Government of the District of Columbia

Office of the Deputy Mayor
for Planning and Economic Development

May 17, 2004

District of Columbia
Board of Zoning Adjustment
441 4th Street, N.W., Suite #210
Washington, D.C. 20001

Re: BZA Case #17145 (Application of Washington Convention Center Authority and The District of Columbia

Dear Board Members:

Please find attached the following materials requested by the Board at the conclusion of the April 13, 2004 public hearing on the captioned case:

1. Site Plan and Layout Plan, including:
   - layout of entrances and exits
   - lighting
   - Landscape Plan, including special treatment toward eventual permanent restoration of the 10th and I Streets axes.
2. Landscape and Edge Condition Narrative.
3. Memorandum of Agreement Regarding the District of Columbia Arena Project. (Please note that the District is not required to reopen 10th and I Streets until the debt on the former convention center has been retired [page 6, Item D.2]).
4. ANC 2F - Attached is a letter from Wachovia Bank to WCCA in which Wachovia expresses concerns about certain conditions proposed by ANC 2F that would govern the operation of the interim parking lot. WCCA has presented the Wachovia letter to ANC 2F and is seeking to renegotiate the terms of the conditions that are issues of concern by Wachovia.
5. Interim Utilization of the Site for the Homeless – The attached describes the impact of the interim utilization of the site as a homeless shelter.

We would also like to express our concern regarding the Board's apparent intention to apply the burden of proof for a use variance in this case. We think that the test prescribed by the Zoning Ordinance is that for an area variance (i.e., practical difficulty rather than undue hardship).

As we mentioned in our previous submission, although the courts have never unequivocally defined the difference between a use variance and an area variance, an area variance has been characterized

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Exhibit No. 40

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EXHIBIT NO. 40

by the courts as one that "does not alter the character of the zoned district," whereas a use variance seeks a use ordinarily prohibited. The simple fact is that, if the Zoning Commission intended that proposed parking lots within the Downtown Development District Overlay (DD/Overlay) were to be held to the standard of a use variance, a parking lot would not have been a permitted use under any circumstances within the overlay area.

The Zoning Commission determined, however, by including Section 1702.7, that parking lots could be permitted in the DD/Overlay under certain conditions. In establishing the variance standard of Section 1702.7 (c), it is clear that the Commission intended that the burden of proof be significantly higher than that for a special exception (so as not to encourage surface parking lots), but the anticipation of parking lots being permitted in the district at all indicates that the Commission did not believe that parking lots would "alter the character of the zoned district."

Under any circumstances when development of a parcel of land in the DD/Overlay cannot proceed immediately, the only economic interim use of that land is for parking. To deny that use would be to deny all economic use of the property for the period of time pending redevelopment, which is clearly not the intent of the Zoning Ordinance and which would constitute a regulatory taking of the property.

For the convenience of the Board, the following summarizes how the burden of proof for an area variance has been met in this case:

Extraordinary or Exceptional Condition

- **With the existing structure**: 1) single-purpose facility, 2) obsolete for designed use (even before construction of new facility), 3) no viable economic use.
- **Without the existing structure**: 1) cannot meet the requirements of Sections 1702.7 (a) and (b) because of insufficient number of retailers and residential developments nearby and infeasibility of a merchants' park and shop organization to serve site; 2) cannot begin redevelopment of the site for several years due to protracted planning process.

Practical Difficulty

No reasonable interim use of the site unless requested permission for surface parking is granted.

No Substantial Detriment to Public Good or Zone Plan

1) Temporary interim parking lot will exist only long enough for planning process to be completed, 2) no appreciable impact on traffic patterns, 3) parking lot will temporarily meet demand for parking in the area, 4) parking lot landscaping will provide significant public amenities during interim period.

We look forward to the Board's favorable consideration of this matter at its June 8, 2004 public meeting.

