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2009 DEC -4 PM 2:07

December 3, 2009

Chairman Anthony Hood and Members
D.C. Zoning Commission
One Judiciary Square, Suite 210 South
441 4th Street N.W.
Washington, D.C. 20001

RE: Request for Minor Modification of ZC Order No. 05-36, (First Stage & Consolidated PUD & Related Map Amendment-200 K Street N.E.)

Dear Chairman Hood and Members:

I write to request Zoning Commission approval of a minor modification of ZC Order No. 05-36, effective October 13, 2006, ("Order") to permit a minor amendment to the Planned Unit Development and Affordable Housing Covenant ("Covenant") recorded with the D.C. Recorder of Deeds in conjunction with this case. Pursuant to the Zoning Regulations at 11 DCMR, § 3030, we ask that you consider this request as a Consent Calendar matter.

EXECUTIVE SUMMARY

- We propose to amend the Covenant to set the maximum rental rates for each unit type of affordable units to conform to the District's Inclusionary Zoning program, which equates to setting the rental rates at 30% of 80% of Area Median Income ("AMI") 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. In contrast, the Covenant currently sets the rental rates based on 30% of an affordable-unit tenant's actual income.
- We propose to amend the Covenant to allow that affordable-unit tenant not devote more than thirty-eight percent (38%) of the household's income toward housing payments to allow more flexibility in renting those units. This 38% ceiling is the level set by the District's regulations implementing the Inclusionary Zoning Implementation Amendment Act of 2006.
- The Department of Housing and Community Development advised us by letter of October 15, 2009 ("DHCD Letter"), that a Covenant amendment would be necessary "to allow tenants to spend more than 30% of their income on housing". DHCD has no objection to our doing so. Because the Decision section of the Order cites to the original Covenant, a minor

ZONING COMMISSION
District of Columbia

CASE NO.

EXHIBIT NO.

modification of the Order is necessary – simply to change the date and description of the citation to the Covenant.¹

- The purpose of the proposed change is to provide flexibility to enable us to use the project's affordable-housing units to rent to artists whose fluctuating earnings handicap their ability to cap their housing payments at no more than 30% of income. In addition, we propose to allow income averaging over a 2-year period prior to certification by DHCD to account for the fluctuating earnings of artists and other prospective affordable-unit tenants.
- Making "provisions for arts professionals in the District's affordable housing programs" is a stated policy of the Arts and Culture Element of the 2006 Comprehensive Plan.

DISCUSSION

1. Background

ZC Order No. 05-36 granted Consolidated PUD approval for a residential/retail building we named the Loree Grand², located in the block bounded by 2nd, K, 3rd, and L Streets N.E. In accordance with the Order, the Loree Grand's 212 residential units include 30 units³ of varying sizes which are set aside as affordable units for tenants with household incomes of no more than 80% of the AMI. Loree Grand construction is near completion. We anticipate initial occupancy on March 30, 2010.

2. Focusing on Artist Housing in Implementing Our Affordable Housing Commitment

From the outset, we sought to implement our affordable-housing commitment in a manner that contributes effectively to the affordable housing objectives of the Zoning Commission, the District Government generally, and the community where the Loree Grand is located. We looked first to DHCD, designated by the Covenant as the entity authorized to set the affordable-unit rental rates and terms, establish tenant eligibility criteria, and administer other regulatory matters.

To more broadly achieve District and neighborhood objectives, we supplemented DHCD guidance with thorough study of:

- The ***Creative DC Action Agenda***, produced in April 2009 by the DC Office of Planning and the Washington DC Economic Partnership, which emphasizes the need to promote arts uses

¹ Exhibit 1 shows, in redline/strikeout form, the existing text and proposed revisions of the relevant portions of the Covenant and ZC Order No. 05-36. Exhibit 2 is a copy of the Covenant, recorded January 26, 2007, which includes as its Exhibit B, a copy of ZC Order 5-36 in full. Exhibit 3 is a copy of the DHCD Letter.

² The building was named in honor of Loree Murray, who was for many years a heroic leader of the neighborhood where the project is located.

³ ZC Order 05-36 specified 202 units, with 28 set aside as affordable. The numbers were increased to 212 units, with 30 set aside as affordable, in accordance with Paragraph 1(e) of the Decision section of the Order, allowing up to a 5% increase in the total number of units with a commensurate increase in the number of affordable units.

throughout the District as a means to foster growth of this aspect of the local economy. The *Action Agenda* singles out the need for affordable artist housing as a significant challenge.

- The *Arts and Culture Element of the 2006 Comprehensive Plan* which declares “**Policy AC-3.1.1: Affordable Artist Housing** Include provisions for arts professionals in the District’s affordable housing programs.”⁴
- The *Loree Grand Neighborhood*, and the desirable ripple effect of its close proximity to the housing, retail, and arts subdistricts established by the H Street Northeast Neighborhood Commercial Overlay District (Zoning Regulations, 11 DCMR §1320). The H Street area arts revival is dynamic and palpable, evidenced most recently by the success of the Conner Contemporary Gallery and the just-announced January 2010 opening of the Industry Gallery of International Design. Both are located in the 1300 block of Florida Avenue NE, at the Starburst intersection with H Street, a comfortable walking distance (or quick bus ride) from the Loree Grand.

The Loree Grand location makes it the ideal affordable home for artists flocking to the nearby gallery showcase opportunities.

For the reasons set forth above, it is our aim to lease a substantial proportion of the Loree Grand’s 30 affordable units to artists who meet the income eligibility criteria. This approach has been supported by the NoMa Business Improvement District, the DC Zoning Administrator, and DHCD. To that end, we enlisted the assistance of the Cultural Development Corporation (“CuDC”), a DC nonprofit organization (www.culturaldc.org) whose mission and services include creating “affordable live-and/or-work opportunities for DC area artists and their families.”

In addition, we have conferred with the District’s Office of Planning (“OP”) on our above-referenced minor modification request and appreciate OP’s support for increased flexibility in the PUD covenant language so that we can better accommodate the artist and affordable workforce housing community we are trying to attract as residential tenants of the Union Place affordable units. We welcomed and responded to the OP invitation to engage in discussions to resolve our differences over the precise language of the proposed amendments to the Covenant and ZC Order 05-36.

Based on our discussions with OP staff, who also have conferred with DHCD staff, we revised our proposed amendment language to read as follows (shown in redline additions and strike-through deletions of the existing language in the Covenant and Order):

⁴ The *Arts and Culture Element of the 2006 Comprehensive Plan* includes this preface to the Affordable Artist Housing Policy Statement: “**AC-3.1 Housing for the Creative Workforce** According to Census 2000, the District has a higher percentage of artists in its workforce than any other state in the country. Yet the city’s ability to sustain its artists is threatened by a lack of affordable real estate and suitable locations for studios, live-work space, and production facilities. Some artistic enterprises have already left the city for cheaper space in the suburbs. . . . While the District clearly has many groups in dire need of affordable housing, the needs of the arts community should not be forgotten.

In Paragraphs 3 and 4 of the Covenant:

- “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. **Upon initial certification** have household **annual** income not exceeding 80% of the Area Median Income (**AMI**) 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, **including not needing to devote more than thirty-eight percent (38%) of the household's income toward housing payments, as** 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.
 - d. **Upon extension or renewal of a lease, shall be in compliance with: the income levels established in Paragraph 3.a, as averaged over the household's previous two years of income; Paragraph 3.b., other than the limitation on the percentage of income that may be devoted to housing costs; and the certification requirements of Paragraph 3.c.**
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 Inclusionary Zoning** Program. **[D.C. Code § 6-1041.01 (2007)]”**~~—, 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.~~

EXPLANATION AND RATIONALE:

For purposes of illustration, assume \$57,500 per year is 80% of AMI for a single person in a one-bedroom unit. The total allowable housing cost for that unit (i.e. inclusive of rental rate and any utility allowance) would be calculated as follows:

$\$57,500 \times .30/12 = \$1,438.00$ maximum allowable total monthly housing cost for that unit

In other words, the maximum allowable total rental rate for any unit shall be fixed, and determined without regard to the actual income of any household.

In addition, the proposed language above addresses the OP concern that our previously-proposed Covenant amendment (later withdrawn) would permit rental rates to rise above the generally accepted level of affordability for households at 80% of AMI. The proposed language above makes clear, for both DHCD and the Applicant, that the rental rates cannot exceed 30% -- the federally-established housing affordability level -- of an 80% AMI income level.

The proposed minor amendment also achieves the flexibility we need by eliminating the existing Covenant requirement that an affordable unit tenant cannot pay more than 30% of household income for housing costs. Instead, we propose a ceiling of 38% of household income -- identical to the level set in the Inclusionary Zoning regulations -- and we propose to let the household-income ceiling be used *only* in the initial lease process. For lease renewals, it would be largely up to the tenants -- with the agreement of our leasing agent based on business judgment -- to determine what percentage of their income they wish to devote to housing costs. We think this is how it should be, as a matter of household choice and family decision-making.

Overall, we believe the language proposed above accommodates OP concerns, fosters proper and effective implementation by DHCD, assures the fairness and uniform treatment OP seeks in the city's management of affordable-housing commitments in numerous PUD cases, and guarantees Union Place affordable unit rental rates at the generally-accepted level of affordability for households at 80% of AMI. The language accomplishes one of our major goals -- eliminating the percentage-of-household-income ceiling as an on-going restriction that unreasonably hamstringing our ability to attract artists, as well as others in the eligible workforce community, to Union Place and allowing the Developer to better predict revenues associated with affordable housing units for economic feasibility purposes

In the DECISION portion of the Order:

- "13. The covenant required by Condition No. 6 shall be the Draft Covenant provided as Attachment 2 in the *Applicant's Post-Hearing Submissions, January 20, 2006*, revised **only** to provide the correct metes-and-bounds descriptions of the lots and parts of lots contained in the Consolidated PUD **and as revised with the approval of the Commission this date and attached hereto.**"

Consultation With ANC 6C

In developing this proposal and our overall affordable-housing approach, we have consulted with ANC Commissioners Karen Wirt and Anne Phelps, who represent District 6C which includes the Loree Grand. They have indicated that ANC 6C supports this minor amendment request and will submit written support shortly.

Chairman Anthony Hood and Members
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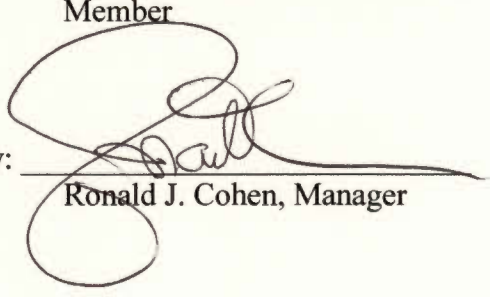
Conclusion

For the reasons set forth above, we request the Commission's Consent-Calendar consideration and approval of the proposed minor modification to the Covenant and Order. Such action would be in accordance with the requirement that relief granted by Consent-Calendar action "shall be consistent with the intent of the Commission in approving its original order. . . and shall not substantially impair the intent, purpose, or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map." (11 DCMR § 3030.13)

Thank you for accepting these comments and considering our request.

Respectfully submitted,

UNION PLACE PHASE I, LLC
a Delaware limited liability company
By: Union North Phase I, LLC
a District of Columbia limited
liability company, its Operating
Member

By: 
Ronald J. Cohen, Manager

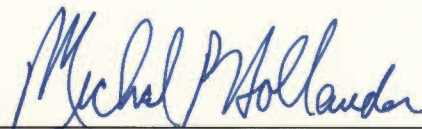
CERTIFICATE OF SERVICE

I hereby certify that a copy of this document and its attachments were served upon the following by E-MAIL TRANSMISSION OR HAND DELIVERY on December 3, 2009 to:

Harriet Tregoning, Director
ATTN: Stephen Cochran
D.C. Office of Planning
Reeves Municipal Center, Fourth Floor
2000 14th Street NW
Washington, D.C. 20009
Stephen.Cochran@dc.gov

Commissioner Karen Wirt, Chairperson
Advisory Neighborhood Commission 6C
234 E Street NE
Washington, D.C. 20002
kwirt@toward.com and kwirt@crs.loc.gov

Commissioner Anne Phelps, ANC 6C04
1150 Fifth Street NE
Washington, DC 20002
anne.phelps@gmail.com



Michael Hollander, General Counsel

EXHIBIT 1.

PROPOSED MINOR MODIFICATION OF ZC ORDER 05-36:

In the DECISION portion of the Order:

- “13. The covenant required by Condition No. 6 shall be the Draft Covenant provided as Attachment 2 in the *Applicant's Post-Hearing Submissions, January 20, 2006*, revised **only** to provide the correct metes-and-bounds descriptions of the lots and parts of lots contained in the Consolidated PUD **and as may be further revised with the approval of the Commission.**”

PROPOSED MINOR MODIFICATION OF THE COVENANT:

- “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. **Upon initial certification** have household **annual** income not exceeding 80% of the Area Median Income (**AMI**) 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, **including not needing to devote more than thirty-eight percent (38%) of the household's income toward housing payments, as** 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.
 - d. Upon extension or renewal of a lease, shall be in compliance with: the income levels established in Paragraph 3.a, as averaged over the household's previous two years of income; Paragraph 3.b., other than the limitation on the percentage of income that may be devoted to housing costs; and the certification requirements of Paragraph 3.c.**
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 Inclusionary Zoning Program. [D.C. Code § 6-1041.01 (2007)]**”~~—, 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.~~



Exhibit 2.

**PLANNED UNIT DEVELOPMENT AND
AFFORDABLE HOUSING COVENANT**

THIS COVENANT, made as of this 26 day of January 2007, 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").

WITNESSETH:

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. 05-36 effective October 13, 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. 05-36, 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. 05-36 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. 05-36 effective October 13, 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. 05-36 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.

