STATEMENT OF REASONS IN SUPPORT OF
APPLICATION OF BUNDY DEVELOPMENT CORPORATION
FOR VARIANCES FROM SECTIONS 402.4 AND 400.1

D.C. OFFICE OF ZONING
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THIS STATEMENT OF REASONS is submitted by Bundy Development Corporation ("Applicant"), owner of Lot 26 in Square 243 ("Property"), by Greenstein DeLorme & Luchs, P.C., its attorneys, in support of an application for variances from Sections 402.4 (floor area ratio) and 400.1 (building height).

BACKGROUND; OVERVIEW. This Application has become necessary because a very recent rezoning of the Property from R-5-D to R-5-C -- unknown to the Applicant, the Zoning Administrator (DCRA), the D.C. Surveyor, the Historic Preservation Review Board and the community -- has jeopardized a planned multi-family residential project. Because the rezoning was unknown, the project has been fully designed based on the R-5-D zone requirements, received approvals from the Historic Preservation Review Board and obtained community support. In addition, complete construction plans and drawings have been prepared by Eric Colbert & Associates PC and its consulting engineers, an application for a building permit has been submitted to DCRA (See Attachment "A") and a filing fee in the amount of $1200.00 has been paid by the Applicant to the D.C. Government. Such application is currently under review by DCRA. All of the above actions were taken based on the knowledge, later proven to be incorrect, that the Property was zoned R-5-D.

The predicament in which the Applicant finds itself is not based on any errors or omissions made by the Applicant but, unfortunately, is the direct result of reliance by the Applicant on action by the D. C. Government. Indeed, the Applicant did everything it could do to inform and protect itself with respect to the zoning classification of the Property, which it believed to be R-5-D based upon information it obtained from the D.C. Government. The actions taken by the Applicant to determine the zoning classification of the property included the following:

(1) Obtained a Certificate of Zoning from the Office of Zoning dated November 10, 1999 (Attachment "B") which indicates the Property is zoned R-5-D.[1]

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[1]The Applicant purchased the Property on October 29, 1999 and obtained a Certificate of Zoning (Attachment "B") on November 19, 1999. The order of the Zoning Commission that rezoned the Property from R-5-D to R-5-C (Zoning Commission Order No. 914, Case No. 97-7(I)), was dated January 10, 2000 and published in the D.C. Register on February 25, 2000.

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Exhibit No. 3

Board of Zoning Adjustment
District of Columbia
CASE NO.16730
EXHIBIT NO.3

(2) Caused the Recordation of a Subdivision Plat on March 21, 2001 which contains a signature by the Zoning Administrator confirming that the zoning of the Property is R-5-D (Attachment "C"); and

(3) Confirmed the zoning of the Property as R-5-D in a telephone conversation with Mr. Olutoye Bello of the Zoning Administrator's Office on February 20, 2001.

The Certificate of Zoning issued by the Office of Zoning on November 10, 1999, certifying that the Property was R-5-D, was incorrect and/or misleading. The certification was incorrect and/or misleading because it did not cross-reference or identify a proceeding (Z.C. No. 97-7), which was pending before the Zoning Commission at the time, that included a proposal to rezone the Property from R-5-D to R-5-B. This pending proposal in effect "downzoned" the Property from R-5-D to R-5-B. The Office of Zoning should have advised the Applicant of this proceeding at the time it issued its Certificate of Zoning because Section 3202.5 of the Zoning Regulations provides that an application for a building permit may be issued only "in accordance with the most restrictive zone district classification being considered for the site." (Emphasis added.)

SUBJECT PROPERTY. The Property is Lot 26 in Square 243 and is known as 1320 13th Street, N.W. The Property is in the block bordered by Vermont Avenue, N.W. (to the west), N Street, N.W. (to the south) and O Street, N.W. (to the north).

PROPOSED DEVELOPMENT. The Applicant proposes to develop an condominium building containing nineteen (19) condominium units. The condominium building will contain six (6) parking spaces. The building was designed to R-5-D standards (**SEE DISCUSSION ABOVE**) and therefore has a floor area ratio of 3.5. Although a building of ninety (90) feet is allowed by the R-5-D zone district, the project has been designed to be constructed to a height of seventy-five (75) feet in order to be compatible with the scale and height of nearby buildings in the Logan Circle Historic District. The proposed building will have a rear yard of seventeen (17) feet and will occupy no more than seventy-five percent (75%) of its lot.

APPROVAL BY THE HISTORIC PRESERVATION REVIEW BOARD, SUPPORT BY ANC 2-F AND THE LOGAN CIRCLE COMMUNITY ASSOCIATION. The project was approved by the Historic Preservation Review Board (HPRB) on February 22, 2001 (Attachment "D"). In conjunction with the

submission of the plans to HPRB, the project was reviewed by ANC 2F and the Logan Circle Community Association ("LCCA"). ANC 2F voted 6 to 0 "to recommend to the HPRB that it approve the general design concept of the proposed new residential building...." (Attachment "E") and the LCCA Historic Preservation Review Committee stated that "(i)n general, we support the design of the project with the following conditions and/or comments...."(Attachment "F").

REQUESTED ZONING RELIEF. The Applicant seeks relief from the provisions of Sections 402.4 (floor area ratio) and 400.1 (height of buildings or structures). The proposed building was designed to R-5-D standards and therefore has a floor area ratio (FAR) of 3.5 and a building height of seventy-five (75) feet. The R-5-C zone district allows a FAR of 3.0 and a building height of sixty (60) feet. [A building containing an FAR of 3.5 and a height of ninety (90) feet is allowed by the R-5-D zone district.] The project has been designed to be constructed to an FAR of 3.5 and a height of seventy-five (75) feet.

EXTRAORDINARY OR EXCEPTIONAL SITUATION APPLICABLE TO SUBJECT PROPERTY. The Applicant is truly faced with an extraordinary or exceptional situation applicable to its property: governmental action, later proven to be incorrect, on which the Applicant relied to its detriment, with respect to the zoning requirements applicable to the property. Such governmental action was specific to the Property and will, if not remedied by the grant of the application, "result in peculiar and exceptional practical difficulties...upon the owner of the property...." (See Section 3103.2, Zoning Regulations).

REQUESTED RELIEF CAN BE GRANTED WITHOUT SUBSTANTIAL DETRIMENT TO THE PUBLIC GOOD AND WITHOUT SUBSTANTIAL IMPAIRMENT OF THE ZONE PLAN. The requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. As stated in the HPRB Staff Report and Recommendation, "the design intent is for a contemporary building that establishes compatibility with the surrounding historic buildings in its materials use..., and scale and facade rhythm (as is established primarily by the width, spacing and articulation of the projecting bays...." In addition, although the project was designed to the R-5-D standards (**SEE DISCUSSION ABOVE**), a grant by the Board of the requested variances will not cause substantial detriment to the public good or substantially impair the zone plan because the variances are not of such a magnitude that they will cause such adverse consequences. Furthermore, the two adjacent

properties have blank walls and, therefore, no windows will be blocked by such additional FAR or building height. The seventy-five (75) feet of building height on 13th Street is appropriate because of the considerable width of 13th Street (i.e., 110 feet).

FOR THE FOREGOING REASONS, it is respectfully submitted that the Applicant is entitled to, and should be granted, the requested zoning relief.

Respectfully submitted,

GREENSTEIN DELORME & LUCHS, P.C.

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