NEIGHBOR AGREEMENT

This AGREEMENT, made as of this __ day of _____, 2000, by and between the SMITH PROPERTY HOLDINGS ALBAN TOWERS, L.L.C., a Delaware limited liability company (hereinafter referred to as "SMITH"), and the undersigned residents of the District of Columbia, an ad hoc association of property owners (hereinafter collectively referred to as the "NEIGHBORS").

WITNESSETH

WHEREAS, SMITH is the owner of the Alban Towers Apartment Building located at Lot 14 in Square 1929 in the District of Columbia and more commonly referred to as 3700 Massachusetts Avenue, N.W., Washington, D.C. (hereinafter the "Towers") and the site to the rear of the Towers, located at Lots 7-11 and 13 in Square 1929, and bounded by 38th Street, NW, Garfield Street, NW and Cathedral Avenue, NW (hereinafter the "Rear Site"); and

WHEREAS, SMITH is renovating the Towers, a building listed on the District of Columbia's Inventory of Historic Sites and the National Register of Historic Places for an apartment use of as many as 230 rental units, with existing parking garage of approximately 40 spaces; and

WHEREAS, pursuant to 11 D.C.M.R. § 2100.5, no additional parking is required for the Towers; and

WHEREAS, SMITH has informed residents of the neighborhoods, which are adjacent to the Towers and the Rear Site, that it is desirous of constructing 15 semi-detached houses on the Rear Site and a parking garage beneath the semi-detached houses which will contain 279 parking spaces: 30 for the semi-detached houses and 249 for the use of the Tower's tenants, for a total of 279 automobiles; and

WHEREAS, desiring to maintain the residential character and quality of the neighborhood, the NEIGHBORS have expressed concerns about several issues with respect to the proposed rehabilitation of the Towers and the development of the Rear Site; and

WHEREAS, the NEIGHBORS believe that there will be disruption to the quality of life in their neighborhood during the construction period and impacts on the neighborhood as a result of the SMITH project; and

WHEREAS, SMITH desires to address the various concerns raised by NEIGHBORS and recognizes the importance of living in harmony with its neighbors, and seeks to contribute toward the improvement of its surroundings; and

BZA
Case No. 16586
Exhibit No. 38
Board of Zoning Adjustment
District of Columbia
CASE NO.16586
EXHIBIT NO.38

WHEREAS, SMITH intends to preserve as much green space and as many trees and bushes as possible; to minimize the quantity and impact of traffic on the community; to operate with consideration for the neighborhood with respect to noise and other factors; and to maintain communication with NEIGHBORS to the fullest extent possible; and

WHEREAS, SMITH desires to obtain the support of NEIGHBORS as necessary to fully implement its development proposal as permitted under this Agreement; and

WHEREAS, NEIGHBORS surrounding the Tower and the Rear Site are concerned with the implementation of this Agreement specifically as it relates to the issues referred to herein; and

WHEREAS, SMITH and NEIGHBORS recognize the importance and necessity of working together closely to ensure, on a continuing basis, the compatibility of the proposed development with the qualities of the adjoining neighborhood.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, as further described herein, the mutual receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. SMITH agrees that its development on the Rear Site shall comply with and be subject to the terms of this Agreement and any order issued by the Board of Zoning Adjustment ("BZA"), if any, with regard to the development of the Rear Site.

2. NEIGHBORS agree to support SMITH, in writing and/or by oral testimony of an authorized representative(s) of NEIGHBORS in any administrative proceedings, applications and/or actions before the various District of Columbia agencies, including the BZA, necessary to fully implement this Agreement in accordance with the proposal furnished to the BZA and NEIGHBORS as of the date of this Agreement. NEIGHBORS' obligation to support SMITH in any administrative proceeding after approval of any relief obtained from the BZA shall be contingent upon SMITH's compliance with the terms and conditions of the Agreement, including any terms and conditions deemed to be applicable to the development by the District of Columbia under the District of Columbia's laws and regulations. SMITH shall promptly notify NEIGHBORS of any material developments relating to the terms and conditions of this Agreement prior to final determination by the BZA. Notwithstanding the foregoing, nothing contained herein provides any obligations or responsibilities on the part of NEIGHBORS with regard to any development proposal or use of the site not described herein.

3. SMITH agrees to implement a Landscaping Plan for the Rear Site as more fully shown and described in Exhibit A. The Landscaping Plan sets forth the planting to be undertaken by SMITH on the Rear Site, and any other portions of the Square shall be maintained

by SMITH in perpetuity. A triangle park in front of the Towers shall be maintained by SMITH in perpetuity to the extent permitted by the District Government.