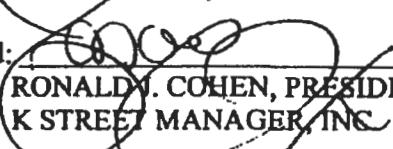
K STREET DEVELOPERS LLC,
a District of Columbia limited liability company

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

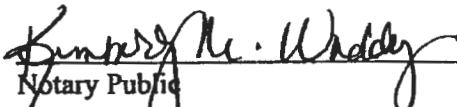
Signed: 
RONALD J. COHEN, PRESIDENT
K STREET MANAGER, INC

_____, ss:

I, KIMBERLY N. NOTOY, a Notary Public in and for PRINCE GEORGE'S COUNTY ^{MD} do hereby certify that RONALD J. COHEN, PRESIDENT of K Street LP, a District of Columbia limited partnership, party to the foregoing Covenant bearing date as of the 18th day of Oct. 2006, the said RONALD J. COHEN 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 18th day of Oct. 2006.


Notary Public
My Commission expires: 10/2/09

[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:

Tabatha Braxton

DISTRICT OF COLUMBIA
a Municipal Corporation

By: Stephanie Salt
Secretary, D.C.

(Corporate Seal)

DISTRICT OF COLUMBIA, ss:

I, Tabatha Braxton a Notary Public in and for the District of Columbia, do hereby certify that Dr. Stephanie Salt 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 26 day of JANUARY, 2007, 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 26 day of JANUARY, 2007.

Tabatha Braxton
Notary Public, D.C.

My commission expires: TABATHA BRAXTON
Notary Public District of Columbia
My Commission Expires April 14, 2007

EXHIBIT A

PROPERTY DESCRIPTION OF THE SUBJECT SITE

Lots numbered 2, 3, 28, 29, 32 through 42, 44 through 46, 57, 58, 59 and parts of Lots 4, 27, 47 and 56 and parts of Public Alleys in Square numbered 749 as per plat recorded in the Office of the Surveyor for the District of Columbia in Subdivision Book CHB at page 137 and Lots 64 and 65 in Square numbered 749 as per plat recorded in the Office of the Surveyor for the District of Columbia in Subdivision Book 122 at page 135; described by metes and bounds as follows:

Beginning at the southeast corner of Lot 65, Square 749, said point being the intersection of northerly line of K Street, N.E., and the westerly line of 3rd Street;

Thence running with said northerly line of K Street, N.E., West 149.50 feet to a point;

Thence running through Lot 4, a 10 foot Public Alley, Lot 47, a 15 foot Public Alley, Lot 56, a 10 foot Public Alley and Lot 27, North 323.83 feet to a point in the southerly line of L Street, N.E.

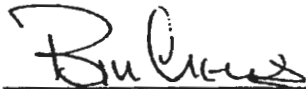
Thence running with said southerly line of L Street, N.E., East 49.50 feet to a point in a 10 foot Public Alley and being the northeast corner of Lot 29;

Thence running with the westerly line of said 10 foot Public Alley, South 55.73 feet to a point;

Thence running the 10 foot Public Alley and with the southerly line of Lot 31, East 100.00 feet to a point in the westerly line of 3rd Street, N.E.;

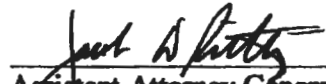
Thence running with said westerly line of 3rd Street, N.E., South 268.10 feet to the point of beginning, containing 42,840 square feet.

APPROVED:

 12.04.06

Zoning Division, Department of
Consumer and Regulatory Affairs

APPROVED FOR LEGAL SUFFICIENCY
ONLY AS TO THE ZONING COMMISSION REQUIREMENT
THAT THE COVENANT MUST BE IDENTICAL TO THE DRAFT COVENANT
PROVIDED AS ATTACHMENT 2 IN THE APPLICANT'S
POST-HEARING SUBMISSIONS, JANUARY 20, 2006:


Assistant Attorney General
for the District of Columbia

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION CORRECTED¹ ORDER NO. 05-36

Z.C. Case No. 05-36

First Stage & Consolidated PUD & Related Map Amendment-200 K Street, N.E.

April 20, 2006

Pursuant to notice, the Zoning Commission for the District of Columbia ("Zoning Commission" or "Commission") held a public hearing on January 5, 2006 to consider applications from 200 K Street, L.P., for (1) consolidated review and approval of a Planned Unit Development; (2) preliminary review of a Planned Unit Development; and (3) and a related map amendment to rezone all of Square 749 except Lots 804, 805, and 31 (the "PUD Site") from C-M-3 and C-2-B to C-3-C. The Commission considered the applications pursuant to Chapters 24 and 30 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the applications with conditions.

FINDINGS OF FACT

The Applications, Parties, and Hearing

1. On November 29, 2005, 200 K Street, L.P. filed applications with the Zoning Commission for preliminary and consolidated approval of a planned unit development ("PUD") and for a PUD related map amendment for property located in the Northeast quadrant of Washington, D.C. and generally bounded by 2nd Street to the west, L Street to the north, K Street to the south, and 3rd Street to the east. The PUD site is comprised all of Square 749 except Lots 804, 805, and 31. 200 K Street, L.P. also requested that the Commission approve a PUD-related map amendment rezoning the entire PUD site from C-M-3 and C-2-B to C-3-C. 200 K Street, L.P. sought consolidated PUD approval for the property shown to the right of the "Phase Line" on the Preliminary Subdivision Plan submitted as Exhibit C to the Application and Pre-Hearing Submission. 200 K Street, L.P. sought preliminary PUD approval for the property shown on the left of the "Phase Line" on the Preliminary Subdivision Plan submitted as Exhibit C to the Application and Pre-Hearing Submission.

¹ This is a corrected version of the Order previously published in the September 15, 2006, edition of the *D.C. Register*. This corrected version includes a discussion of NCPC's comments and corrects the statement of the zoning relief requested.

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2. The Applicant, is a limited partnership organized and in good standing in the District of Columbia. It is one of several real estate investment entities operating under the umbrella of the Cohen Companies, under the control of Ronald J. Cohen. The term "Applicant" is used in this Order to refer to 200 K Street, L.P., to the other Cohen-controlled entities that are the recorded owners of various properties within the PUD Site, and to any successors in interest or title to 200 K Street, L.P. and its related entities. The recorded owners of the properties within the PUD site are K Street Developers LLC, Casco, Inc., Three Cee Investors LLC, and Union North Corporation.
3. These applications are related to an earlier Zoning Commission case. Z.C. Order No. 783, adopted September 11, 1995, approved a Consolidated PUD and PUD related map amendment for the PUD Site. Order No. 783 was subsequently extended by Z.C. Order No. 783-A, adopted April 13, 1998, and Z.C. Order No. 783-B, adopted December 13, 1999. The Applicant applied for a further modification and time extension of Order 783. The application was designated as Zoning Commission Case No. 01-28TE, and was revised by the Applicant's submission dated January 18, 2005. The Zoning Commission convened a hearing on Case No. 01-28TE on November 17, 2005. After reviewing evidence and written submissions from the Applicant and the Office of Planning on the time-extension issue, the Commission voted to deny the time-extension application. Denial of the time extension had the effect of terminating the PUD approved by Z.C. Order 783.
4. After voting to deny the time extension at the November 17, 2005 hearing, the Zoning Commission voted to set down the proposed modified project as a new case. The Commission also agreed to treat the Office of Planning reports submitted March 4, 2005, September 23, 2005, as its report for the new case, and the pre-hearing statements submitted by the Applicant on April 25, 2005 and September 29, 2005 as the pre-hearing statement for the new case. The Commission scheduled the new case for a hearing on December 15, 2005, conditioned upon the Applicant's expedited payment of the filing and hearing fees and filing new application documents.
5. Upon the advice of the Office of the Attorney General, the Commission subsequently rescheduled the hearing on Case No. 05-36 to January 5, 2006, in order to comply with § 492(b)(2), of the Home Rule Act, codified at D.C. Official Code, § 6-641.05(a), which requires a 30-day notice period for Commission hearings on proposed map amendments.
6. Advisory Neighborhood Commission ("ANC") 6C, which represents the area including the PUD Site, adopted a resolution in support of the applications by a vote of 7-1, with one member absent, at a regularly scheduled and publicly-noticed meeting on December 14, 2005. The ANC submitted a copy of the resolution into the record and appeared as a party at the hearing.
7. After proper notice, the Zoning Commission conducted a public hearing on the applications on January 5, 2006. The parties to the case were the Applicant and ANC 6C.

8. At its meeting held February 23, 2006, the Zoning Commission took proposed action by a vote of 4-0-1 to approve, with conditions, the applications and plans that were submitted into the record.
9. The Zoning Commission took final action to approve the PUD and related map amendment on April 20, 2006.

The PUD Site and Surrounding Area

10. The 2.3-acre PUD Site (101,082 sf) consists of all of Square 749 except Lots 804, 805, and 31 ("the outparcels"), in the Northeast quadrant of the District of Columbia, bounded by L Street on the north, 3rd Street on the east, K Street on the south, and 2nd Street on the west. The outparcels are located in the northeast corner of Square 749, at 3rd and L Streets, N.E. The neighborhood is known as Near Northeast in Ward 6, and the PUD Site is in ANC Single-Member-District 6C04.
11. The PUD Site was most recently occupied by vacant and boarded-up rowhouses along the 3rd Street side, small structures once used as a church and for some commercial purposes on the K Street side, and a small warehouse on the L Street side. The Applicant applied for and received permits from the Department of Consumer and Regulatory Affairs to raze all of the existing structures, except the warehouse which will be used for construction staging and storage.
12. To facilitate development, the Applicant has submitted an application to the Office of the D.C. Surveyor to close the public alleys within the PUD Site, except for the portion of the north-south alley adjacent to the rear of the outparcels.
13. The PUD Site is within a neighborhood where the traditional land uses have been residential rowhouses to the east and south and small industrial facilities to the north. To the west, 2nd Street is adjacent to the railroad tracks on top of a rock-walled embankment.
14. Within the past five years, the neighborhood has become a center of substantial office development and has emerged as a locus of mid- to high-rise residential developments – some under construction, some awaiting zoning approval, and some in preliminary planning stages. It is within one-half mile of two federal agency headquarters buildings: to the north, the Bureau of Alcohol, Tobacco, Firearms & Explosives will locate in a 350,000-square-foot structure under construction at New York and Florida Avenues, N.E.; to the south, the Securities & Exchange Commission and other office tenants located in the partially-completed 1.3 million-square-foot Station Place complex on 2nd Street from F to H Streets, N.E. Residential developments are under construction at the Capital Children's Museum site at 3rd and H Streets, N.E., and in various planning stages at 318 I Street, N.E.; 300 L Street, N.E.; and on the east side of 3rd Street between K and L Streets, N.E.
15. The PUD Site is fewer than two blocks south of the New York Avenue Metrorail Station and approximately five blocks north of Union Station. It lies within the NoMa (North of

Massachusetts Avenue) area designated as a Redevelopment Area for city planning and economic development purposes. It is three blocks north of the H Street Corridor, subject of REVIVAL: The H Street NE Strategic Development Plan, proposed by the Executive Branch and adopted by the D.C. Council as a Small Area Plan in February 2004.

Existing and Proposed Zoning

16. The underlying zone districts are C-2-B for the easternmost portion of the PUD Site – 26,805 square feet – between 3rd Street and the north-south public alley bisecting the property, and C-M-3 for the westernmost portion of the PUD Site – 74,277 square feet – between 2nd Street and the public alley.
17. The C-2-B zone district is designed to serve commercial and residential functions, with high-density residential and mixed uses. Developments as a matter of right may be 90 feet high with a maximum density of 3.5 FAR and a maximum lot occupancy of 80%.
18. The C-M zones are designated as a Commercial-Light Manufacturing Districts, in which new residential uses are not permitted. In the C-M-3 district, developments as a matter of right may be 90 feet high, with a maximum density of 6.0 FAR. There is no prescribed maximum lot occupancy.
19. The Applicant requested a map amendment to rezone the PUD site to C-3-C to allow residential use and to permit greater height and density than permitted in C-M-3 and C-2-B zone districts. In a C-3-C district, the matter- of right maximum height is 90 feet, the maximum density is 6.5 FAR, and the maximum lot occupancy is 100%. The PUD Standards of the Zoning Regulations, at 11 DCMR § 2405.1, allow a maximum height of 130 feet and maximum density of 8.0 FAR in a C-3-C district.

The PUD Project

20. The PUD is proposed as a residential development, with ground-level retail, to be named Union Place. The Applicant proposes construction in two phases, with the Consolidated PUD as Phase 1 and the Preliminary PUD as Phase 2.
21. Overall, the PUD will have a gross floor area of 849,338 square feet apportioned as 831,841 square feet of residential and 17,497 square feet devoted to retail use- and to a child development center. The child development center will contain 3,449 square feet. The lot occupancy will be approximately 68%. The PUD will provide underground parking for Union Place residents at a ratio of one parking space per unit.
22. The PUD will include a landscaped central plaza of approximately 27,984 square feet as an aesthetic feature and an amenity for passive recreational and social use by Union Place and neighborhood residents. The plaza will be open for public use between the hours of 11:00 a.m. and 7:00 p.m. daily.

23. Loading docks and berths and access points will be situated so as to route delivery truck traffic along L Street or 2nd Street, rather than along residentially-oriented K and 3rd Streets. Loading facilities will comply with the requirements of 11 DCMR § 2201.1.