Sincerely,

Susan Vener Linsky
Special Assistant

Claude E. Bailey
General Counsel

Attachments (5)

cc: Eric Price, Deputy Mayor
Allen Y. Lew (WCCA)



LEGEND

- A RAMPED PEDESTRIAN ISLAND TO N.Y. AVENUE
- B FEDERAL RESERVATION
- C PERFORMANCE STAGE
- D PROJECTION SCREEN
- E STEPPED GABION SEAT WALL
- F SLOPED RAMP
- G PEDESTRIAN ISLAND
- H EXISTING TREES TO REMAIN
- I OVERLOOK TO PARKING AND SCRIMS OVER PARKING
- J 3'-0" STORMWATER INFILTRATION ZONES @ EA. PARKING BAY
- K COLORED SCRIMS
- L 6' WIDE VEGETATION / BIORETENTION ZONE
- M SITE FOR INFORMATION KIOSK
- N ENHANCED PAVEMENT @ PEDESTRIAN CROSSING

LIGHTING NOTE:

PARKING LOT WILL BE LIGHTED TO A LEVEL OF 1 FOOT-CANDLE, MINIMUM AVERAGE MAINTAINED. NO LIGHT WILL SPILL BEYOND THE LIMITS OF THE SITE.

WASHINGTON CONVENTION CENTER TEMPORARY LANDSCAPE

Martha Schwartz, Inc.
141 Sherman Street #200
Cambridge MA 02140
Tel. 617-661 6941
Fax.617-661 6383
mail@marthaschwartz.com

THE
RITCH
STUDIO

ISLAND SCHEME

SCALE 1"= 40'-0"

LANDSCAPE AND EDGE CONDITION NARRATIVE **ATTACHMENT 2**

All landscaping, paving, lighting and entrance/exist locations will conform to 11DCMR §2303.1

LANDSCAPED AREA CALCULATIONS

Total area of parking lot:	370143 sf
Area of green pedestrian "island":	29015 sf
Area of green public spaces at 9th and New York:	4368 sf
Area of planted buffers at H Street and 11th Street:	4224 sf

The 37,607 square foot landscaped area comprises just over 10% of the total site area. The planted buffers along H Street will act as bio-retention areas, and will be fed by run-off from north-south channels that will be installed between parking lanes. All of this will augment the underground stormwater retention at the southern edge of the side.

THE "ISLAND". The pedestrian island will define the 10th Street corridor between New York Avenue and H Streets, tying the site into the city street grid. It will provide a significant break in the large parking lot, define the southwest corner of the site as the primary events area, and provide an area for pedestrians and additional programming. Descending from the New York Avenue sidewalk at the north, the "island" will break at the "Eye" Street" extension through the parking lot to allow for vehicular circulation between the east and west sections of the site. It will be terraced on the west side to provide seating for programmed events in the defined events area along 11th Street.

H STREET: The sidewalk on H street, east of the "island," is buffered from the parking lot by a 6' wide planted strip that also acts as a bio-retention area. West of the "island" the 6' planted strip is interrupted by spaces that will provide the flexibility to accommodate various types of programming opportunities, including temporary booths, accessible from the sidewalk.

11th STREET: The 11th Street sidewalk is buffered from the parking lot by a 6' wide planted strip, interrupted by spaces that will provide the flexibility to accommodate various types of programming opportunities, including temporary booths, accessible from the sidewalk.

NEW YORK AVENUE: The federal reservation at 11th Street and NY Avenue will be upgraded to provide additional gathering area to compliment the site. The "island" defining the 10th Street corridor begins east of the federal reservation. The island will be sloped to meet New York Avenue at the existing sidewalk level. East of the island, the sidewalk along New York Avenue will be separated from the parking lot by a railing, or low wall due to the significant elevation difference between the lot and the sidewalk. This will create an "overlook" separated by a railing from the parking lot to the south. The existing grove of trees and pedestrian area at the corner of 9th Street and New York Avenue will be retained and upgraded with some grassy area, and the potential for a temporary information structure and a stairway into the parking lot.

9th STREET: The landscape plan retains all existing street trees and groves of site trees wherever possible, particularly the Bradford Pear trees that are densely planted at mid-block along 9th Street. Additionally, the 9th Street streetscape brings pedestrians into direct contact with the art installation over the eastern parking lot by extending the overhead scrim out over the sidewalk, where the former convention center's drop-off island is. The idea here is to not augment the existing trees with additional planted buffering, so that the overhead art installation will be the dominant element the public sees as it walks along 9th Street.

