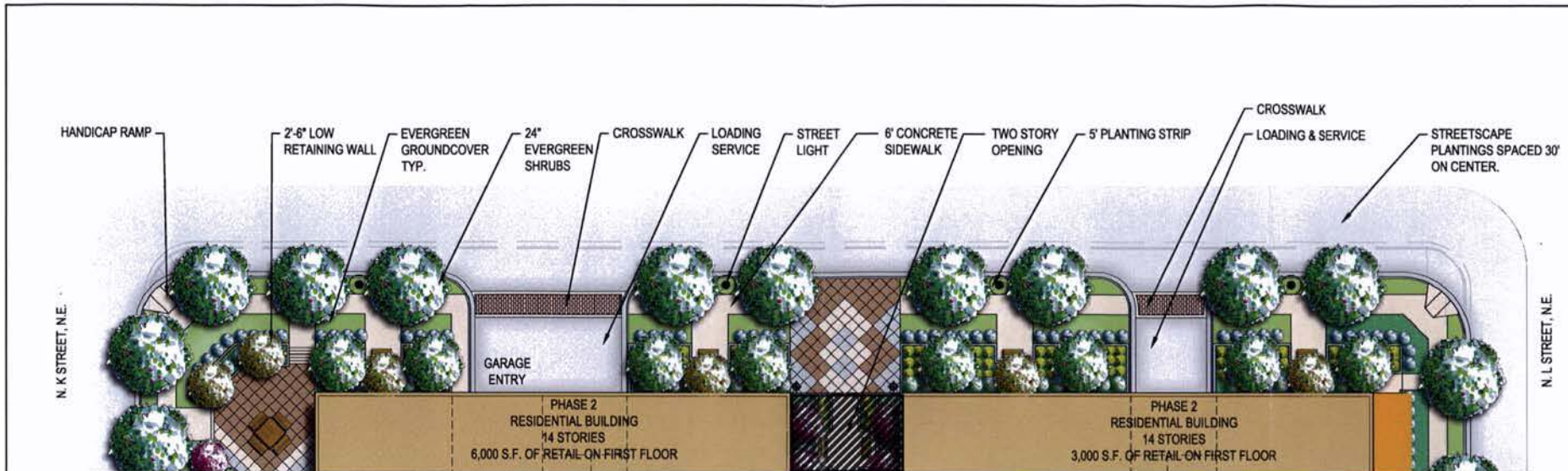
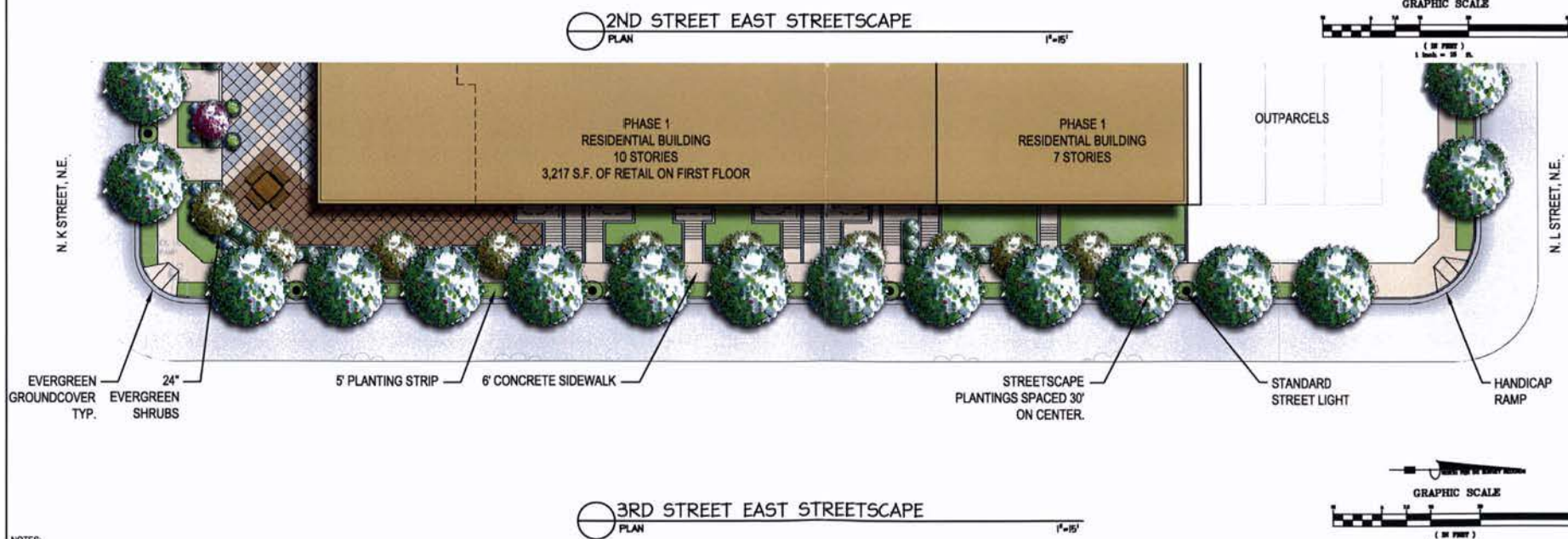
01-17-06