The Consolidated PUD

24. The Consolidated PUD will consist of 236,905 square feet of gross floor area, with 233,206 square feet for residential use and 3,699 square feet for retail use. The structure will be located on the eastern, most portion of the PUD site, with a land area of 42,995 square feet. The location will be between K, 3rd and L Streets, N.E. The lot occupancy will be 64%.
25. The Consolidated PUD will have a maximum height of 90 feet and ten (10) stories, stepping down to 61 feet/6 inches and seven (7) stories at the northern end.
26. The Consolidated PUD will include 202 residential units, 28 of which will be set aside as affordable housing. The affordable units are located on floors one (1) through five (5) as identified on floor plans submitted by the Applicant on January 20, 2006.
27. The Consolidated PUD will have 177 underground parking spaces for residents.
28. The Consolidated PUD design features a façade primarily using three shades of brick and pre-cast concrete trim caps and cornices. The first through third floors will be red brick, capped with a cornice. The fourth through eighth floors will be set back four feet and will use tan brick capped with a cornice. The ninth and tenth floors will use a light beige brick, topped with a cornice. The building will have a two- to three-story base, emulating traditional Washington rowhouse design, with unit entrances fronting on K Street and 3rd Street and also accessible from the project interior. There will be balconies on the fourth through tenth floors.

The Preliminary PUD

29. The Preliminary PUD is proposed to consist of approximately 612,433 square feet of gross floor area, with approximately 598,635 square feet for residential use and approximately 13,798 square feet for retail use, including a daycare center of approximately 3,449 square feet. The structure will be located on the westernmost portion of the PUD Site, with a land area of 58,087 square feet. The location is between K, 2nd, and L Streets, N.E.
30. The Preliminary PUD will contain approximately 500 residential units. At least 10% of the residential square footage will be set aside as affordable housing, providing approximately 50 affordable units. The affordable units will be further defined by the Applicant in the second-stage PUD application.

31. The Preliminary PUD will have at least 525 underground parking spaces for residents, if 500 units are built. In any case, the number of spaces will be sufficient to assure a 1:1 parking ratio for residents of the Consolidated and Preliminary PUD.

Development Incentives and Flexibility

32. In addition to the map amendment, the Applicant requests the following areas of flexibility from the C-3-C requirements and PUD standards:
- a. An increase of five percent (5%) in the floor area, to density of 8.4 FAR, pursuant to 11 DCMR § 2405.3;
 - b. A variance from the residential recreation space requirements of 11 DCMR § 773.3; and
 - c. A special exception from the prohibition of multiple roof structures set forth at 11 DCMR § 411.3.
33. The 5% bonus FAR provides the necessary density to allow development of approximately 702 residential units (78 of which would be set aside as affordable housing) and a spacious interior plaza available for public recreation use.
34. The proposed PUD provides the equivalent of approximately four percent (4%) of residential gross floor area as residential recreation space in the form of the central plaza and the rooftop terrace on the Consolidated PUD, which is less than the 10% required by § 773.3. The Applicant stated that some additional residential recreation space may be made available in the second-stage PUD, but in the meantime requested a variance from the 10% requirement.
35. The Zoning flexibility to permit multiple roof structures is necessary to allow elevator penthouses and stair towers on both the seven-story and the ten-story portions of the Consolidated PUD.

Public Benefits and Amenities

36. The following benefits and amenities will be created as a result of the PUD project:
- a. Affordable Housing – The primary benefit is the creation of approximately 78 new residential units set aside as affordable for households at no more than 80% of the Area Median Income (“AMI”). The affordable units comprise 92,045 square feet, which is 11.07% of the total residential. In the Consolidated PUD, 28 of the 202 units will be designated as affordable units; this is 32,182 square feet (11.07% of the total Consolidated PUD residential area of 233,206 square feet). In the Preliminary PUD, 50 of approximately 500 units will be designated as affordable units; this is 59,863 square feet (10% of the approximate total Preliminary PUD residential area of 598,635 square feet). The Applicant will

reserve for-sale units as affordable for a period of ten (10) years and rental units as affordable for a period of twenty (20) years. The Consolidated PUD affordable units are identified on the Applicant's floor plans for floors one (1) through five (5). The Preliminary PUD affordable units will be identified during second-stage PUD review.

- b. Day Care Center – The Preliminary PUD will include a licensed and professionally-operated child daycare center of approximately 3,449 square feet in size with convenient access to an outdoor play area. Based on per-child space requirements in the District Government's daycare center regulations, the facility may accommodate up to 75-80 children. Union Place residents will have first priority in applications for admission. Other available daycare slots will be open to applicants from the community at large. The city, and particularly Ward 6, has a substantial need for more daycare facilities. The Office of Early Childhood Development of the D.C. Department of Human Services has reported that, as of December 2004, there were 882 children on waiting lists for the 3,175 slots available in licensed childcare facilities in Ward 6.
- c. Green Roof – The Consolidated PUD features an extensive green roof system, with 11,928 square feet of roof space designed for plantings, comprised of a variety of different sedums and other succulents hardy for the D.C. metropolitan region. On the seventh-floor step-down roof at the corner of 3rd and L Streets, N.E., the green roof system is designed as a recreation amenity for residents. For the Preliminary PUD, the Applicant has committed to address the use of a green roof system and to explore the feasibility of a green and/or low-impact surface or storm water management system for the surface of the courtyard, that also serves as the roof for the parking garage. The reduction of negative environmental impacts is perhaps the foremost public benefit the proposed roofing system provides. Stormwater run off will be reduced by temporarily storing some of the rainwater within the growing medium and then slowly discharging the excess water into the off site storm water collection system, thereby reducing the peak flows of a major storm. It is estimated that this roof will store approximately 1,074 cubic feet of water, of which as much as 70-80% will never discharge directly into the public collection system. In addition, the plantings will extract a significant amount of airborne pollutants falling on the site, including acid rain and unhealthy particulates such as solid metals, dust, pollen, etc. The plants will also help improve air quality by reducing the amount of ozone and carbon dioxide often associated with smog. Also, because of the extra thickness of the soil medium, studies have shown that there is a significant energy savings over time for all seasons because of the insulation value of the green roof.
- d. Double-Height Ground Floor Retail – The Consolidated PUD features ground-floor retail space at a height of 18 feet, well above the requirements of the Zoning Regulations. This will provide flexibility for retail tenants to design unique and aesthetically-appealing showcases for consumer goods. The glass-walled double-

height storefronts will enhance interior natural light and present an inviting exterior face to passers-by.

- e. *Landscaped Central Plaza for Use by Residents and the Community* – The Union Place plaza of approximately 27,984 square feet is designed for both public and private use for passive recreation and social interaction. The plaza will be open to the from 11:00 a.m. to 7:00 p.m. daily, accessible through a gated entrance that will be open during public hours and closed during non-public hours except to Union Place residents. The Applicant will provide and maintain plaza signage to announce the public hours and general rules of use. The plaza will be protected by security personnel.
 - f. *Streetscape Beautification* – PUD landscaping constitutes a public benefit through substantial enhancement of the aesthetic appeal of the neighborhood streetscape.
 - g. *Interim Surface Parking for Phase 1 Residents* – During the interim between occupancy of the Consolidated PUD structure and completion of construction of the Preliminary PUD structure, off-street surface parking will be provided on the PUD Site to assure a 1:1 residential parking ratio at all times. The interim arrangement is necessary because the Consolidated PUD, with 202 residential units, is designed to provide 177 underground parking spaces. The Applicant stated that geotechnical factors make it difficult to provide the full complement of spaces for Consolidated PUD residents within the Consolidated PUD garage. The underground garage in the Preliminary PUD will provide a sufficient number of spaces to accommodate its residents at a 1:1 ratio, plus the 25 additional spaces necessary for Consolidated PUD residents, to assure a 1:1 space-per-unit ratio overall. Pervious materials will be used for the interim surface parking area.
 - h. *First-Source Employment Agreement* – The Applicant entered into a First-Source Employment Agreement with the Department of Employment Services, effective September 13, 2005.
 - i. *LSDBE Contracting Commitment* – The Applicant entered into a Local, Small, and Disadvantaged Business Enterprise (LSDBE) Memorandum of Understanding with the Department of Small and Local Business Development, effective January 18, 2006.
37. The Commission finds that the project is acceptable in all proffered categories of public benefits and amenities, and is superior in public benefits and project amenities relating to housing and affordable housing, the daycare facility, use of green roof technology, and the double-height retail design.

Office of Planning Report

38. By report dated December 27, 2005 and through testimony at the January 5, 2006 hearing, the Office of Planning ("OP") recommended conditional approval of the PUD.

OP supported the applications and found that the proposed PUD is not inconsistent with the Comprehensive Plan and the PUD evaluation standards. OP testified that the PUD is consistent with neighborhood trends toward denser residential uses to replace derelict industrial and commercial uses, to replace in part by the completion of the New York Avenue Metrorail Station and the H Street Corridor Revitalization Plan of 2004 and the subsequent approval of the H Street N.E. Neighborhood Commercial Overlay Zone District.

39. OP recommended approval of the applications, subject to the Applicant's submission of additional requested information and the following conditions:

- a. The Consolidated PUD shall be constructed according to the plans submitted on November 29, 2005 (i.e., September 13, 2005 plans as amended September 29, 2005).
- b. The Preliminary PUD shall be restudied to address the height issue and the Applicant shall submit an alternative that maintains a 90-foot building height along K Street, with at least a 40-foot horizontal setback from the building line, as part of the second-stage PUD application.
- c. The Applicant shall file for a building permit no later than 18 months from the effective date of the final order and commence construction no later than 30 months from the effective date of this order.
- d. At least 13.8% of the Consolidated PUD's residential gross floor area shall be made available as for-sale units to households earning no more than 80% of the AMI. The units shall remain affordable for at least 10 years after their initial sale. The sale of a unit within this 10-year period shall initiate a new 10-year affordability period for the unit. The units shall be evenly distributed throughout the first five floors of the building. The location and square footages of the affordable units shall be agreed upon by the Applicant and the Zoning Commission prior to the signing of the PUD covenant.
- e. At least 10% of the Preliminary PUD's residential gross floor area shall be made available as rental or for-sale units to households earning no more than 80% of the AMI. If the units are for-sale, the 10-year affordability period shall apply. If the units are rental, they shall remain affordable for no less than 25 years.
- f. The Applicant shall construct an in-fill all-residential building in Square 749, Lot 805. The building shall be no higher than 50 feet. The occupancy permit for the Preliminary PUD shall not be issued until the occupancy permit has been issued for the residential structure at Square 749, Lot 805.
- g. The Applicant shall provide for a rental car option similar to Flex Car or Zip Car when the Preliminary PUD's garage is completed.

- h. The Applicant shall include a letter of intent, with general details on rental terms and similar matters for the operation of the daycare center when filing the second-stage PUD application.
 - i. The ground floor retail space in the second-stage PUD shall have an interior clear height of no less than 14 feet.
40. In response to OP's recommendations, the Commission finds as follows:
- a. The Commission concurs with OP's recommendations regarding approval of the bonus density and finds that the Applicant has met the burden of proof required by § 2405.3. The Commission finds that the high level of proffered affordable housing is an essential element of the proposed PUD and that the Applicant has demonstrated that the bonus density is "essential to the successful functioning of the project" as proposed and "consistent with the purposes and evaluation standards of" Chapter 24. The Commission further finds that any requested reduction in the level of proffered benefits and amenities will cause the Commission to consider a commensurate reduction in the bonus FAR.
 - b. The Commission finds that the Applicant has submitted the additional information requested in the OP report.
 - c. The Commission generally concurs with the conditions recommended by OP, and has incorporated these conditions with minor changes in the Decision portion of this Order.
 - d. The Commission does not concur with the OP recommendation that the Applicant should be required to submit, in the second-stage PUD application, a 90-foot-height plan as an alternative to the requested maximum height of 130- feet for the Preliminary PUD structure. Instead, the Commission has required that the Applicant submit design studies of approaches that ameliorate the appearance of the 130-foot height when presenting the second stage application to the Commission.
 - e. The Commission does not concur with the OP recommendation that the Applicant shall construct an in-fill building, or to limit the in-fill building to Lot 805 and to a height of 50 feet and to link the occupancy permit for the Preliminary PUD to the occupancy permit for the in-fill building. The Commission finds that, because the out parcels are not part of the PUD, it is inappropriate to link the Preliminary PUD occupancy permit to an occupancy permit for the out parcels structure.

Other Government Agency Reports

41. By report dated September 30, 2005 in the predecessor Case No. 01-28TE, the District Department of Transportation ("DDOT") stated that it has no objection to the proposed PUD. DDOT projected only a slight increase in trip generation as a result of the PUD

development, with no adverse impact on the surrounding transportation system. DDOT found the PUD loading facilities and access and circulation system to be acceptable. Consistent with DDOT policy to promote car-sharing programs, DDOT encouraged the Applicant to consider setting aside approximately five percent (5%) of the proposed garage parking spaces for car-sharing vehicles.

42. Stanley Jackson, Deputy Mayor for Planning and Economic Development, submitted a letter dated September 29, 2005 in support of the identical project in the predecessor Case No. 01-28TE. Mr. Jackson stated that that Applicant's affordable housing proffer will contribute to the District's priority goal of developing an additional 6,000 affordable housing units.
43. Jalal Greene, Director of the D.C. Department of Housing and Community Development, submitted a letter dated September 29, 2005, in support of the identical project in the predecessor Case No. 01-28TE. Mr. Greene also stated that the Applicant's affordable housing proffer supports the city's goal of developing 6,000 more affordable units.
44. D.C. Council Chairman Linda Cropp and Council member Vincent B. Orange, Sr. submitted letters dated November 21, 2005, and November 17, 2005, respectively, in support of the identical project in the predecessor Case No. 01-28TE.