MEMORANDUM OF AGREEMENT
BY AND AMONG
THE NATIONAL CAPITAL PLANNING COMMISSION,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICER,
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING THE DISTRICT OF COLUMBIA ARENA PROJECT

WHEREAS, the Comprehensive Plan for the National Capital, District of Columbia Elements, as adopted by the D.C. Council and reviewed by the National Capital Planning Commission ("NCPC"), was amended on November 3, 1994 to specifically provide for an arena as a "priority use" on Square 455 and the southern portion of Square 454; and

WHEREAS, the Downtown Urban Renewal Plan may not be inconsistent with the Comprehensive Plan; and

WHEREAS, the Comprehensive Plan establishes a policy for the amendment of the Downtown Urban Renewal Plan for Square 455 and the southern portion of Square 454 to permit a sports and entertainment complex as a "priority use"; and

WHEREAS, the Comprehensive Plan contains various provisions encouraging the protection of the L'Enfant and McMillan Plans, and also contains provisions encouraging downtown development to promote the social and economic revitalization of the District of Columbia; and

WHEREAS, the District of Columbia Redevelopment Land Agency ("RLA") has requested that the NCPC modify the Downtown Urban Renewal Plan, and approve site and building plans to authorize construction and operation of a 20,600-seat arena on an approximately 5-acre site in the Gallery Place area of Northwest Washington, D.C. ("Arena" or "Arena Project"), which would encompass (1) Square 455, which is between F and G Streets, N.W. and 6th and 7th Streets, N.W.; (2) the right-of-way for the 600 block of G Street, N.W.; and (3) approximately the southern fifth of Square 454, which is located between G, H, 6th, and 7th Streets, N.W.; and

WHEREAS, DC Arena L. P. ("DCALP"), the limited partnership for which Washington Sports & Entertainment Inc. is the general partner and Abe Pollin is President of the general partner, will privately finance and construct the proposed Arena Project, which will be governed by the terms of a land disposition agreement between DCALP and RLA pursuant to a 30-year lease that allows for two 10-year renewal options; and

WHEREAS, DCALP is the licensee for the development of site and building plans that are to be approved by NCPC; and

WHEREAS, the District of Columbia ("District"), acting through the municipal agencies under the direct control of the Mayor, including the Office of Planning ("DCOP") and the Department of Public Works ("DCDPW"), among others, is responsible for the implementation of a number of the mitigation measures required by this Memorandum of Agreement ("MOA"); and

WHEREAS, the D.C. Sports Commission is responsible for the promotion and development of sports in the District of Columbia; and

WHEREAS, NCPC has determined that construction of the Arena Project will have an adverse effect on properties listed in or eligible for listing in the National Register of Historic Places, including National Historic Landmarks, which are identified in Appendix A of this MOA, and has consulted with the District of Columbia State Historic Preservation Officer ("SHPO") and the Advisory Council on Historic Preservation ("Council") in accordance with Sections 106 and 110(f) of the National Historic Preservation Act, 16 U.S.C. § 470 (the Act), and its implementing regulations (36 C.F.R. Part 800); and

WHEREAS, those adverse effects to historic properties result primarily from the placement of the Arena Project across the right-of-way of the 600 block of G Street, N.W., as well as effects associated with the design, construction, traffic, parking and long-term operations of the Arena, as noted in the Historic Resources Report for the proposed D.C. Arena dated June 1995; and

WHEREAS, some of the interested persons participating in the Section 106 consultation process believe that the effect on the L'Enfant Plan of closing G Street can not be fully mitigated; and

WHEREAS, the SHPO stated in a letter to NCPC dated July 25, 1995 that "as weighed against the potential economic and social benefits to the District of Columbia which will result from the Arena project, I conclude that I am justified in accepting the losses to historic resources that will result"; and

WHEREAS, specific economic development strategies are necessary to ensure and support the anticipated economic benefits to the District of Columbia which will result from the Arena Project; and

WHEREAS, NCPC has invited for consultation and considered the views of the National Trust for Historic Preservation, the D.C. Preservation League, the Committee of 100, the Smithsonian Institution ("Smithsonian"), the National Building Museum, the Residential Action Coalition, the Citizens Planning Coalition, the Pennsylvania Avenue Development Corporation ("PADC"), the Chinatown Steering Committee, property owners, and other interested persons; and

WHEREAS, the District, RLA, DCALP, PADC, and the National Building Museum participated in the consultation and have been invited to concur in this MOA; and

WHEREAS, this MOA supersedes an existing MOA dated January 12, 1973 ("1973 MOA") between RLA, the Department of Housing and Urban Development, the SHPO, and the Council, only with respect to the mitigation of the proposed development on Square 455; and

WHEREAS, the definitions provided in 36 C.F.R. § 800.2 are applicable throughout this MOA.