PROJECT NO:

20538

DRAWING NO:

A2.12



- NOTES:
1. HARDSCAPE AND LANDSCAPE PLANS ARE SCHEMATIC AND ARE NOT FOR CONSTRUCTION.
 2. ALL HARDSCAPE AND LANDSCAPE DETAILING IS SUBJECT TO CHANGE BY THE OWNER, DURING FINAL ENGINEERING DESIGN AND DURING THE PHASE 2-STAGE 2 PUD SUBMISSION.

ATTACHMENT 4.

The Mayhood Company

January 19, 2006

Ronald J. Cohen
Cohen Companies
2701 Tower Oaks Boulevard
Suite 200
Rockville, MD 20852

**Re: 200 K--Phase I
Union Place**

Dear Mr. Cohen:

After carefully reviewing your plans for Phase I of the above-captioned project and based upon your instructions to equitably locate the affordable housing units throughout the first five stories of the project, we feel the enclosed plan gives equal recognition to unit types, location and positioning of the affordable housing units in comparison to the market-driven units.

Our company has studied other similar projects in the District of Columbia. Based upon our experience, we feel that this is a fair location and allocation of unit types as set forth in the plan that we have submitted to you.

Sincerely,



Ann Scully
Executive Vice President

The Mayhood Company
1420 Beverly Road, Suit 200
McLean, Va 22101
(703) 448-0400



ATTACHMENT 5.

TABLE OF UNION PLACE PHASE 1 AFFORDABLE UNITS
Placement, Size, & Type in relation to Market-Rate Units

[nsf = net square feet]

FLOOR 1					
Affordable			Market-Rate		
Floor 1-Type	Size	Placement	Floor 1-Type	Size	Placement
1 BR	635 nsf	K St side w/ K St frontage	1 BR	557 nsf	K St side w/ Plaza frontage
	575 nsf	3 rd St side w/ street frontage		618 nsf	3 rd St side w/ Plaza frontage
	575 nsf	3 rd St side w/ street frontage			
1 BR + den	888 nsf	3 rd St side w/ street frontage	1 BR + den	906 nsf	3 rd St side w/ street frontage
	906 nsf	3 rd St side w/ street frontage		888 nsf	3 rd St side w/ street frontage
	795 nsf	3 rd St side w/ Plaza frontage			
2 BR	1042 nsf	3 rd St side w/ Plaza frontage	2 BR	1405 nsf	K St side w/ street frontage
				1258 nsf	K St side w/ Plaza frontage
				1160 nsf	3 rd St side w/ Plaza frontage
				1203 nsf	3 rd St side w/ Plaza frontage