The ANC Position

45. Advisory Neighborhood Commission 6C adopted a resolution in support of the applications, with conditions, by a vote of 7-1, with one member absent, at a regularly scheduled and publicly noticed meeting on December 14, 2005. The ANC resolution included the following conditions:
 - a. The Applicant shall file a Phase 1 (Consolidated PUD) building permit application within one (1) year following the effective date of a Zoning Commission approval order, and shall also begin Phase 1 construction within one (1) year subject to timely D.C. Government action on legislation to close alleys within the PUD Site. The Applicant will file quarterly reports to ANC 6C regarding the status of the building permit application and the construction start date.
 - b. The Applicant will file a second-stage PUD application at the earliest opportunity in order to prevent delays in Phase 2 (Preliminary PUD) construction and will timely provide copies of the second-stage PUD plans and documents to members of ANC 6C and its Planning and Zoning Committee for their review and comment.
 - c. The Applicant will provide the interim surface parking spaces as agreed upon with ANC 6C

- d. The Applicant will set aside approximately 78 units – more than 11% of the total – as affordable housing and will deliver all of the other public benefits and amenities as set forth in the applications.
- 46. ANC 6C Commissioner Daniel M. Pernell, who represents Single-Member-District 6C04, which includes the PUD site, presented the ANC report at the January 5, 2006 hearing. He was accompanied by ANC 6C Chair Mark Dixon.
- 47. The Commission generally concurs with the conditions recommended by ANC 6C and has incorporated these conditions with minor changes in the Decision portion of this Order.

The Positions of Other Parties, Organizations, and Persons

- 48. There are no parties to the case other than the Applicant and ANC 6C.
- 49. In support of the PUD, the Commission received testimony at the January 5, 2006 hearing from the following:
 - a. Loree Murray, who resides at 1134 Seventh Street N.E., and was among the original organizers of the Near Northeast Citizens' Against Crime and Drugs, testified that Union Place will be a beneficial addition to the neighborhood, particularly because it will include affordable housing, a daycare center, and public plaza.
 - b. Reverend William Bynum, president of the Public Citizen Civic Association, testified that Union Place is one of the few significant developments in the past 40 years that will bring tangible public benefits to the vicinity of the H Street N.E. Corridor.
 - c. William Howard, who represented PSI Services, a provider of daycare and other social services in the District, commended the inclusion of a daycare center in the PUD project to meet community needs and said his firm will submit a proposal to the Applicant to operate the Union Place daycare center.
 - d. Anwar Saleem, chairman of H Street Main Street and the H Street Merchants and Professionals Association, testified that the Union Place development will be an asset to the community in continuing efforts to attract retailers to the H Street N.E. Corridor. He said the Applicant's package of public benefits and amenities responds to community needs.
- 50. In opposition to the PUD, the Commission received testimony at the January 5, 2006 hearing from Mozella Boyd Johnson, who stated that she owns the property located at 229 K Street, N.E. She spoke in opposition to the proposed 130-foot height of the Preliminary PUD structure and expressed the view that the project's height and mass would have an adverse effect on the neighborhood.

NCPC Report

51. The proposed action of the Zoning Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to § 492 of the District Charter.
52. NCPC, by action dated March 2, 2006, concluded: (1) the proposed consolidated PUD would not adversely affect the identified federal interests and would be consistent with the Comprehensive Plan for the National Capital; and (2) the proposed first stage PUD would adversely affect the federal interest and would be inconsistent with the Comprehensive Plan for the National Capital and the Height of Buildings Act of 1910. NCPC indicated that the two structures shared no meaningful communication and thus comprised two separate buildings, with two different fronts and therefore two distinct measuring points for height.² Yet, only the 3rd Street front was used to measure height. NCPC therefore concluded that the Commission should either require the Applicant to establish a "meaningful connection" between two structures, so as to permit the 3rd Street measuring point, or to lower the height of the building fronting 2nd and L Streets.
53. The Commission shared this same concern with the Applicant as part of the earlier PUD modification proceeding discussed in Find of Fact No. 3. The plans in that case did indeed show two separate structures with a single point of measurement. In response to the Commission's concerns, the Applicant submitted the revised drawings on September 29, 2006 that show a single building made of two parts connected by a twelve (12) story glass bridge. After the Commission denied the request for a time extension on November 17, 2005, thereby terminated the prior PUD, the Commission immediately set this case down for hearing based on the plans showing the connected structures.
54. Based upon statements in and attachments to the "staff recommendation" that accompanied NCPC action, it appears that NCPC may have been looking at the plans from the earlier case. In any event, the Commission believes that the glass bridge will establish communication between the two portions of the structure, thereby allowing the entire development to be considered a single building that fronts 3rd Street. The 3rd Street front was therefore properly used as the measuring point for height.

Compliance with PUD Evaluation Standards

55. Under the PUD regulations, the Commission must "judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects." 11 DCMR § 2403.8. Given the level of project amenities and public benefits, particularly the significant amount of

² The definition of building that appears at 11 DCMR § 119.1 provides that the "existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one (1) building." This statement has therefore been interpreted to mean that the "existence of communication" at or above the main floor allows the connected structures to be deemed a single building.

affordable housing, the Commission finds that the value of the project amenities and public benefits justifies the development incentives allowed by the PUD Standards.

56. Pursuant to 11 DCMR § 2403.3 of the PUD evaluation standards, the Commission finds that the impact of the project on the surrounding area and the operation of city services and facilities is acceptable.
57. The Commission finds that the project will have no detrimental impact on traffic and parking in the neighborhood.

Compliance with the Comprehensive Plan

58. The Commission finds that the proposed PUD is not inconsistent with the Comprehensive Plan.
59. The proposed PUD fosters the objectives of the Land Use Element to encourage substantial new housing primarily near Metrorail stations, to conserve and enhance the stability of residential neighborhoods and protect them from disruptive uses, and to promote retention and expansion of residential uses in mixed-use neighborhoods.
60. The proposed PUD fosters the objectives of the Housing Element, which calls for multi-unit housing development near Metrorail stations and on vacant, underutilized, or unused properties, with particular emphasis on meeting the housing needs of low- and moderate-income residents by means of zoning incentives such as permitting additional density.
61. The proposed PUD fosters the objectives of the Transportation Element, which supports higher-density residential and non-residential development near Metrorail stations.
62. The proposed PUD fosters the Ward 6 Objectives for Housing, which are "to maintain and strengthen the quality and construction of housing in the various neighborhoods throughout Ward 6; stimulate production in Ward 6 of new and rehabilitated housing; discourage encroachment of the non-residential uses in residential areas; and stimulate private investment in housing in Ward 6 and expand home ownership opportunities...."
63. The proposed PUD fosters the Ward 6 Objectives for Economic Development, which include "protect(ing) adjacent residential neighborhoods in Northeast against pressures for conversion to retail and office uses generated by Union Station development." By creating a new residential community in the buffer zone, the proposed PUD will shield the residential neighborhood from commercial redevelopment.

CONCLUSIONS OF LAW

1. Pursuant to Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that

the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, welfare, and convenience." 11 DCMR § 2400.2.

2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider these applications as a Consolidated and a Preliminary (first-stage) PUD, respectively. The Commission may impose development guidelines, conditions, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, and courts. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. The development of the PUD project will carry out the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations.
5. The PUD is within the applicable height, bulk, and density standards of the Zoning Regulations, and the height and density will not cause a significant adverse effect on any nearby properties. High-density residential and retail uses are appropriate for the site, which is located within the NoMa Redevelopment Area and in close proximity to mass transit. The impact of the project on the surrounding area is not unacceptable. The proposed project has been appropriately designed to complement and respect existing structures in the nearby neighborhood with respect to height and mass.
6. The PUD applications meet the contiguity requirements of § 2401.3 of the Zoning Regulations.
7. The PUD applications can be approved with conditions to ensure that any potential adverse effects on the area surrounding the development will be mitigated.
8. The project benefits and amenities, particularly the provision of housing, affordable housing, neighborhood-serving retail, the daycare center, the green roof system, and streetscape beautification, are reasonable for the development proposed on the site and responsive to the needs of the community and the city.
9. The Applicant seeks an increase in density as permitted by 11 DCMR § 2405.3. The Applicant has met the burden of proof required by 11 DCMR § 2405.3 for approval of 5% bonus density, because the increase is essential to the successful functioning of the project and consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations. The bonus density will allow the Applicant to include a greater affordable housing component than would otherwise be feasible. The large affordable housing component is one of the primary benefits of the project, and is essential to the

success of the project, and consistent with the standards of Chapter 24 of the Zoning Regulations.

10. Approval of the PUD is appropriate, because the proposed development is not inconsistent with the Comprehensive Plan or with other public policies related to the subject site.
11. Approval of the PUD is appropriate, because the proposed development is consistent with other city policies, particularly the policies to generate development of more affordable housing.
12. In accordance with D.C. Official Code § 1-309.10(d)(3)(A) (2001 ed.), the Commission is required to give "great weight" to the position of the affected ANC. As is reflected in the Findings of Fact contained herein, the Commission has carefully considered the testimony and evidence submitted by ANC 6C and has incorporated conditions in this Order which reflect the recommendations of ANC 6C.
13. The applications for a PUD and related map amendment will promote the orderly development of the site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
14. The applications for a PUD and related map amendment are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia orders **APPROVAL**, consistent with this Order, of the applications for (1) consolidated review of a Planned Unit Development; (2) preliminary review of a Planned Unit Development; and (3) a Zoning Map amendment from C-M-3 and C-2-B to C-3-C for the PUD Site. The approval is subject to the following guidelines, conditions, and standards:

1. The consolidated approval of the PUD shall apply to the properties in Square 749 except Lots 804, 805, and 31 shown to the right of the "Phase Line" on the Applicant's *Preliminary Subdivision Plan*, dated September 7, 2005, and submitted as Exhibit C of the Applicant's *Application and Pre-Hearing Submission*, ZC Case No. 05-36, filed November 29, 2005.
2. The preliminary approval of the PUD shall apply to properties in Square 749 shown to the left of the "Phase Line" on the Applicant's *Preliminary Subdivision Plan*, dated September 7, 2005, and submitted as Exhibit C of the Applicant's *Application and Pre-Hearing Submission*, ZC Case No. 05-36, filed November 29, 2005.
3. A PUD-related map amendment shall rezone the PUD site, in its entirety, from C-M-3 and C-2-B to C-3-C.

4. With respect to the properties within the Consolidated PUD, the map amendment shall take effect at the time the Applicant records the covenants required by Conditions No. 6, No. 13, No. 14, and No. 17 below. With respect to the properties within the Preliminary PUD, the map amendment shall take effect upon final approval of the second-stage PUD application and the Applicant's recordation of the covenant as specified by the Commission in an Order approving the second-stage PUD.
5. The PUD shall have a maximum density of 8.4 FAR.
6. The Applicant shall designate 11.07% of the total residential gross floor area of the total project as affordable housing for eligible households with annual household incomes of no more than eighty percent (80%) of the Area Median Income, as determined and adjusted annually by the U.S. Department of Housing and Urban Development. The affordable-housing requirements shall be guaranteed by covenants that the Applicant shall execute and record in the land records of the District of Columbia. The affordable units shall be guaranteed by covenant to be set aside as affordable for ten (10) years in the case of for-sale units and twenty (20) years in the case of rental units, as defined with specificity in the covenants.
7. The Applicant shall apply green-roof technology in the development and construction of the Consolidated PUD and the Preliminary PUD. For the Consolidated PUD, the Applicant shall apply the green-roof plan as shown and described in Exhibit D, *Sheets L.9, L.9.1, L.9.2 and L.9.3*, of the Applicant's November 29, 2005 submission. For the Preliminary PUD, the Applicant shall develop and submit with the second-stage PUD application a similar green-roof plan for the maximum amount of roof space, minus the space needed for rooftop building systems such as elevator and mechanical penthouses.
8. The Applicant shall provide a central plaza of approximately 27,000 square feet in size. The central plaza shall be open to the public for passive recreational use between the hours of 11:00 a.m. and 7:00 p.m. daily, and shall be posted with appropriate signage to inform plaza users about permissible and prohibited plaza activities. The plaza shall be accessible to the public through a 2nd Street entrance that shall remain open during the hours of public access and shall be closed to all except building residents, employees, and any other authorized personnel between the hours of 7:00 p.m. and 11:00 a.m. In the second-stage PUD application, the Applicant shall provide data and drawings showing the design and placement of the 2nd Street entrance. The Applicant shall provide sufficient security personnel and procedures to ensure the safety of plaza users, including procedures defining the conditions requiring requests for Metropolitan Police Department assistance. Specific rules and operational details for the plaza shall be developed collectively by the Applicant, the condominium unit owner's association representing building residents in accordance with the provisions of D.C. Official Code § 42-1903.01 *et seq.*, and Advisory Neighborhood Commission 6C.
9. Ground floor retail space in the Consolidated PUD shall have an interior clear height of 18 feet. Ground floor retail space in the Preliminary PUD shall have an interior clear height of no less than 14 feet.