NOW, THEREFORE, NCPC, the SHPO, and the Council agree that the Arena Project, if approved, will be implemented in accordance with the following stipulations in order to take into account the effect of the Arena Project on historic resources.

STIPULATIONS

NCPC will ensure that the following measures are implemented.

I. MODIFICATION OF EXISTING STREET PLAN

A. Reopening 900 Block of G Street, N.W.

The District will restore two-way vehicular traffic in the 900 block of G Street adjacent to Martin Luther King Library. The purpose of the work is to reinforce both the distinctive offset at the northwest corner of Reservation No. 8 (Old Patent Office Square) and the G Street vista. The design for this public space improvement will be subject to review by NCPC, in consultation with the SHPO, in accordance with the procedures set forth in Stipulation I.E. below. The public space improvement will be completed by October 15, 1998. The District will advise neighboring property owners of its plans to restore vehicular traffic to this area within 60 days of commencing feasibility and environmental studies for this public space improvement.

B. Reopening 700 and 800 Blocks of F Street, N.W.

1. The District, in consultation with NCPC, the SHPO, and the Council, will work with PADC and support its efforts to restore two-way vehicular traffic in the 700 and 800 blocks of F Streets, N.W., and the 500 block of 8th Street, N.W. The Smithsonian also will be invited to review the plans necessary to accomplish this task. The District's role will include (a) working with PADC in the design of

the public space improvements, (b) providing the assistance of DCDPW and the DCOP as necessary to facilitate the planning and approval process for this project, and (c) ensuring the proper maintenance of the public space improvements once they are completed.

2. The purpose of the work is to reinforce both the offset of F Street and the F Street vista, as well as the pivotal placement of the Patent Office in its historic setting in the L'Enfant Plan by restoring the character and extent of Reservation No. 8.

3. If PADC remains in existence through September 1997, it plans to use appropriated funds for the purposes of this project. PADC plans to begin construction of the public space improvements in 1996 and to complete construction within a year of commencing.

4. If PADC is unable to undertake this project because the agency is abolished during 1996, the District will make a good faith effort to secure federal funding to restore the 700 and 800 blocks of F Street to vehicular traffic.

   a. Within 3 months of the passage of any legislation abolishing PADC, the District will file the necessary documents to begin securing federal funds, including requesting the Federal Highway Administration's ("FHwA's") permission to include the 700 and 800 blocks of F Street in the federal aid system.

   b. It is understood that the need to obtain federal funds may require a modification of the schedule for completion of these street improvements; nevertheless, the District agrees to complete the project within 3 years of obtaining FHwA's permission to add the 700 and 800 blocks of F Street to the federal aid system.

   c. If FHwA does not approve the District's request for federal funds, the District is not obligated by the terms of this MOA to undertake this project.

5. The design of this public space improvement will be subject to review by NCPC, in consultation with the SHPO, in accordance with the procedures set forth in Stipulation I.E. below.

6. The entity responsible for this project (either the District or PADC) will advise the neighboring property owners of the plans to restore vehicular traffic to this area.

C. Removal of Arena and Reopening the 600 Block of G Street

1. RLA, or its successors, will demolish the Arena from the Gallery Place site and restore vehicular traffic to the 600 block of G Street in the configuration that it exists on October 1, 1995, upon a determination by the Mayor that the Arena has outlived its useful life as a sports and entertainment facility or other beneficial public facility that requires the configuration of this Arena. The determination will be made by the Mayor, based on the recommendation of a Committee appointed by the Mayor comprised of representatives of the Executive Branch of the District.

2. The Mayor must evaluate whether the Arena has outlived its useful life as a beneficial public facility that requires the configuration of this Arena within six months after the end of the lease term, including renewal periods, between RLA and DCALP. That evaluation will be based on final criteria developed by the above-referenced Committee at least 6 months prior to the end of the lease term, including renewal periods, and will include, among other things, consideration of the economic viability of the Arena, the physical condition of the facility, the continued ability of the Arena to attract sports and entertainment events, the goals of the Comprehensive Plan, and current District of Columbia goals and policies.

3. The Mayor's Committee will submit a draft of the criteria to the NCPC and the SHPO for a thirty-day review and comment period commencing after the agencies receive the draft. The Mayor's Committee will consider the comments of NCPC and the SHPO in finalizing the criteria.