4. SMITH agrees to establish a landscaped buffer area on the east side of 38th Street and up to five street trees on the west side of 38th Street, within the public space, all of which is between improved portions of the Towers and the Rear Site and the neighborhood houses, and to perform the landscaping work, as depicted in Exhibit A.

5. SMITH agrees to undertake to stabilize and maintain open areas not built on, including the planting of grass, and planting of trees and shrubs except as provided herein with regard to the use of the Rear Site Landscape Plan. Moreover, SMITH agrees to preserve as many trees and shrubs as possible and as long as possible consistent with reasonable needs of housing construction.

6. SMITH agrees to utilize the services of American Pest Control, or a similar entity, for the purpose of installing bait stations throughout the neighborhood as a rat control program, and the NEIGHBORS waive any liability of SMITH to them as a consequence of the use of such bait stations.

7. SMITH agrees to comply with storm drainage and storm water management plan contained in Exhibit B both during and after construction on the properties in the area and to take remedial measures to assure storm runoff shall not damage NEIGHBORS' homes or grounds, if such plan is not complied with.

8. SMITH agrees that during construction on the Rear Site and rehabilitation of the Towers, contractors for SMITH shall be subject to the following rules and regulations: (a) contractors shall work closely with the NEIGHBORS to minimize disturbances during construction to keep to a minimum noise, traffic, vibrations, air pollution, and other adverse effects from construction; (b) construction and construction related activities shall not start before 7 a.m. nor continue after 5 p.m.; (c) major machinery such as backhoes and front end loaders shall not start before 7:30 a.m. To the extent possible, SMITH shall abate noise until 8:00 a.m. In addition, SMITH make a good faith effort to provide a quiet period of 30 minutes duration over the lunch hour each day (d) trash shall not be collected before 7 a.m. or after 7 p.m. (e) no pile driving is anticipated or expected but, should unforeseen circumstances require pile driving, as opposed to any other available method, SMITH will provide the NEIGHBORS with at least seventy-two (72) hours notice, excluding weekends and holidays of the need to perform pile driving, the duration of the pile driving, the basis for the pile driving and make every effort to provide additional advance notice; (f) weekend exterior construction activity, if any, shall be confined to a period of 9 a.m. to 5 p.m. on Saturdays; (g) contractors shall comply with the

"Cooper Code", a plan governing truck traffic developed by Advisory Neighborhood Commission 3-C and attached hereto as Exhibit C; (h) contractors shall maintain a program of dust control as follows: periodic watering of soil, daily cleaning of 38th Street, daily washing of truck tires and undercarriages; (i) construction workers shall avoid parking on 38th Street; (j) SMITH shall use its best efforts to employ a "noise monitor" to ensure that diesel engines on trucks do not create an excessive level of noise while idling or during startup; (k) prior to commencement of construction on the Rear Site, SMITH shall cause to be prepared and deliver to NEIGHBORS traffic studies of the area; (l) SMITH will try to avoid using 38th Street to the extent possible; (m) SMITH shall promptly, upon receipt, provide NEIGHBORS with copies of all building permits; (n) SMITH shall provide NEIGHBORS with e-mail alerts or extra-net communications regarding any instances when construction is likely to produce considerably more noise than usual for construction or increased noise levels for an unusually long period; (o) SMITH shall provide NEIGHBORS with information regarding the ventilation system utilized for the parking garage on the Rear Site, the A/C for the residential structures on the Rear Site and the rooftop A/C for the Towers. Such systems shall not produce any greater noise than provided in the specifications in SMITH's plans (attached hereto); and (p) SMITH shall provide quarterly progress reports or newsletters to NEIGHBORS on the construction on the Property and the condition of the roads beginning on date of execution hereof.

9. As for the use of the parking garage on the Rear Site, SMITH agrees that it shall not be used for any purpose other than as parking for the residential tenants or employees of the Towers and the semi-detached houses on the Rear Site, and guests of residents. The premises shall not be subleased or used by entities other than as provided herein. Tenants shall be encouraged to use the garage whenever possible and avoid parking on the surrounding streets.

10. SMITH shall comply with the construction traffic plan attached hereto as Exhibit E. SMITH shall carry out the plan so as to minimize any negative impact on NEIGHBORS. SMITH agrees that it shall not seek or support other changes in residential parking without concurrence of NEIGHBORS.

11. SMITH and NEIGHBORS agree to create, within sixty (60) days of BZA approval of the Development, an on-going Liaison Committee. The Liaison Committee shall be composed of two representatives from SMITH, and two representatives selected by NEIGHBORS, provided that the representatives of NEIGHBORS (other than consultants) must live in the neighborhood.