10. The Consolidated PUD shall be developed in accordance with the plans prepared by GTM Architects, dated September 13, 2005, including the revisions submitted September 29, 2005, and January 4, 2006 (the "Combined Plans"). The Consolidated PUD shall have a total of 236,905 gross square feet with 233,206 square feet for residential use and 3,699 square feet for retail use.
11. The Consolidated PUD shall be a residential development with ground-floor retail space, constructed to a maximum height of 90 feet above the measuring point, stepping down to a height of 61 feet/6 inches on the northeast end.
12. The Consolidated PUD shall contain 202 residential units, 28 of which shall be designated as affordable units for an affordability period of ten (10) years, if for-sale units, and twenty (20) years, if rental units, guaranteed by covenant between the Applicant and the District of Columbia and recorded in the land records of the District of Columbia.
13. The covenant required by Condition No. 6 shall be the Draft Covenant provided as Attachment 2 in the *Applicant's Post-Hearing Submissions, January 20, 2006*, revised only to provide the correct metes-and-bounds descriptions of the lots and parts of lots contained in the Consolidated PUD.
14. Except as otherwise provided below, the affordable housing units in the Consolidated PUD shall be the units designated by the Applicant in the floor plans for floors one (1) through five (5), submitted as Attachment 6 in the Applicant's Post-Hearing Submissions dated January 20, 2006 ("Affordable Unit Designation Plans").
15. The Applicant shall have flexibility with the design of the Consolidated PUD in the following areas:
 - a. To replace some of the units designated as affordable on floors one (1) through five (5) with some units of comparable type and size on floor six (6), subject to the approval of the person or agency charged with implementing and enforcing the affordable-housing requirements;
 - b. To increase or decrease the overall number of residential units by no more than five percent (5%), provided that the percentage of residential gross floor area designated for affordable units shall not be less than 13.8% of total residential gross floor in the Consolidated PUD;
 - c. To rearrange the unit types and mix, provided that the number, type, size, and distribution of the affordable units shall remain consistent with the Affordable Unit Designation Plans;
 - d. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms,

elevators, escalators, and toilet rooms, provided that the variations do not change the exterior appearance or configuration of the buildings;

- e. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and
 - f. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings, and trim, or any other changes necessary to comply with the Construction Codes of the District of Columbia or that are otherwise necessary to obtain a building permit.
- 16. The landscaping, streetscape, and exterior lighting shall be as shown on the Consolidated Plans. Landscaping, streetscape, and lighting improvements to public space shall be in accordance with the Consolidated Plans and as approved by the Public Space Division of DDOT. The Applicant shall maintain all landscaping, streetscape, and lighting improvements in good condition.
 - 17. No building permit shall be issued for the Consolidated PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the owners and the District of Columbia, satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs ("DCRA"). Such covenant shall bind the owners and all successors in title to construct on and use the property in accordance with this Order or amendment thereof by the Zoning Commission.
 - 18. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed copies of the covenant with the records of the Zoning Commission.
 - 19. The Consolidated PUD approved by the Zoning Commission shall be valid for a period of one (1) year from the effective date of this Order. Within such time, the first application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction on the Consolidated PUD shall begin within two (2) years of the effective date of this Order.
 - 20. The Preliminary PUD shall be developed in accordance with the Combined Plans and the character, scale, mixture of uses, and design of the uses proposed.
 - 21. The Preliminary PUD shall have a maximum height of 130 feet from the measuring point and a maximum of 14 stories, each of which shall have a minimum floor-to-ceiling height of 8 feet/6 inches, within the 130-foot height of the structure as measured for zoning purposes. The Preliminary PUD shall include approximately 500 dwelling units and 13,798 square feet for retail use, including the daycare center.
 - 22. The Commission is concerned with the proposed maximum 130 foot height of the second stage proposal along K Street. The Commission expects the Applicant to develop

alternative design studies that ameliorate the appearance of the 130 Foot height in presenting the second stage application to the Commission.

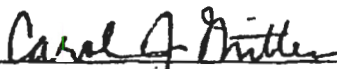
23. The Preliminary PUD shall include an affordable-unit set-aside of no less than 10% of the total residential gross floor area of the Preliminary PUD. Affordability periods of ten (10) years for for-sale units and twenty (20) years for rental units shall be guaranteed by covenants agreed upon by the Applicant and the Commission and recorded in the land records of the District of Columbia. The affordable unit types and sizes shall be in reasonable proportion to the types and sizes of market-rate units and shall be evenly dispersed among the central and lower residential floors.
24. The Preliminary PUD shall include a daycare center of approximately 3,449 square feet in size. In the second-stage PUD application, the Applicant shall provide evidence of progress in identifying and securing an agreement with a suitable daycare provider to operate the facility.
25. In the second-stage PUD application, the Applicant shall address the District Department of Transportation and OP recommendations for the inclusion of garage parking spaces for car-sharing services.
26. In the second-stage PUD application, the Applicant shall have flexibility with respect to:
 - a. Increasing or decreasing the overall number of residential units by no more than five percent (5%), provided that the percentage of residential gross floor area designated for affordable units shall not be less than 10.0% of total residential gross floor area in the structure; and
 - b. The exterior façade design and materials, so long as the exterior appearance is compatible with the exterior of the Consolidated PUD structure and consistent in quality and character with the façade design and materials and overall exterior appearance of the Consolidated PUD.
27. In the second-stage PUD application, the Applicant shall include, as an element of the architectural materials, street-level renderings and a cross-section showing the Second Street public access point of entry to the plaza and 2nd Street elevations.
28. The second-stage PUD application shall be submitted within one year following the effective date of this Order.
29. The Applicant shall abide by the terms of the executed Memorandum of Understanding with the Department of Small and Local Business Development in order to achieve, at a minimum, the goal of thirty-five percent (35%) participation by local, small, and disadvantaged business enterprises in the contracted development costs associated with the design, development, construction, and security for the PUD project.

30. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent (51%) of the jobs created by the PUD project.
31. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 *et seq.* (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial of or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

The Zoning Commission at its public meeting held on February 23, 2006 approved the application, subject to conditions, by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, Gregory N. Jeffries, Michael G. Turnbull in favor, John G. Parsons not participating, not voting).

The Order was adopted by the Zoning Commission at its public meeting on April 20, 2006 by a vote of 4-0-1 (Carol J. Mitten, Anthony J. Hood, and Michael G. Turnbull to adopt; Gregory N. Jeffries to adopt by absentee ballot; John G. Parsons not participating, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*, that is on OCT 13 2006.


CAROL J. MITTEN
CHAIRMAN
ZONING COMMISSION


JERRILY R. KRESS, FAIA
DIRECTOR
OFFICE OF ZONING

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EXHIBIT B

THE CITY OF NEW YORK
 DEPARTMENT OF CITY PLANNING
 OFFICE OF THE DEPUTY COMMISSIONER
 100 NASSAU ST., NEW YORK 10038
 TEL. 212-312-2000
 FAX 212-312-2000

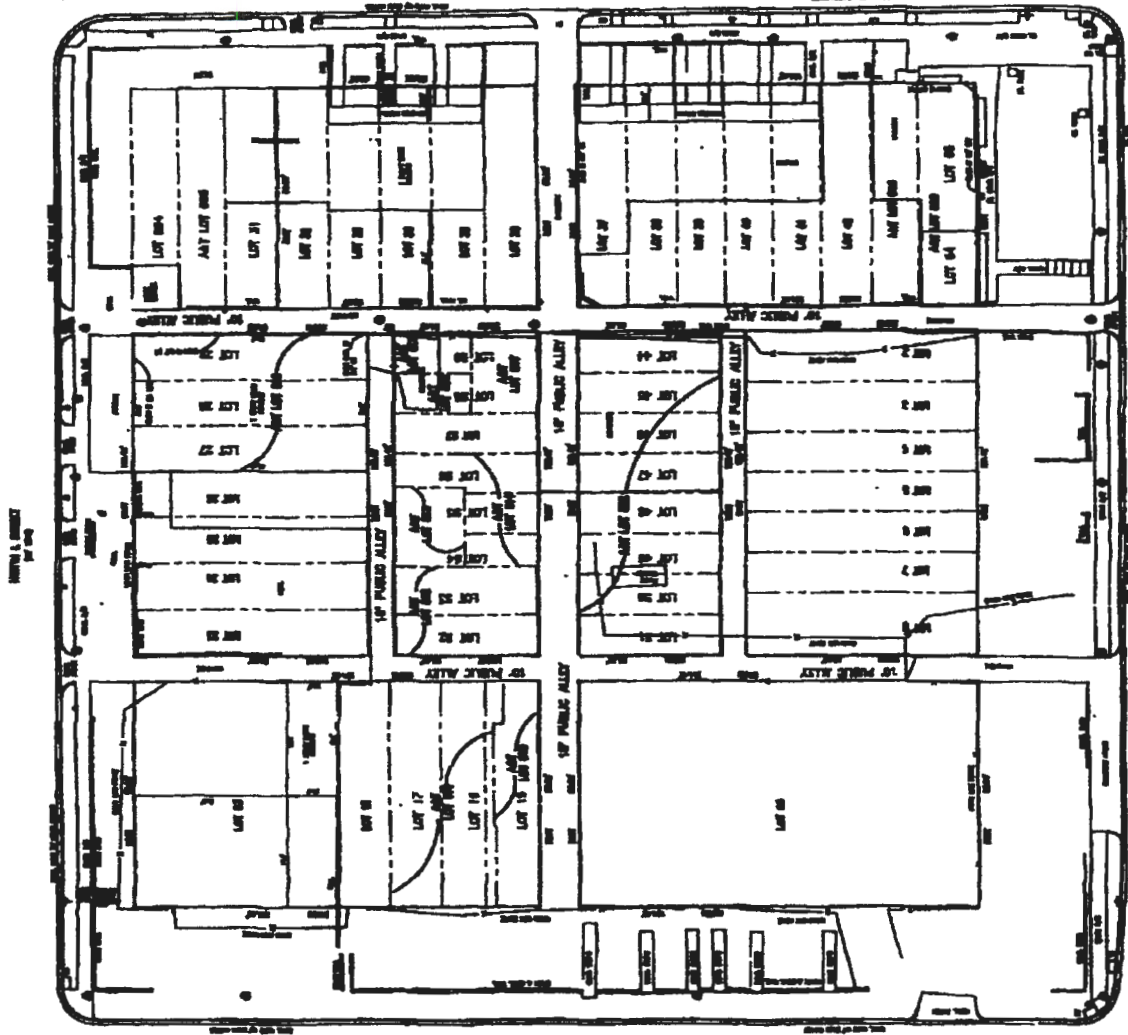


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Bowman

100 NASSAU ST., NEW YORK 10038
 TEL. 212-312-2000
 FAX 212-312-2000



COLLAPSED SCALE
 1" = 100'

N.Y.C. Case 05-36

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

★ ★ ★

Doc# 2007012725 Fees: \$338.50
01/25/2007 3:08PM Pages 35
Filed & Recorded in Official Records of
WASH DC RECORDER OF DEEDS LARRY TODD

Z.C. CASE NO.: 05-36

As Director of the Office of Zoning, I hereby certify that **OCT 10 2006** copies of this Z.C. Corrected Order No. 05-36 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

- | | |
|--|--|
| 1. D.C. Register | 6. Councilmember Sharon Ambrose |
| 2. John Ray, Esq.
Manatt, Phelps, & Phillips
700 12th St NW # 1100, Washington,
DC 20005 | 7. Office of Planning (Ellen McCarthy) |
| 3. Mark Dixon, Chair
ANC 6C
P.O. Box 77876
Washington, DC 20013 | 8. Ken Loden, DOT |
| 4. Commissioner Daniel Parnell, III
ANC/SMD 6C04
1116 3rd Street, NE
Washington, DC 20002 | 9. Zoning Administrator |
| 5. Gottlieb Simon
ANC
1350 Pennsylvania Ave., N.W.
Washington, D.C. 20004 | 10. Office of the Attorney General |
| | 11. Jill Stern, Esq.
General Counsel - DCRA
941 North Capitol Street, N.E.
Suite 9400
Washington, D.C. 20002 |
- | | | |
|---------------|----|--------|
| RECORDING | \$ | 251.00 |
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| COPIES | \$ | 78.75 |
| CERTIFICATION | \$ | 2.25 |

ATTESTED BY:


Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

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MICHAEL HOLLANDER

COHEN COMPANIES

2701 TOWER OAKS BOULEVARD

SUITE 200
ROCKVILLE, MD 20852

35

Exhibit 3.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Housing and Community Development



VIA EMAIL (ilana@culturaldc.org)
& FIRST CLASS MAIL

OCT 15 2009

Ilana Branda
Program Manager
Housing and Community Development
Cultural Development Corporation
1835 14th Street, N.W
Washington, D.C. 20009

Re: Determination Letter for the Loree Grand @ Union Place
Affordable Dwelling Unit (ADU) Eligibility Plan and Guidelines for Phase I

Ms. Branda:

Thank you for contacting the Department of Housing and Community Development ("DHCD") regarding Phase I development of the Loree Grand @ Union Place, which is located between K, 3rd & L Streets N.E. in Washington, D.C., Lot 828, Square 749 ("Phase I"). In accordance with the Planned Unit Development and Affordable Housing Covenant recorded against Phase I ("Covenant"), the Phase I will contain 202 units, of which 28 will be affordable to households with incomes not exceeding 80% of the area median income ("AMI") for the metropolitan Washington, D.C. statistical area Affordable Dwelling Unit ("ADUs"). Further, the Covenant requires that the monthly housing payment of the renter shall not exceed thirty percent (30%) of the renter's monthly household income.

The Cultural Development Corporation, working as a consultant to Union Place Phase I, LLC (collectively "CuDC"), submitted a proposal to DHCD on July 7, 2009, which included proposed rental rates and household selection criteria for the ADUs for Phase I (Attachment 1). CDC provided a revised proposal following its meeting with DHCD on July 9, 2009 (Attachment 2). DHCD provided a response to CuDC on August 14, 2009 (Attachment 3). CuDC then provided a revised proposal on September 16, 2009 (Attachment 4). The purpose of this letter is to provide a final determination of the maximum allowable rent levels for Phase I.

ADU Monthly Rents and ADU Eligibility Tables

After review of CuDC's September 16, 2009 proposal, which proposes to include utility rates from the Utility Schedule into housing cost, DHCD has determined that the maximum allowable

housing cost for the ADUs shall follow the Maximum Allowable Rent in the Multi-Family Inclusionary Developments section of the "Inclusionary Zoning Affordable Housing Program Maximum Rent and Purchase Price Schedule" ("Schedule") (Attachment 5). We expect the Schedule to be updated through the D.C. Register on at least an annual basis. When a new Schedule is published in the D.C. Register, you shall use the new Schedule as a basis for the housing cost calculation for the ADUs.