4. The Mayor must provide an opportunity for public input into his/her evaluation of whether the facility has outlived its useful life. The Mayor also must provide a written explanation of his/her determination on whether this Arena has outlived its useful life to NCPC, the SHPO, and any members of the public that request it.

5. If the Mayor determines that the Arena has not outlived its useful life, then the Mayor must reevaluate his/her decision every two years until a determination is made that the useful life of the facility

has been exhausted. The reevaluation will be based on the criteria developed pursuant to paragraph C.2 and C.3 above.

6. Once the Mayor makes a determination that the Arena has outlived its useful life, RLA, or its successors, will demolish the Arena and restore the 600 block of G Street within 3 years of that determination.

7. The obligation to reopen the 600 block of G Street, N.W. will run with the land. By December 31, 1995, the District will enter into the Land Records of the District of Columbia a covenant requiring the reopening of G Street consistent with the terms of this MOA.

D. Removal of the Existing Convention Center and the Reopening of 10th and I Streets, N.W.

1. The District plans to construct a new convention facility to replace the existing Convention Center at 9th Street, N.W. and New York Avenue, N.W.

2. If a new convention facility is constructed and when the debt on the existing Convention Center is retired, the District will demolish the existing Convention Center and reopen the underlying blocks of 10th and I Streets, N.W. to vehicular traffic and restore those streets to the configuration that existed immediately prior to the construction of the existing Convention Center.

3. The obligation to reopen those blocks of 10th and I Streets, N.W. will run with the land. By December 31, 1995, the District will enter into the Land Records of the District of Columbia a covenant mandating such reopening of 10th and I Streets, N.W. consistent with the terms of this MOA.

4. The District acknowledges that it must weigh the benefit of certain public uses against the detriment associated with the closure of streets depicted in the L'Enfant Plan. In this regard, the District believes the reopening of 10th and I Streets would provide a public benefit. The District expects its agreement to provide this public benefit to be given due consideration consistent with Section 106 review for the Arena Project and a future public use project that may require the closure of L'Enfant Plan Streets.

E. Review Procedures for Reopening Streets

Consistent with any future 106 review for these street restorations, NCPC and the SHPO will review the plans and specifications for compatibility with the terms of this MOA. The District and/or RLA will provide NCPC and the SHPO with conceptual and completed design documents in accordance with a schedule to be agreed upon that takes into consideration the deadlines established in this MOA and any regulatory requirements. The District or RLA will either modify their plans consistent with the comments or resolve any disagreement. If an agreement can not be reached, the dispute will be resolved in accordance with Stipulation XII.

II. DESIGN REVIEW PROCESS

A. DCALP has provided site and building plans to the SHPO, the Council, and the Chinatown Steering Committee concurrently with the submission of the same to NCPC on August 28, 1995 to be considered at NCPC's October 5, 1995 meeting.

B. If NCPC approves the submission and changes to the exterior design are proposed thereafter, DCALP will notify NCPC of those exterior design revisions so that NCPC can determine, through its standard practice as referenced in the submission requirements (Project Plan Submission Requirement § 3D), if formal review of those revisions by NCPC is required.

C. If formal review is necessary, DCALP will also forward the plans showing the revisions to the SHPO, the Council, the Smithsonian, and the Chinatown Steering Committee at the same time that they are submitted to NCPC for review. The SHPO, the Council, the Smithsonian, and the Chinatown Steering Committee will have the opportunity to comment in writing by the time of the NCPC meeting on the proposed revisions as they affect the historic resources. Their comments will be considered by NCPC.

D. If the SHPO requests comments from the Historic Preservation Review Board ("HPRB"), then the NCPC meeting on the proposed revisions will be scheduled to accommodate the HPRB meeting and the submission of the HPRB's comments to NCPC.

III. INTEGRATION OF ARENA INTO SURROUNDING COMMUNITY

A. Historic Preservation and Revitalization Action Plan

1. The DCOP will prepare a Historic Preservation and Revitalization Action Plan ("Action Plan") for an expanded Gallery Place/Chinatown area, including Square 454. The study area will encompass, at a minimum, the area generally bounded by 5th Street, N.W. on the east, 11th Street, N.W. on the west, Pennsylvania Avenue on the south, and Massachusetts Avenue on the north. The Action Plan will include a map of the Action Plan study area that specifically identifies its boundaries, the historic districts, historic properties, and any special or overlay districts included in the area.