12. SMITH agrees to structural monitoring of neighborhood housing during construction and agrees to provide for the photographing or recording via survey of all interior

and exterior conditions and buildings, where access is granted by the owner, to ascertain conditions prevailing before construction begins, the preparation of structures and support members for adjacent drilling and the establishment of a monitoring program, including any required seismic or crack-detection monitoring. SMITH shall indemnify and hold NEIGHBORS harmless from and against any and all loss, damage, cost or expense, or personal injury, including death, resulting from or arising out of the work performed on or about the Rear Site pursuant to this Agreement, or in connection with the excavation and construction of the Rear Site. SMITH shall promptly repair, at its sole cost and expense, any damage to the NEIGHBORS' property or the NEIGHBORS' improvements caused by the excavation and construction contemplated by this Agreement. SMITH shall comply with all applicable District of Columbia Government regulations and codes with respect to construction activities, protection of adjoining properties, and repair of any damage to adjoining property or public space.

13. To improve the transportation situation in the area, SMITH shall do the following: (a) SMITH shall consider seeking the establishment or modification of parking zones favoring residents of the neighborhood; (b) SMITH shall confer with neighbors on the design of the bus shelter proposed for Wisconsin Avenue; and (c) SMITH shall seek a new southbound bus stop at the intersection of Wisconsin Avenue and Garfield Street.

14. SMITH shall consider making a joint appeal to the utility companies and the City to upgrade and bury the utilities on 38th Street and then resurface the whole block.

15. To facilitate resolution of complaints by NEIGHBORS pertaining to the terms of this Agreement or other matters:

(a) SMITH shall maintain the following procedures:

(1) SMITH's representative to the Liaison committee may be notified by calling the principal, whose current number is 202-364-1825, or another phone number to be established if this number is changed. SMITH shall use reasonable and or best efforts to resolve the issue as promptly as possible.

(2) If the issue is not resolved, the person or party raising the issue, or SMITH, shall notify the Liaison Committee. The Liaison Committee shall attempt to resolve the problem within 30 days to the satisfaction of the Liaison Committee. During this process, SMITH and NEIGHBORS are committed to working in good faith toward resolution of the problem. To the extent such issue arises which is not subject to the arbitration remedy contained herein and remains unresolved by the Liaison Committee after thirty days, the parties agree to submit the dispute to mediation under such terms and conditions that are developed by the Liaison Committee.

(3) Regardless of whether any disputes arise between the parties, SMITH agrees to hold at least one community meeting a year with the parties to this Agreement at a time to be selected by the Liaison Committee to discuss and resolve any issues which arise from the use or operation of the Towers and Rear Site.

16. The parties hereto agree to request that the BZA and/or any other D.C. agency incorporate the terms of this Agreement as a condition of any Final Order affecting any and all administrative proceedings, application or actions referred to herein. The provision, which the parties shall request to be included as a condition to any order, shall be substantially similar to the following:

> The terms and conditions of a certain agreement between SMITH and NEIGHBORS, dated July 5, 2000 are incorporated in this order as though fully set forth herein and shall be enforceable in the same manner as any other condition contained in an order of this Board.

As so incorporated, the terms of the Agreement shall be enforceable through the zoning code enforcement procedures of the District of Columbia. Independently of such incorporation, the terms of the Agreement shall continue in full force and effect as an agreement among the parties, and shall be enforceable through the Liaison Committee procedures or through binding arbitration proceedings commenced by any party to the Agreement no sooner than 30 days after notice of the violation of the terms of this Agreement. The arbitrator shall be approved by the American Arbitration Association and the arbitration shall follow the policies and procedures of the said Association. Arbitration proceedings shall be held in the District of Columbia. The arbitrator will be asked at the outset to make a finding as to whether or not the case is frivolous. If he so finds, the loser will be required to pay all costs and attorneys fees.

17. For purposes of this Agreement, the terms "development proposal", "project" or "development" shall mean the exhibits attached hereto and this Agreement.

18. If any provision of this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof and any other application thereof shall not in any way be affected or impaired, and such remaining provisions shall continue in full force and effect. Nothing herein will supersede laws and regulations of the District of Columbia or prevent the parties hereto from seeking enforcement of said laws and regulations.

19. This Agreement constitutes the entire agreement between the parties with respect to the subject matter described herein.

20. All parts of this Agreement shall be governed by and construed in accordance with the laws of the District of Columbia. SMITH shall not seek any order from the BZA or any other District or federal agency, which is inconsistent with this Agreement.

21. The terms of this Agreement contained herein are binding on SMITH, its subcontractors, agents, assigns and other successors in interest on NEIGHBORS, their heirs, devisees and assigns. This agreement shall run with the land and be recorded among the land records of the District of Columbia.

22. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement, except as modified by this Agreement. The parties shall carry out the obligations set forth in the Exhibits as fully as though such obligations were set forth in the body of the Agreement.

23. No change or modification of this Agreement or any waiver of the provisions hereof shall be valid unless it is in writing and signed by all of the parties hereto. Waiver from time to time of any provision or of any default hereunder shall not be deemed to be a full waiver of such provision or waiver of any other provision hereunder or a waiver of any earlier or later default.

24. All notices and communications hereunder shall be in writing and deemed duly given if personally delivered or mailed by certified mail, return receipt requested, postage prepaid

If to NEIGHBORS: M. Jon Vondracek
2924 38th Street, N.W.
Washington, D.C. 20016

Neill Heath
3819 Cathedral Ave, N.W.
Washington, D.C. 20016

Robert Mattox and Johara Alatas
2914 38th St., N.W.
Washington, D.C. 20016

Ciro De Quadros
2920 38th Street, N.W.
Washington, D.C. 20016

Jeremiah Norris
3708 Massachusetts Ave, N.W.
Washington, D.C. 20016

Christian P. Westermann
2912 38th St., N.W.
Washington, D.C. 20016

Christopher M. Jones
3805 Garfield St., N.W.
Washington, D.C. 20016

Barton C. Abbott
3808 Cathedral Ave, N.W.
Washington, D.C. 20016

Dorothy K. Ballas
2926 38th St., N.W.
Washington, D.C. 20016

Lars H. Hydle
2918 38th St., N.W.
Washington, D.C. 20016

Marie Shanley
3801 Garfield St., N.W.
Washington, D.C. 20016

With a copy to: Stephen N. Gell, Esq.
Fifth Floor, 1101 30th Street, N.W.
Washington, DC 20007

And if to SMITH: Mr. James Kane
Project Manager
Charles E. Smith Companies
2345 Crystal Drive
Suite 1100
Arlington, Virginia 22202

With a copy to: Robins, Kaplan, Miller & Ciresi L.L.P.
Attn.: Richard B. Nettler
1801 K Street, N.W.
Suite 1200
Washington, D.C. 20006

The parties hereto shall be responsible for notifying each other of any change of address.

25. Any dates specified in this Agreement which is a Saturday, Sunday or legal holiday shall be extended to the first regular business day after such date which is not a Saturday, Sunday or legal holiday. Any reference herein to the singular shall include the plural and reference to the male, female or neuter gender shall include reference to all other genders.

26. Time shall be of the essence with regard to all matters contained within this Agreement.

27. The date on which this Agreement is accepted by the last party to accept and sign this Agreement shall be inserted as the effective date of this Agreement under the first paragraph.

IN WITNESS WHEREOF, on the day and year first above written, the said _____ of the SMITH PROPERTY HOLDINGS ALBAN TOWERS L.L.C., has caused these presents to be signed for and on its behalf by _____, and its seal to be hereunto affixed and attested by _____ its Secretary and does hereby constitute and appoint, the said _____ to be its true and lawful attorney in fact for it and in its name to acknowledge and deliver according to law.

ATTEST:

_____

SMITH PROPERTY HOLDINGS ALBAN TOWERS L.L.C.

By: _____

DISTRICT OF COLUMBIA, ss:

I, _____, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT, _____, who is personally well known to me as the person named as the attorney in fact for the SMITH PROPERTY HOLDINGS ALBAN TOWERS L.L.C., in the foregoing, bearing date on the ___ day of _____, 2000, personally appeared before me in said District of Columbia and as attorney in fact as aforesaid, acknowledge the same to be the act and deed of SMITH PROPERTY HOLDINGS ALBAN TOWERS L.L.C., and that he delivered the same as such.

Given under my hand and seal this _____ day of _____, 2000.

_____
Notary Public

My Commission Expires: _____

DISTRICT OF COLUMBIA, ss:

I, _____, a Notary Public in and for the District of Columbia, do hereby certify that who is named as attorney-in-fact for the, personally appeared before me in said District, the said being personally well known to me as the person named as attorney-in-fact in the above instrument for the said, and acknowledged the same to be the act and deed of the said and that he delivered the same as such, on this date, _____.

Given under my hand and seal this ____ day of _____, 2000.

_____

Notary Public

My Commission expires:

[Notarial Seal]

LIST OF EXHIBITS

Exhibit A. Landscaping Plan

Exhibit B. Garage, Storm Water Management & Soil Erosion Plans

Exhibit C. Cooper Code

Exhibit D. Neighbor Health Club List

Exhibit E. Construction Traffic Plan

Exhibit F. Parking List