Based on the language in the Covenant, to the extent CuDC selects a prospective tenant whose income is less than 80% of the AMI, CuDC must reduce the maximum housing cost to the appropriate AMI level to ensure that the prospective tenant does not spend more than 30% of their income on housing cost.

DHCD will assist CuDC in determining the appropriate rent levels going forward. To the extent CuDC wishes to allow tenants to spend more than 30% of their income on housing cost, the Covenant must be amended.

Artistic Eligibility Criteria, Selection Process, Marketing and Outreach

DHCD approves the Artistic Eligibility Criteria, Selection Process, Marketing and Outreach as outline by CuDC in its September 16, 2009 letter.

Financial Certification Window

CuDC has requested that the financial certification window be extended to a four month time period to allow CuDC to effectively administer the program in time for residents to move-in when the building opens. The initial 90 day certification period may be extended by an additional 30 days by agreement between CuDC and the prospective tenant.

Income

In its September 16, 2009 letter, CuDC asks for clarification as to whether the gross or adjusted income should be used when considering the area median income of the prospective tenant. CuDC should use the gross income of the prospective tenant.

If you have any questions regarding the above, please contact Gilles Stucker, the Housing Resource Administrator at 1800 Martin Luther King Jr. Avenue SE, Washington, D.C. 20020. Mr. Stucker's email address is gilles.stucker@dc.gov.

Sincerely,



Leila Finucane Edmonds
Director



**Loree Grand @ Union Place
3rd and K Streets NE**

Affordable Dwelling Unit Eligibility Plan and Guidelines

Cultural Development Corporation (CuDC), working as a consultant to Union Place Phase I, LLC, hereby proposes the following ADU Eligibility Plan and Guidelines to the Department of Housing and Community Development (DHCD) for approval.

Philosophy

CuDC's philosophical approach is to create affordable, urban, live/work opportunities for area artists and their families to support the creative workforce, thereby building a culturally rich and diverse community. Exemplary artist housing opportunities cultivate a healthy, stable and creative workforce, retaining the valuable creative human capital otherwise lost when artists are priced out of the city. Artist housing spurs small business development, contributes to public safety efforts and reduces transportation demands. Artist residents are dually vested in the community, contributing to the local income tax base and property tax base. To the extent that artist residents create and sell goods in the District of Columbia, they are also contributing sales tax. A vibrant, diverse creative economy inspires culturally rich neighborhoods and accessible arts opportunities for DC residents, visitors and tourists.

Artistic Eligibility

Affordable artist housing at Loree Grand is open to artists working in all disciplines – visual art, craft, sound and performance art, theatre, dance, music and literary arts. Eligible artists may include, but are not limited to: painters, sculptors, photographers, filmmakers, metal-smiths, writers, musicians, actors, dancers, graphic designers, computer animators, arts administrators and other creative entrepreneurs. Artists are expected to have a home-based component to their artistic practice, a willingness to participate in enlivening the project area and a cooperative spirit. CuDC will conduct a fair, objective selection process wherein applicants will be evaluated based on three criteria:

- Commitment to the artistic practice. Is there a body of work?
- Current and active involvement in that artistic practice. Is the artistic product active and in circulation?
- Housing need. Will the artist housing unit play a role in furthering the artistic practice?

Applicants will be required to submit the following materials: artistic resume, images or samples of artistic product, references and a narrative statement.

Affordable artist housing at Loree Grand is open to all US residents, regardless of current jurisdiction of residency.

Financial Eligibility

Financial eligibility is based on the Planned Unit Development (PUD) Agreement and Affordable Housing Covenant recorded for this project and the Washington DC Uncapped Limits, as presented on DHCD's website, updated to 2009 numbers as calculated by the Department of Housing and Urban Development. The District of Columbia's Inclusionary Zoning guidelines for household size to unit size ratios were also incorporated into the income limits per unit type.

As per the Affordable Housing Covenant, rent was calculated based on affordability for households with an income equal to 80% of area median income (AMI) assuming 30% of gross household income is spent on rent. We expanded the eligibility range to include households earning a minimum of 50% of AMI to households earning a maximum of 100% of AMI. Given the economic climate and project location, this range is critical to the ability to serve area artist constituents and lease all the units. As the covenants do not stipulate any ongoing income verifications, an eligibility range of 50-100% of AMI retains the integrity of the program's goal to provide affordable housing, while also creating a cushion that allows for income fluctuations.

The income guidelines and rent schedule will be updated on a bi-annual basis, adjusted for inflation, using the CPI Index to ensure continued affordability as units turnover.

Applicants will be required to submit recent pay stubs and a copy of their 2008 tax return to demonstrate financial eligibility.

Application Process

CuDC plans to conduct a two-phased process to lease the 30 available units to eligible artists.

Phase I: First-come, first serve. During Phase I, up to 15 units will be available on a first-come, first-serve basis to eligible households over a five-week period. Phase I provided a limited number of proactive, competent applicants the opportunity to immediately lock in their unit of choice. These "early decisions" will motivate the accepted artists to help spread the word about the project and build demand for the remaining units.

Phase II: Lottery. In Phase II, the remaining 15 units (in addition to any that were not leased during Phase I) will be leased to eligible artists through a lottery process. Remaining eligible applicants from the lottery pool, after the units are fully leased will be added to a waiting list to ensure the continued ability to tenant these units.

All applications will be vetted for artistic and financial certification. CuDC will coordinate with DHCD for all eligible applicants to receive the necessary financial certification letter. At that point, CuDC will work with eligible applicants and the property leasing agent to select a unit and execute a lease. Once qualified for a unit, artist residents may remain in their unit without ongoing income verifications. However, should an artist resident wish to move to a different ADU unit, s/he will need to demonstrate financial eligibility for the new unit.

Timeline

Year	Month	Date	Event
2009	August	19	Release Loree Grand applications
2009	September	9 or 10	Information session for prospective applicants
2009	September	17	Begin accepting first-come, first-serve applications & qualifying prospective residents
2009	October	7 or 8	Online chat - application assistance
2009	October	19	Information session for prospective applicants
2009	October	23	Deadline: first-come, first-serve applications
2009	November	throughout	Unit Selection: first-come, first-serve qualified applicants
2009	November	tbd	Online chat - application assistance
2009	November	30	Deadline: lottery applications
2009	December	10	Loree Grand housing lottery
2010	January	throughout	Unit selection for lottery winners
2010	Feb/Mar/Apr	throughout	Residents take occupancy (expected late February/early March)

Eligibility Tables

The following explains the sources and assumptions for the attached eligibility tables.

Schedule 1: Max. Rental Price Calculation – Using the HUD 2009 AMI for the Washington DC metro area of \$102,700, 80% of AMI was calculated for household size of 1-4 people. With calculations completed for 80% of AMI, we then derived a maximum annual rent by calculating 30% of the income. Maximum monthly rent is annual rent divided by 12.

Schedule 2: Max. Rent Per Unit Type – The next step examined the number of occupants allowed in the four unit types and the maximum rent of each unit type. The proposed DC Inclusionary Zoning Guidelines provides a basis for minimum and maximum number of occupants per a unit. The maximum rent for studios, 1-bedroom and 2-bedroom units were calculated using the minimum number of occupants allowed for that unit type. The 2-bedroom with den unit uses the average number of occupants allowed in the unit.

Schedule 3: Eligible Incomes – We used 50% of AMI as the minimum income level needed to qualify for this project. While the annual rent may exceed 30% of income at this level, according to information from HUD's and DHCD's website 50-80% of AMI is generally considered an appropriate affordability bracket. The minimum income level corresponds to the minimum number of occupants allowed in the unit. Maximum income to qualify is based on 100% of AMI. We feel it is important to expand the maximum beyond 80% of AMI to ensure unit affordability to qualified applicants. As the rental calculations are based on household incomes equal to 80% of AMI, the broader income range ensures more households will be able to obtain affordable housing at a cost of 30% of their income or less.

Schedule 4: Rent Calculation by Sq. Ft. – Equipped with the maximum allowable rent per unit type, we adjusted the rents taking into consideration the varying sizes within the different unit types. Therefore, we calculated a rent per a square foot for each unit type. We analyzed a number of systems (average, median, max. allowable rent) to establish a model that maintained the affordability of all the units, given the various sizes and types. Equipped with all of these tables we selected a maximum rent per a square foot of \$1.50. The rent per square foot rate was then used to calculate specific rents for each unit size.

Schedule 5: Rent Schedule – A final rent schedule was derived showing unit type, monthly rental rates and number of units available. Used with the Eligible Incomes Table, this schedule will govern qualifying residents and affordable rental rates for this project. Rental rates shaded were capped by the maximum rental rate allowed for that unit type.

Loree Grand ADU Eligibility Tables

Schedule 1: Max. Rental Price Calculation

Household Size	80% of AMI*	Annual Rent (Max)	Monthly Rent (Max)
1	\$57,500	\$17,250	\$1,438
2	\$65,800	\$19,740	\$1,645
3	\$74,000	\$22,200	\$1,850
4	\$82,200	\$24,660	\$2,055

* Based on the HUD 2009 AMI for the DC metro area of \$102,700 for a family of four.

Schedule 2: Max. Rent Per Unit Type

Unit Type	Min. # Occupants	Max. # of Occupants	Annual Rent (Max)	Monthly Rent (Max)	Rent Basis
Studio/Junior 1 bedroom	1	2	\$17,250	\$1,438	1 person
1 bedroom	1	2	\$17,250	\$1,438	1 person
2 bedroom	2	4	\$19,740	\$1,645	2 people
2 bedroom/den	2	4	\$22,200	\$1,850	3 people

Schedule 3: Eligible Incomes

Unit Type	Min. Income (50% AMI)	Max. Income* (1 person)	Max. Income (2 people)	Max. Income (3 people)	Max. Income (4 people)
Studio/Junior 1 bedroom	\$35,900	\$71,900	\$82,200		
1 bedroom	\$35,900	\$71,900	\$82,200		
2 bedroom	\$41,100		\$82,200	\$92,400	\$102,700
2 bedroom/den	\$41,100		\$82,200	\$92,400	\$102,700

* Max. income is based on 100% of AMI.

Loree Grand ADU Eligibility Tables

Schedule 4: Rent Calculation by Sq. Ft.

Unit Type	Unit Size Min. (sq. ft.)	Unit Size Max. (sq. ft.)	Max. Rent*	Max Rent/Sq. Ft.
Studio/Junior 1 bedroom	596	1006	\$1,438	\$1.50
1 bedroom	684	1024	\$1,438	\$1.50
2 bedroom	1173	1362	\$1,645	\$1.40
2 bedroom/den	1362	1362	\$1,850	\$1.36

* Utilities are not included in the monthly rent.

Schedule 5: Rent Schedule

Unit Type	Unit Size (sq. ft.)	Monthly Rent	# Units Available
Studio/Junior 1 bedroom	596	\$894	1
Studio/Junior 1 bedroom	684	\$1,026	2
Studio/Junior 1 bedroom	699	\$1,049	1
Studio/Junior 1 bedroom	701	\$1,052	1
Studio/Junior 1 bedroom	939	\$1,409	1
Studio/Junior 1 bedroom	940	\$1,410	1
Studio/Junior 1 bedroom	1006	\$1,438	1
1 bedroom	755	\$1,133	2
1 bedroom	793	\$1,190	2
1 bedroom	840	\$1,260	2
1 bedroom	866	\$1,299	1
1 bedroom	874	\$1,311	1
1 bedroom	876	\$1,314	1
1 bedroom	896	\$1,344	1
1 bedroom	897	\$1,346	2
1 bedroom	899	\$1,349	3
1 bedroom	978	\$1,438	1
1 bedroom	1006	\$1,438	1
1 bedroom	1024	\$1,438	1
2 bedroom	1173	\$1,645	2
2 bedroom	1362	\$1,645	1
2 bedroom/den	1362	\$1,850	1

* Utilities are not included in the monthly rent.



**Loree Grand @ Union Place
3rd and K Streets NE**

Affordable Dwelling Unit Eligibility Plan and Guidelines

Cultural Development Corporation (CuDC), working as a consultant to Union Place Phase I, LLC, hereby proposes the following ADU Eligibility Plan and Guidelines to the Department of Housing and Community Development (DHCD) for approval.

Philosophy

CuDC's philosophical approach is to create affordable, urban, live/work opportunities for area artists and their families to support the creative workforce, thereby building a culturally rich and diverse community. Exemplary artist housing opportunities cultivate a healthy, stable and creative workforce, retaining the valuable creative human capital otherwise lost when artists are priced out of the city. Artist housing spurs small business development, contributes to public safety efforts and reduces transportation demands. Artist residents are dually vested in the community, contributing to the local income tax base and property tax base. To the extent that artist residents create and sell goods in the District of Columbia, they are also contributing sales tax. A vibrant, diverse creative economy inspires culturally rich neighborhoods and accessible arts opportunities for DC residents, visitors and tourists.

Artistic Eligibility

Affordable artist housing at Loree Grand is open to artists working in all disciplines – visual art, craft, sound and performance art, theatre, dance, music and literary arts. Eligible artists may include, but are not limited to: painters, sculptors, photographers, filmmakers, metal-smiths, writers, musicians, actors, dancers, graphic designers, computer animators, arts administrators and other creative entrepreneurs. Artists are expected to have a home-based component to their artistic practice, a willingness to participate in enlivening the project area and a cooperative spirit. CuDC will conduct a fair, objective selection process wherein applicants will be evaluated based on three criteria:

- Commitment to the artistic practice. Is there a body of work?
- Current and active involvement in that artistic practice. Is the artistic product active and in circulation?
- Housing need. Will the artist housing unit play a role in furthering the artistic practice?

Applicants will be required to submit the following materials: artistic resume, images or samples of artistic product, references and a narrative statement.