2. The Action Plan will integrate considerations of historic preservation (buildings and archaeology); land uses, including, among others, retail, entertainment, office, housing, arts, and hotels; transportation; parking; urban design; and economic development in the creation of revitalization strategies for the area. It will also consider the pressure for changes in land use patterns in response to development of the Arena (such as the potential pressure to accommodate parking.) The Action Plan will be prepared within the context of updating the Downtown Plan as contained in the Comprehensive Plan for the National Capital.

3. Preparation of the Action Plan will include the following stages: (a) updating information on the study area; (b) preparing a concept plan for discussion; and (c) preparing a detailed Action Plan with specific recommendations, priorities, time-frames, and cost estimates for historic preservation and revitalization activities in this study area, and an implementation program and schedule which identifies the next steps, responsible parties, and funding mechanisms. The Action Plan will be completed by April 1, 1997.

4. The DCOP, in consultation with NCPC and the SHPO, will develop and implement a public participation process for the Action Plan that ensures that the public, including historic preservation organizations, neighborhood associations, businesses, churches, institutions, property owners, and others with an interest in the area, will participate in the development of the Action Plan. The Council also will be invited to participate. The process will be flexible enough to allow organizations to participate at different levels. The

public participation process will be developed by December 31, 1995.

5. The specific recommendations in the Action Plan will address the following issues:

   a. Gallery Place/Chinatown Area

   The Action Plan for the Gallery Place/Chinatown area will include recommendations designed to:

   - encourage adaptive reuse and rehabilitation of historic buildings and buildings in historic districts;

   - encourage the designation and protection of properties eligible for listing under the National Historic Preservation Act or D.C. Law 2-144;

   - encourage new development that is compatible with historic structures, and that in Chinatown, incorporates Chinese design features;

   - encourage identification and consideration of the District of Columbia's significant archaeological heritage;

   - encourage and achieve a mix of uses, including arts, retail, and housing;

   - encourage the economic viability of existing and new businesses in the area;

   - achieve coordinated streetscape and landscape treatment in the area, with emphasis on Special Streets and Special Places as defined in the Comprehensive Plan;

   - address specific design issues related to compatibility with historic structures, height, scale, bulk, massing, and Chinese design features;

   - identify options for the use of the parcels remaining if 10th and I Streets are reopened after the existing Convention Center is demolished, with particular attention to arrangements that will enable the District to retire the existing debt on the Convention Center and thereby eliminate

the need for the continued operation of the facility if a new facility has been constructed;

- provide an integrated transportation system for the area, in coordination with the Arena Transportation and Parking Coordinating Committee and consistent with the Transportation Management Plan described in Stipulation III.C.1 and 2; and

- implement the Action Plan through strategies and tools, which may include modification of existing land use controls, design review processes, and design guidelines, as well as investment incentives, such as low-interest loans, tax abatements, and grants. If the use of low-interest loans, tax abatements, or grants is adopted as part of the Action Plan, the plan will identify a specific entity to coordinate and deliver the funds.

b. Square 454

The Action Plan for Square 454 will include recommendations designed to:

- achieve coordinated development on the portion of the square north of the Arena that includes a mix of uses, Chinese design features in accordance with the Chinatown Design Guidelines, and compatibility with the historic properties located on the square;

- identify, preserve, and attract economically viable uses for historic properties and properties within the historic district on Square 454;

- address specific design issues related to compatibility with historic structures, height, scale, bulk, massing, streetscape, and Chinese design features with particular attention to the setback requirements for the property immediately north of the Arena;

- achieve the optimum street level activity and pedestrian connection between Chinatown and the north side of the Arena with specific attention to pedestrian access;

- ensure street level activity and pedestrian connections, including the design treatment of the alley (mid-block on H Street, N.W.) and the sidewalks;

- ensure coordinated parking and loading access from 6th Street; and

- implement the Action Plan through strategies and tools, which may include modification of existing land use controls and design guidelines, as well as investment incentives, such as low-interest loans, tax abatements, and grants. If the use of low-interest loans, tax abatements, or grants is adopted as part of the Action Plan, the plan will identify a specific entity to coordinate and deliver the funds.

6. DCOP will submit a draft of the final Action Plan to NCPC for review and comment. The SHPO and Council also will be invited to review and comment on this Plan. All comments will be provided within 30 days of receipt of the Plan otherwise DCOP can assume that the agencies have accepted the Plan. The final Action Plan shall respond to all comments received by NCPC, and the SHPO and Council, if participating.