FLOOR 2					
Affordable			Market-Rate		
Floor 2-Type	Size	Placement	Floor 2-Type	Size	Placement
1 BR	904 nsf	K St side w/ K St frontage	1 BR-None		
	658 nsf	K St side w/ Plaza frontage			
1 BR + den	1105 nsf	3 rd St side w/ street frontage	1 BR + den	1204 nsf	K St side w/ K St frontage
	928 nsf	3 rd St side w/ Plaza frontage		1057 nsf	K St side w/ Plaza frontage
				1066 nsf	K St side w/ Plaza frontage
				1010 nsf	3 rd St side w/ street frontage
				1010 nsf	3 rd St side w/ street frontage
				1105 nsf	3 rd St side w/ Plaza frontage
				954 nsf	3 rd St side w/ street frontage
2 BR	1373 nsf	3 rd St side w/ street frontage	2 BR	1094 nsf	3 rd St side w/ Plaza frontage
	1373 nsf	3 rd St side w/ Plaza frontage		1367 nsf	3 rd St side w/ street frontage
				1362 nsf	3 rd St side w/ Plaza frontage

FLOOR 3					
Affordable			Market-Rate		
Floor 3-Type	Size	Placement	Floor 3-Type	Size	Placement
1 BR	562 nsf	K St side w/ Plaza frontage	1 BR	621 nsf	K St side w/ K St frontage
	559 nsf	3 rd St side w/ Plaza frontage		495 nsf	3 rd St side w/ Plaza frontage
	513 nsf	3 rd St side w/ street frontage		598 nsf	3 rd St side w/ street frontage
				568 nsf	3 rd St side w/ Plaza frontage
				547 nsf	3 rd St side w/ street frontage
				533 nsf	3 rd St side w/ street frontage
				557 nsf	3 rd St side w/ Plaza frontage
				637 nsf	3 rd St side w/ Plaza frontage
1 BR + den	885 nsf	K St side w/ K St frontage	1 BR + den	855 nsf	K St side w/ street frontage
	869 nsf	3 rd St side w/ street frontage		909 nsf	K St side w/ street frontage
				884 nsf	K St side w/ Plaza frontage
				976 nsf	3 rd St side w/ Plaza frontage
				850 nsf	3 rd St side w/ street frontage
				859 nsf	3 rd St side w/ Plaza frontage

				844 nsf	3 rd St side w/ street frontage
2 BR	1193 nsf	3 rd St side w/ street frontage	2 BR	1339 nsf	K St side w/ Plaza frontage
	1178 nsf	3 rd St side w/ street frontage		1372 nsf	K St side w/ street frontage
				1370 nsf	Corner of 3 rd & K w/ street frontage
				1141 nsf	3 rd St side w/ Plaza frontage
FLOOR 4					
Affordable			Market-Rate		
Floor 4-Type	Size	Placement	Floor 4-Type	Size	Placement
1 BR	503 nsf	3 rd St side w/ street frontage	1 BR	656 nsf	K St side w/ street frontage
				585 nsf	K St side w/ Plaza frontage
				533 nsf	3 rd St side w/ Plaza frontage
				519 nsf	3 rd St side w/ Plaza frontage
				590 nsf	3 rd St side w/ street frontage
				511 nsf	3 rd St side w/ Plaza frontage
				498 nsf	3 rd St side w/ street frontage
				527 nsf	3 rd St side w/ street frontage

				500 nsf	3 rd St side w/ street frontage
1 BR + den	920 nsf	3 rd St side w/ street frontage	1 BR + den	1048 nsf	K St side w/ street frontage
	911 nsf	3 rd St side w/ Plaza frontage		895 nsf	K St side w/ Plaza frontage
				869 nsf	3 rd St side w/ Plaza frontage
				873 nsf	L St side w/ Plaza frontage
2 BR	1106 nsf	3 rd St side w/ street frontage	2 BR	1206 nsf	K St side w/ street frontage
				1184 nsf	K St side w/ Plaza frontage
				1144 nsf	K St side w/ street frontage
				1155 nsf	Corner of 3 rd & K w/ street frontage
				1083 nsf	3 rd St side w/ street frontage
				1124 nsf	3 rd St side w/ Plaza frontage
				1111 nsf	3 rd St side w/ street frontage