Affordable artist housing at Loree Grand is open to all US residents, regardless of current jurisdiction of residency.

Financial Eligibility

Financial eligibility is based on the Planned Unit Development (PUD) Agreement and Affordable Housing Covenant recorded for this project and the Washington DC Uncapped Limits, as presented on DHCD's website, updated to 2009 numbers as calculated by the Department of Housing and Urban Development. The District of Columbia's Inclusionary Zoning guidelines for household size to unit size ratios were also incorporated into the income limits per unit type.

As per the Affordable Housing Covenant, rent was calculated based on affordability for households with an income equal to 80% of area median income (AMI) assuming 30% of gross household income is spent on rent. We expanded the eligibility range to include households earning a minimum of 50% of AMI to households earning a maximum of 100% of AMI. Given the economic climate and project location, this range is critical to the ability to serve area artist constituents and lease all the units. As the covenants do not stipulate any ongoing income verifications, an eligibility range of 50-100% of AMI retains the integrity of the program's goal to provide affordable housing, while also creating a cushion that allows for income fluctuations.

The income guidelines and rent schedule will be updated on a bi-annual basis, adjusted for inflation, using the CPI Index to ensure continued affordability as units turnover.

Applicants will be required to submit recent pay stubs and a copy of their 2008 tax return to demonstrate financial eligibility.

Application Process

CuDC plans to conduct a two-phased process to lease the 30 available units to eligible artists.

Phase I: First-come, first serve. During Phase I, up to 15 units will be available on a first-come, first-serve basis to eligible households over a five-week period. Phase I provided a limited number of proactive, competent applicants the opportunity to immediately lock in their unit of choice. These "early decisions" will motivate the accepted artists to help spread the word about the project and build demand for the remaining units.

Phase II: Lottery. In Phase II, the remaining 15 units (in addition to any that were not leased during Phase I) will be leased to eligible artists through a lottery process. Remaining eligible applicants from the lottery pool, after the units are fully leased will be added to a waiting list to ensure the continued ability to tenant these units.

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Schedule 4: Rent Calculation by Sq. Ft. – Equipped with the maximum allowable rent per unit type, we adjusted the rents taking into consideration the varying sizes within the different unit types. Therefore, we calculated a rent per a square foot for each unit type. We analyzed a number of systems

(average, median, max. allowable rent) to establish a model that maintained the affordability of all the units, given the various sizes and types. Equipped with all of these tables we selected a maximum rent per a square foot of \$1.50. The rent per square foot rate was then used to calculate specific rents for each unit size.

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1 bedroom	\$35,900	\$57,500	\$65,800		
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2 bedroom/den	\$41,100		\$65,800	\$74,000	\$82,200

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Housing and Community Development



Attachment 3

VIA EMAIL (ilana@culturaldc.org)
& FIRST CLASS MAIL

AUG 14 2009

Ilana Branda
Program Manager
Housing and Community Development
Cultural Development Corporation
1835 14th Street, N.W
Washington, D.C. 20009

Re: Loree Grand @ Union Place ADU Eligibility Plan and Guidelines for Phase I

Ms. Branda:

Thank you for contacting the Department of Housing and Community Development ("DHCD") regarding Phase I development of the Loree Grand @ Union Place, which is located between K, 3rd & L Streets N.E. in Washington, D.C., Lot 828, Square 749 ("Phase I"). In accordance with the Planned Unit Development and Affordable Housing Covenant recorded against Phase I ("Covenant"), the Phase I will contain 202 units, of which 28 will be affordable to households with incomes not exceeding 80% of the area median income for the metropolitan Washington, D.C. statistical area ("ADUs"). The Cultural Development Corporation ("CDC"), working as a consultant to Union Place Phase I, LLC, submitted a proposal to DHCD, which included proposed rental rates and household selection criteria for the ADUs for Phase I. CDC provided a revised proposal following its meeting with DHCD on July 9, 2009, which is enclosed hereto¹. The purpose of this letter is to provide CDC with DHCD's determination regarding CDC's revised proposal for ADUs in Phase I.

Monthly Rents for the Affordable Dwelling Units

The revised proposal for Phase I includes five (5) schedules regarding the maximum rental price calculation, the maximum rent per unit type, the eligible incomes, the rent calculation by square foot, and the rent schedule. These schedules build from each other, so DHCD's determination will likely affect more than one schedule.

The HUD 2009 area median income for the metropolitan Washington, D.C. statistical area in 2009 for a family of four is \$102,700.00. Therefore, in extrapolating this number, the maximum monthly housing payments for the affordable would be the following:

¹ The original proposal stated that households earning up to 100% of AMI could qualify to rent ADUs, which was contrary to the Zoning Commission Order No. 05-36. The revised proposal was corrected in the schedules, but not in the text of the proposal. DHCD incorporates changes to the schedules into the proposal by reference.

Household Size	Percentage	80% of AMI	Annual Housing Cost	Monthly Housing Cost
1	70%	\$57,512.00	\$17,253.60	\$1,437.80
2	80%	\$65,728.00	\$19,718.40	\$1,643.20
3	90%	\$73,944.00	\$22,183.20	\$1,848.60
4	100%	\$82,160.00	\$24,648.00	\$2054.00

Schedule 1 in CDC's revised proposal provides the maximum rental price calculation. As a threshold matter, the amounts on Schedule 1 are greater than the information above. As such, the schedules in your revised proposal need to be adjusted. Further, the Covenant requires that the monthly housing payment of the renter shall not exceed thirty percent (30%) of the renter's monthly household income. DHCD includes rent, utilities and other fees (e.g. parking fees²) that are paid by the renter within housing payments. In order for DHCD to determine if the maximum rental price is the monthly housing payment, the existence or non-existence of any of the above mentioned additional housing payments must be disclosed.

CDC proposes that the maximum rental price for the ADUs will be "updated on a bi-annual basis, adjusted for inflation, using the CPI Index[,] to ensure continued affordability as [ADUs] turnover." The Covenant requires that the monthly housing payment of the renter shall be affordable to households with incomes not exceeding 80% of the area median income for the metropolitan Washington, D.C. statistical area. Therefore, the only permissible way to adjust the maximum allowable rent is through annual changes to the area median income. Please contact DHCD if you have questions regarding the appropriate rent to be charged going forward.

Artistic Eligibility Criteria

DHCD is aware of the artesian philosophy behind the development of the Phase I. In contemplation of this philosophy, DHCD understands that CDC created selection criteria to promote an artesian population. CDC's proposes selection criteria for all the ADUs increases the eligibility requirements to include the following:

- Commitment to the artistic practice. Is there a body of work?
- Current and active involvement in the artistic practice. Is the artistic product active and in circulation?
- Housing need. Will the artist housing unit play a role in furthering the artistic practice?

The proposal states that these artistic criteria will be considered by an independent selection panel. Disclose what procedures are in place to ensure the independence of the selection panel from CDC or any other person having an interest in Phase I.

² The Zoning Commission Order No. 05-36 requires one parking space per unit.

Please also disclose how the artesian philosophy will be promoted in the market rate units to ensure that for all units: (1) the internal square footages are uniform, (2) the external design and materials are uniform and (3) the internal appliances and finishes are comparable. This will ensure that Phase I development is in line with the Covenant.

Selection Process

The revised proposal states that tenants for 15 ADUs in Phase I will be selected through a "first-come, first serve" process. Disclose how all prospective tenants will have the same ability to request to be on this list. Further, the revised proposal goes on to state that the remaining 15 ADUs in Phase I will be selected through a lottery process. Disclose how the lottery will be conducted (e.g. computer program). Finally, DHCD would like to be aware of CDC's planned efforts to market and advertise the availability of ADUs in Phase I.

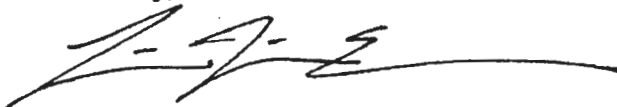
Distribution of Units

During CDC's meeting with DHCD on July 9, 2009, CDC provided DHCD with a "Proposed ADU Layout". The ADUs are not distributed evenly horizontally on the residential floors. CDC stated that the reason for this distribution was to provide the ADUs with a storefront opportunity where artists could showcase their work. DHCD understands that Union Place Phase I, LLC is working with the D.C. Office of Planning to ensure distribution of units are appropriate.

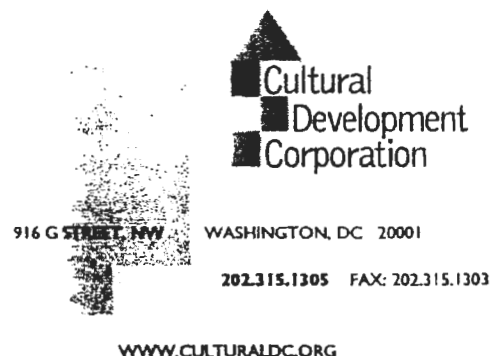
If Union Place Phase I, LLC, or any successor or assignee in interest, seeks to increase the housing cost for the ADUs or change the selection criteria during the applicable affordability period, or create or propose adjustments to regulated DHCD components, please contact DHCD for approval.

In consideration of the above, please submit a revised proposal to Gilles Stucker, the Housing Resource Administrator, for DHCD consideration. Mr. Stucker's mailing address is 1800 Martin Luther King Jr. Avenue SE, Washington, D.C. 20020 and his email address is gilles.stucker@dc.gov.

Sincerely,



Leila Finucane Edmonds
Director



September 16, 2009

Gilles A. E. Stucker Jr.
Housing Regulation Administration
Department of Housing and Community Development
District of Columbia Government
1800 Martin Luther King Jr. Avenue SE
Washington, D.C. 20020

RE: AMENDMENT/RESPONSE TO DHCD LETTER DATED 8.14.09

In response to the letter CuDC received from DHCD on August 14, 2009, we hereby amend our proposal to lease 30 affordable units to artists at the Loree Grand as described below. Additionally, revised income and rent schedules are attached.

Monthly Rents

The revised income and rent schedules align with the calculations provided in the letter dated August 14, 2009 by DHCD. The monthly rent figures are rounded to the nearest five. The revised income levels ensure that no resident will pay more than 45% of his/her annual household income towards housing costs, as recommended by DHCD.

CuDC understands that the maximum monthly rent must include all basic utilities (electric and water, there is no gas in the units) or be reduced by the amount of the utility allowance. We have elected to use the utility allowance published in the DC Register Vol. 56 – No. 33 as established for the Inclusionary Zoning Affordable Housing Program. Schedule 5 has been amended to show an adjusted monthly rent that will be charged to the tenant. Tenants will therefore be responsible to pay their own utilities which will be metered individually in the building.

The rent does not include parking, which is considered an elective amenity in this project. The letter from DHCD noted that, page 4 of the Zoning Order, item number 21 states that the PUD will provide a one-to-one ratio of units to parking spaces. However, the Consolidated PUD (Phase I) only includes 177 parking spaces for 202 units, not a one-to-one ratio.¹ The property's close proximity to two Metro stations, offers all residents convenient public transportation alternatives. Parking spaces in the building will be available at an additional fee. Equal opportunity to rent parking spaces will be provided to both market-rate tenants and artist tenants. There will also be bike parking available within the project. There are currently six Zipcar locations within 4 blocks of the project.

¹ Zoning Order No. 05-36 Page 5, item 27.

Monthly rent will be assessed on an annual basis to ensure compliance with the area median income (AMI) for the Washington, DC statistical area. Any changes to income limit and/or rent, based on updated AMI statistics, will be submitted to DHCD for approval.

Artistic Eligibility Criteria

Artistic Review. A panel comprised of five arts professionals, representing a diverse set of artistic disciplines (e.g. dance, literature, music, theatre, and visual arts) will review the artistic eligibility of all applicants. Panelists and their immediate families will be ineligible to apply for the project. All panelists will be required to sign a conflict of interest policy stating that they have no financial relationship with CuDC, Union Place Phase I or any of their subsidiaries. Panelists will also be required to disclose any previous or current relationship they have/had with an applicant. Depending on the nature of the relationship disclosed, the panelist may be asked to recuse him/herself from scoring that applicant. Any financial or family relationship with an applicant will automatically require a panelist to recuse him or herself. A minimum of three panelists (out of five) will review each application.

The panel will evaluate the applications based on the following criteria:

- Commitment to the artistic practice and/or active participation in the arts industry;
- Demonstrated previous and current involvement in that arts industry; and
- Housing need (Is there a specific role that this live/work unit will play in furthering the applicant's artistic practice?).

The panel will review applicants' resumes, references, samples of work and narrative statements. Panelists will review whether applicants demonstrate past and ongoing active engagement in the arts. Panelists will not review applicants based on the quality of work presented. Panelists will complete scoresheets for all applicants, rating each question on a scale of 1 to 5 (ex 1 = not very active – hasn't worked in the industry for 5+ years; 5 = very active on a day-to-day basis and over the course of the artist's career). Applications will be judged on a cumulative score. An average score of 9 out of 15 will be necessary for an application to be considered eligible. Any applicant whose score falls within 5 points of eligibility will be reviewed by a fourth panelist to ensure a fair process.

Artisan Philosophy. The only artist units in Phase I are the 30 affordable units. There are no market-rate units reserved for artists. As per the PUD requirement, interior square footage, external design and materials will be uniform in size, design and material as the market-rate units. The interior appliances and finishes are the same as the market-rate units.

Selection Process

First-come, First-serve. Given the timeframe between collecting the applications and expected occupancy, CuDC has decided to eliminate the first-come, first-serve phase. All applications received will be entered into the Lottery, per the updated schedule provided.

Lottery. CuDC will conduct a lottery with third party certification that will be open to the public. The date and time of the lottery will be announced publicly at a later date. CuDC will use uniform pre-numbered raffle balls. CuDC will choose an independent person to select the balls. Each eligible applicant will be randomly assigned a number. CuDC will coordinate the leasing of the affordable units by offering leases to applicants in numerical order. Applicants will have 3 business days to enter into a lease. If the applicant has not signed a lease within 3 business days, the applicant with the next number will be offered a lease. Any remaining applicants who are not granted the opportunity to lease units during the initial leasing phase will automatically be placed on a waiting list. The lottery will be a pure lottery; preferential treatment will not be given before or after the lottery.

Marketing and Outreach. CuDC has developed a detailed marketing plan that includes local and national outlets. Our strategy is three-pronged:

1. **Paid Advertising.** We will coordinate paid advertisements in general and arts-related resources throughout the application period.
2. **Industry Resources.** General affordable housing and arts resources that disseminate information via enewletters, online databases and blogs, including the DC Housing Search. We will regularly update the providers on the project/application status.
3. **Earned Media.** We intend to publicize the project widely, reaching out to various media outlets for coverage of the project.

Following this letter is a list of sources CuDC has identified for advertising, posting and earned media.

Additional Concerns

Certification Process. CuDC has reviewed Chapter 5 of the HUD Occupancy Handbook in order to develop a comparable plan for the artist units at the Loree Grand. CuDC understands that all documents for financial certification must be dated within three months of occupancy. As a result, CuDC has made every effort to revise our process. **We request that the financial certification window be extended to a four month time period.** The additional month will allow CuDC to effectively administer the program in time for residents to move-in when the building opens. CuDC will require that all applications submitted include income information through October 31, 2009 or later. With a projected move-in date of March 1, 2010, this schedule will allow all applicants to provide one set of financial documentation at the time of application compliant with the four month window.

CuDC will require all applicants to submit records dated for a one month period, including October 31, 2009 or later, that demonstrates all income sources (e.g. regular pay stubs, income earned from business activities, alimony and child support, educational scholarships and grants, and any social security or other government support). CuDC will work with DHCD to receive the appropriate training to analyze this information according to Chapter 5 of the HUD Occupancy Handbook. Finally, CuDC will recommend eligible applicants to DHCD for certification.

CuDC will coordinate with DHCD to receive financial certification letters for all applicants deemed financially eligible. Once an applicant has received his/her certification letter from DHCD (with a copy to CuDC), CuDC will coordinate unit selection and leasing.

Minimum Income. CuDC has revised the minimum income numbers to ensure no household is paying more than 45% of their annual income towards housing. The property manager, at the direction of the owner, may request that applicants who at the lower end of the income qualification bracket obtain cosigners for their leases.

Gross or Adjusted Income. CuDC is waiting for confirmation from DHCD as to whether the minimum and maximum income levels refer to gross income or adjusted gross income.

Income Verification. CuDC proposes conducting tenant income reviews bi-annually to provide two years of housing security to the artist tenants. A minimum of two years of housing security will encourage artist tenants to invest in the home improvements necessary to live and work productively. Given the unstable economic climate, compounded by the proximity in the cost of the affordable units to comparable market-rate units, offering the artist tenants housing security will allow them to focus on their professional artistic growth and invest in building a community and engaging the neighborhood. At the time of income verification, artist residents whose income has changed putting them below or above the allowable limits will not be offered standard renewal leases for their units. If any market-rate units become available and their income has increased over the maximum income allowed, they will be offered the opportunity to move to a market-rate unit. If there are no market-rate units available, or their income has decreased below the minimum, they will be offered temporary 6-month leases to provide them with time to secure alternative housing. Artist residents who are priced-out of their unit will be encouraged to utilize the DC Housing Search engine to secure alternative housing.

Updated Timeline – October 2009 – March 2010

Month	Date	Event
October	7	Release Loree Grand applications (Tentative Date)
	20	Office hours for prospective applicants
November	9	Online chat - application assistance
December	1	Office hours for prospective applicants
	9	Online chat - application assistance
	17	Deadline: applications
January	throughout	Internal financial and artist reviews
February	18	Loree Grand housing lottery (Tentative Date)
February/March	throughout	Unit selection for lottery winners
March	throughout	Residents take occupancy (expected early March)

Marketing and Outreach

Paid Advertising

Name	Website/Print	Duration of Ad/Number of Runs
Washington City Paper	Print (weekly)	1 week/ 2
Dance Metro DC	www.dancemetrodcc.org	2 months/ 1
Art List	www.theartlist.com	2 months/ 1
DC Metro Centric	http://dcmetrocentric.com/	2 months/ 1
DC Theatre Scene	www.dcthatrescene.com	2 weeks/ 2
Express	Print (daily)	1 day/ 1
Arts Journal	www.artsjournal.com	2 weeks/ 2

Industry Resources

- Arlington Arts Center
- Arlington Cultural Affairs Division
- Art Deadlines List
- Art League of Alexandria
- ArtDC.org
- Artist Housing Scoop (CuDC)
- Art-O-Matic
- Arts & Humanities Council of Montgomery County
- Arts Council of Fairfax
- Arts Opportunities
- Craigslist
- Dance Metro DC
- DC Artists (CuDC)
- DC Arts Center
- DC Commission on Arts and Humanities
- **DC Housing Search**
- DC Theatre Group
- Find Art Info Bank
- Greater Baltimore Cultural Alliance
- Manna, Inc.
- Maryland Art Place
- McLean Project for the Arts
- Pyramid Atlantic
- The Writer's Center
- Washington Calligraphers Guild
- Washington Project for the Arts

Earned Media

Missy Frederick	Washington Business Journal
Liz Price	NoMa BID
Philip Rucker	Washington Post – Philanthropy Beat
Philippa Hughes	CreativesDC/Pink Line Project
DCMuD	Local Blog
Greater Greater Washington	Local Blog
Frozen Tropics	Local Blog
DCist	Local News Website

Arts and Real Estate	Local Blog
DC Metro Centric	Local Blog
Housing Complex	Washington City Paper Blog
Rebuilding Space	Local Blog
Americans for the Arts	National Blog
The Other 35 Percent	Local Blog

Loree Grand ADU Eligibility Tables

Schedule 1: Max. Rental Price Calculation

Household Size	80% of AMI*	Annual Rent (Max)	Monthly Rent (Max)
1	\$57,512	\$17,253.60	\$1,438
2	\$65,728	\$19,718.40	\$1,643
3	\$73,944	\$22,183.20	\$1,849
4	\$82,160	\$24,648.00	\$2,054

* Based on the HUD 2009 AMI for the DC metro area of \$102,700 for a family of four.

Schedule 2: Max. Rent Per Unit Type

Unit Type	Min. # Occupants	Max. # of Occupants	Annual Rent (Max)	Monthly Rent (Max)	Rent Basis
Studio/Junior 1 bedroom	1	2	\$17,253.60	\$1,438	1 person
1 bedroom	1	2	\$17,253.60	\$1,438	1 person
2 bedroom	2	4	\$19,718.40	\$1,643	2 people
2 bedroom/den	2	4	\$22,183.20	\$1,849	3 people

Schedule 3: Eligible Incomes

Unit Type	Min. Income*	Max. Income** (1 person)	Max. Income (2 people)	Max. Income (3 people)	Max. Income (4 people)
Studio/Junior 1 bedroom	\$38,341	\$57,512	\$65,728		
1 bedroom	\$38,341	\$57,512	\$65,728		
2 bedroom	\$43,819		\$65,728	\$73,944	\$82,160
2 bedroom/den	\$49,296		\$65,728	\$73,944	\$82,160

* Min. Income is calculated to ensure no more than 45% of annual income is spent on housing costs.

** Max. income is based on 80% of AMI.

Loree Grand ADU Eligibility Tables

Schedule 4: Rent Calculation by Sq. Ft.

Unit Type	Unit Size Min. (sq. ft.)	Unit Size Max. (sq. ft.)	Max. Rent*	Max Rent/Sq. Ft.
Studio/Junior 1 bedroom	596	1006	\$1,438	\$1.50
1 bedroom	684	1024	\$1,438	\$1.50
2 bedroom	1173	1362	\$1,643	\$1.40
2 bedroom/den	1362	1362	\$1,849	\$1.36

Schedule 5: Rent Schedule

Unit Type	Unit Size (sq. ft.)	Gross Monthly Rent	Utility Allowance	Adjusted Monthly Rent	# Units Available
Studio/Junior 1 bedroom	596	\$894	\$108	\$786	1
Studio/Junior 1 bedroom	684	\$1,026	\$108	\$918	2
Studio/Junior 1 bedroom	699	\$1,049	\$108	\$941	1
Studio/Junior 1 bedroom	701	\$1,052	\$108	\$944	1
Studio/Junior 1 bedroom	939	\$1,409	\$108	\$1,301	1
Studio/Junior 1 bedroom	940	\$1,410	\$108	\$1,302	1
Studio/Junior 1 bedroom	1006	\$1,438	\$108	\$1,330	1
1 bedroom	755	\$1,133	\$150	\$983	2
1 bedroom	793	\$1,190	\$150	\$1,040	2
1 bedroom	840	\$1,260	\$150	\$1,110	2
1 bedroom	866	\$1,299	\$150	\$1,149	1
1 bedroom	874	\$1,311	\$150	\$1,161	1
1 bedroom	876	\$1,314	\$150	\$1,164	1
1 bedroom	896	\$1,344	\$150	\$1,194	1
1 bedroom	897	\$1,346	\$150	\$1,196	2
1 bedroom	899	\$1,349	\$150	\$1,199	3
1 bedroom	978	\$1,438	\$150	\$1,288	1
1 bedroom	1006	\$1,438	\$150	\$1,288	1
1 bedroom	1024	\$1,438	\$150	\$1,288	1
2 bedroom	1173	\$1,643	\$192	\$1,451	2
2 bedroom	1362	\$1,643	\$192	\$1,451	1
2 bedroom/den	1362	\$1,849	\$192	\$1,657	1

**THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT
THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**

**INCLUSIONARY ZONING AFFORDABLE HOUSING PROGRAM
MAXIMUM RENT AND PURCHASE PRICE SCHEDULE**

This Maximum Rent and Purchase Price Schedule is established pursuant to the Inclusionary Zoning Implementation Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. Official Code § 6-1041.01 *et seq.*) ("the Act") and the Inclusionary Zoning Regulations adopted by the Zoning Commission for the District of Columbia and codified in Chapter 26 Title 11 of the DCMR. The Schedule is effective August 14, 2009.

Multi-Family Inclusionary Developments

Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	50% of AMI Units		80% of AMI Units	
					Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
Studio	1	1	\$108	\$250	\$899	\$107,500	\$1,438	\$190,700
1	2	1 - 2	\$150	\$313	\$1,027	\$117,700	\$1,643	\$212,800
2	3	2 - 4	\$192	\$425	\$1,155	\$120,100	\$1,849	\$227,100
3	5	4 - 6	\$233	\$525	\$1,412	\$144,300	\$2,259	\$275,100

Single-Family Inclusionary Developments

Number of Bedrooms	Occupancy Pricing Standard	Occupancy Limits	Estimated Utility Allowance	Estimated Condo Fees	50% of AMI Units		80% of AMI Units	
					Maximum Allowable Rent	Maximum Purchase Price	Maximum Allowable Rent	Maximum Purchase Price
2	3	2 - 4	NC	\$110	\$1,155	\$160,300	\$1,849	\$267,300
3	5	4 - 6	NC	\$130	\$1,412	\$196,800	\$2,259	\$327,600
4	7	6 - 8	NC	\$150	\$1,669	\$233,400	\$2,670	\$388,000

The Maximum Purchase Price or Rent is based on the Washington Metropolitan Statistical Area 2009 Area Median Income of \$102,700 for a family of four (4) as published by the United States Department of Housing and Urban Development. It takes into account an ability to pay thirty percent (30%) of the benchmark income towards the housing cost.

Maximum Allowable Rent is equal to the rent published minus any utility expenses paid by the tenant for heat, air conditioning, cooking, electricity, or hot water. Utilities are estimated above. Actual costs to be deducted for each utility are as described in the District of Columbia Housing Authority's Utility Schedule.

An Inclusionary Development Owner may lower the rents or prices to achieve a larger marketing band of incomes for marketing purposes to assure occupancy.

Maximum Allowable Purchase Prices use the following assumptions:

1. A conventional thirty (30) year, fixed-rate, fully amortizing mortgage at the national average mortgage rate as published by the Federal Housing Finance Agency at www.fhfa.gov (5.12% as of July 28, 2009) plus a one percent (1%) cushion to protect for future interest rate increases and a five (5%) down payment.
2. Real estate property taxes are assessed at the control price at current real estate tax rates and homestead deductions.
3. Condominium fees are estimated at fifty cents (\$0.50) per square foot per month applied to the assumed unit square footages. Single-family homeowner association fees are estimated at ten cents (\$0.10) per square foot per month applied to the assumed unit square footages. Estimated unit sizes are:

Multi-Family Inclusionary Development

Studio	1-Bedroom	2-Bedroom	3-Bedroom
500	625	850	1,050

Single-Family Inclusionary Development

2-Bedroom	3-Bedroom	4-Bedroom
1,100	1,300	1,500

4. Monthly hazard insurance on single-family units is estimated at one half of one percent (0.5%) of replacement value.

NOTE 1. If the actual homeowner/condominium fee for a specific Inclusionary Unit is more than ten percent (10%) higher than the fee assumed in the Maximum Price or Rent Schedule and/or hazard insurance is not included in the condominium fees, then the actual fees and insurance costs shall be used to determine the maximum sales price of the Inclusionary Unit.

NOTE 2. For unit types larger than listed above contact the Agency.

NOTE 3. NC — Not calculated. Contact the Agency.

NOTE 4. More information on Inclusionary Zoning is available at www.dhcd.dc.gov.