FLOOR 5					
Affordable			Market-Rate		
Floor 5-Type	Size	Placement	Floor 5-Type	Size	Placement
1 BR	503 nsf	3 rd St side w/ street frontage	1 BR	656 nsf	K St side w/ street frontage
				585 nsf	K St side w/ Plaza frontage
				566 nsf	3 rd St side w/ street frontage
				533 nsf	3 rd St side w/ Plaza frontage
				519 nsf	3 rd St side w/ Plaza frontage
				511 nsf	3 rd St side w/ Plaza frontage
				498 nsf	3 rd St side w/ street frontage
				527 nsf	3 rd St side w/ street frontage
1 BR + den	942 nsf	3 rd St side w/ street frontage	1 BR + den	895 nsf	K St side w/ Plaza frontage
	1048 nsf	K St side w/ street frontage		869 nsf	3 rd St side w/ Plaza frontage
				911 nsf	3 rd St side w/ Plaza frontage
				873 nsf	3 rd St side w/ Plaza frontage
2 BR	1083 nsf	3 rd St side w/ street frontage	2 BR	1206 nsf	K St side w/ street frontage

				1184 nsf	K St side w/ Plaza frontage
				1144 nsf	K St side w/ street frontage
				1155 nsf	Corner of 3 rd & K w/ street frontage
				1124 nsf	3 rd St side w/ Plaza frontage
				1111 nsf	3 rd St side w/ street frontage
				1106 nsf	3 rd St side w/ street frontage

ATTACHMENT 6.



1 FIRST FLOOR
 SCALE: 3/8" = 1'-0"



3RD STREET, N.E.

G.T.H.
 1721 OLD GEORGETOWN ROAD
 SUITE 205
 BETHESDA, MD 20814
 (301) 223-2000
 (301) 223-2001 FAX

Bowman
 Bowman Consulting Group, LLC
 1711 Eisenhower Avenue
 Suite 202
 Rockville, Maryland 20851
 Phone: (301) 548-0100
 Fax: (301) 548-0101
 www.bowmanconsulting.com
 © Bowman Consulting Group, LLC

manatt
 manatt | pratt | phillips

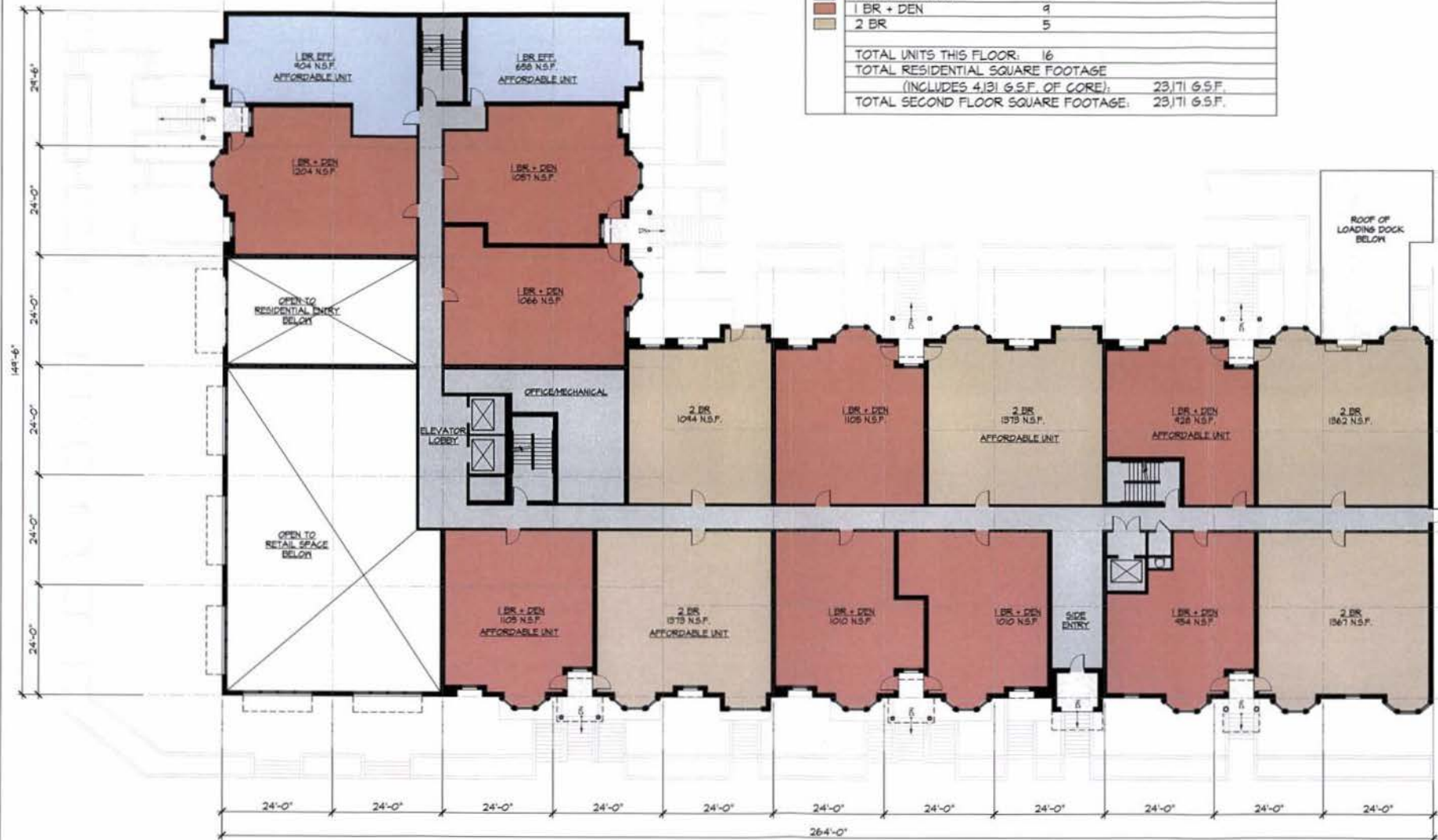
COHEN
 COMPANIES

UNION PLACE

REVISIONS:
 08-13-05
 09-29-05
 ANG 12-1-05
 12-12-05
 1-3-06

DRAWN BY: JAA
 CHECKED BY: CEH, R.J.G.
 SCALE: AS NOTED
 DATE: 1-17-06
 PROJECT NO: 03.0315
 DRAWING NO:

A1.01



2 SECOND FLOOR
SCALE: 3/8" = 1'-0"



3RD STREET, N.E.

SECOND FLOOR DATA

UNIT TYPES # OF UNITS

1 BR EFFICIENCY 2

1 BR + DEN 9

2 BR 5

TOTAL UNITS THIS FLOOR: 16

TOTAL RESIDENTIAL SQUARE FOOTAGE

(INCLUDES 4,311 G.S.F. OF CORE): 23,171 G.S.F.

TOTAL SECOND FLOOR SQUARE FOOTAGE: 23,171 G.S.F.

G.T.M.
7728 OLD GEORGETOWN ROAD
SUITE 700
BETHESDA, MD 20814
(301)333-3880
(301)333-3881 FAX

Bowman
CONSULTANTS

Bowman Consulting Group, LLC
2115 Eastview Avenue
Suite 100
Baltimore, Maryland 21214
Phone: (703) 588-2100
Fax: (703) 588-1781
www.bowmanconsulting.com
© Bowman Consulting, Inc.

manatt
manatt | phillips | philips

COHEN
COMPANIES

UNION PLACE

REVISIONS:
04-13-05
04-24-05
ANG 12-1-05
12-12-05
1-3-06

SEAL

DRAWN BY: JAA
CHECKED BY: CEH, RJC
SCALE: AS NOTED
DATE: 1-17-06
PROJECT NO: 03.0315
DRAWING NO:

A1.02

K STREET, N.E.



3RD STREET, N.E.

③ THIRD FLOOR
SCALE 3/8" = 1'-0"



THIRD FLOOR DATA

UNIT TYPES

OF UNITS

1 BR EFFICIENCY	11
1 BR + DEN	9
2 BR	6

TOTAL UNITS THIS FLOOR: 26

TOTAL RESIDENTIAL SQUARE FOOTAGE

(INCLUDES 3,463 G.S.F. OF CORE) 27386 G.S.F.

TOTAL THIRD FLOOR SQUARE FOOTAGE: 27386 G.S.F.

GTM

GTM
775 OLD GEORGETOWN ROAD
SUITE 700
BETHESDA, MD 20814
(410)333-2000
(410)333-2001 FAX

Bowman

Bowman Consulting Group, LLC
1111 Eastwood Avenue
Suite 202
Alexandria, Virginia 22304

Phone: (703) 546-2188
Fax: (703) 546-2181

www.bowmanconsulting.com
© Bowman Consulting Group, LLC

manatt

manatt | philips | phillips

COHEN
COMPANIES

UNION PLACE

REVISIONS:

04-13-05
04-24-05
ANC 12-7-05
12-12-05
1-3-06

SEAL:

DRAWN BY: JAA

CHECKED BY: CEH, RJC

SCALE: AS NOTED

DATE: 1-17-06

PROJECT NO: 03.0315

DRAWING NO:

A1.03

K STREET, N.E.



3RD STREET, N.E.

4 FOURTH FLOOR
SCALE: 3/8" = 1'-0"



FOURTH FLOOR DATA

UNIT TYPES # OF UNITS

1 BR EFFICIENCY	10
1 BR + DEN	6
2 BR	8

TOTAL UNITS THIS FLOOR: 24

TOTAL RESIDENTIAL SQUARE FOOTAGE

(INCLUDES 3,380 G.S.F. OF CORE) 25,212 G.S.F.

TOTAL FOURTH FLOOR SQUARE FOOTAGE: 25,212 G.S.F.

G.T.M.

7775 OLD GEORGETOWN ROAD
SUITE 200
BETHESDA, MD 20814
(301)333-2000
(301)333-2001 FAX

Bowman

Bowman Consulting Group, LLC
2121 Eastwood Avenue
Suite 202
Alexandria, Virginia 22304

Phone: (703) 445-2100

Fax: (703) 445-5701

www.bowmanconsulting.com

© Bowman Consulting Group, LLC

manatt
manatt | phillips | phillips

COHEN
COMPANIES

UNION PLACE

REVISIONS:

04-13-05

04-24-05

ANG 12-1-05

12-12-05

1-3-06

SEAL:

DRAWN BY: JAA

CHECKED BY: GEH, RJC

SCALE: AS NOTED

DATE: 1-17-06

PROJECT NO: 03.0315

DRAWING NO:

A1.04

K STREET, N.E.



3RD STREET, N.E.

5 FIFTH FLOOR
SCALE: 3/8" = 1'-0"

0' 5' 10'

FIFTH FLOOR DATA

UNIT TYPES # OF UNITS

1 BR EFFICIENCY	10
1 BR + DEN	6
2 BR	8

TOTAL UNITS THIS FLOOR: 24
 TOTAL RESIDENTIAL SQUARE FOOTAGE
 (INCLUDES 3380 G.S.F. OF CORE): 25212 G.S.F.
 TOTAL FIFTH FLOOR SQUARE FOOTAGE: 25212 G.S.F.

GTM

GTM

7735 OLD GEORGETOWN ROAD
 SUITE 200
 BETHESDA, MD 20814
 (202) 333-2000
 (202) 333-2000 FAX

Bowman

Bowman Consulting Group, LLC
 1715 Connecticut Avenue
 Suite 302
 Alexandria, Virginia 22304

Phone: (703) 548-0708
 Fax: (703) 548-0709

www.bowmanconsulting.com
 © Bowman Consulting Group, LLC

manatt
 manatt | pratt | phillips

COHEN
 COMPANIES

UNION PLACE

REVISIONS:
 04-13-05
 04-29-05
 ANC 12-T-05
 12-12-05
 1-3-06

SEAL

DRAWN BY: JAA
 CHECKED BY: GEH, RJC
 SCALE: AS NOTED
 DATE: 1-17-06
 PROJECT NO: 03.0315
 DRAWING NO:

A1.05