B. Signage and Wayfinding

By December 15, 1995, DCDPW will establish a Committee to develop a plan and/or guidelines for signage and other appropriate wayfinding mechanisms that establish directional and visual linkages among the Arena and neighboring cultural resources. DCDPW will invite DCALP, NCPC, the SHPO, the Council, and the Commission of Fine Arts to participate on the Committee. DCALP will provide up to $15,000.00 toward the development of the plan and/or guidelines. DCDPW will coordinate this process with the DCOP, the Office of Tourism and Promotion, and other visitor orientation efforts ongoing between the District and NCPC.

1. The National Building Museum, PADC, the Smithsonian, the Washington Metropolitan Area Transit Authority, and others whom the participants deem appropriate may also be invited by DCDPW to participate on the Committee.

2. The Committee will:

   - establish a schedule for completion of a plan and/or guidelines that insures the directional signage and other appropriate wayfinding mechanisms within the Arena and on the Arena site can be designed and installed consistent with the plan and/or guidelines by the opening of the Arena;

   - produce a document delineating the concept and essential features of the plan and/or guidelines and describing the content, appearance, and installation of signage and other appropriate wayfinding mechanisms; and

   - establish a mechanism for the evolution of the plan and/or guidelines if deemed appropriate by the Committee.

3. If the plan and/or guidelines are completed within the schedule established by the Committee, DCALP will ensure that directional signage installed within the Arena and on the Arena site is installed consistent with the plan and/or guidelines by the time the Arena opens. In the event the plan and/or guidelines are not completed within the schedule established by the Committee, DCALP is not obligated to install directional signage consistent with any plan that subsequently may be developed.

4. With respect to F Street, N.W. between 5th and 6th Street, NCPC will provide staff resources to assist the experts in designing appropriate signage for this block and the District will provide the signs. The National Building Museum will provide signs on the block in front of its building.

C. Arena Transportation and Parking Coordinating Committee

1. DCDPW and DCALP jointly have prepared and agreed to implement a "Transportation Management Plan - MCI Center," dated August 28, 1995 ("TMP") for the Arena Project. Among other things, the TMP contains a requirement that contractual arrangements guaranteeing adequate parking spaces for institutions in the area be developed and specific provisions addressing the management of buses and trucks on 6th Street providing service to the Arena. Subject to its compliance with the appropriate regulatory review process, DCDPW will ensure that appropriate signs are posted along 6th Street prohibiting the queuing of trucks, trailers and unauthorized buses.

2. DCDPW has established an Arena Transportation and Parking Coordinating Committee. DCDPW will invite representatives of DCALP, the National Building Museum, the Smithsonian, the Pennsylvania Quarter Neighborhood Association, the Shakespeare Theater, the Chinatown Steering Committee, the SHPO, and the Council to serve on the Committee. In consultation with NCPC, the Committee will address issues associated with transportation management and parking that may develop during the operation of the Arena and will ensure that appropriate monitoring and enforcement mechanisms are in place.

3. DCDPW and DCALP will develop a Traffic Operations Plan for the operation of the Arena and will provide the Committee with an opportunity to provide input.

4. DCDPW intends to convene the Committee shortly after the Arena Project is approved and the group will meet on a monthly basis as long as the Committee members deem that it is necessary. The Committee either can agree on an alternative meeting schedule or that regular meetings are not necessary and the Committee will be abolished. NCPC, the SHPO, and the Council will be informed if the Committee determines that there is no longer any purpose for its existence.

IV. HISTORIC DOCUMENTATION OF CERTAIN HISTORIC PROPERTIES

DCALP will develop photographic and historic documentation of Reservation No. 8 (the Patent Office Square) and G Street, N.W., consistent with the quality and format of existing Historic American Building Survey ("HABS") documentation on the L'Enfant-McMillan Plans (HABS Nos. DC-668 through DC-718). Prior to December, 1995, DCALP will consult with the SHPO and NCPC regarding this documentation. The photographic documentation, which will not include aerial photographs, will be completed prior to January 1, 1996. The historic documentation will be completed and donated, along with the photographs, to the National Park Service's HABS program prior to March 1, 1996, and made available to the SHPO and/or a local archive designated by the SHPO. DCALP's financial obligation to accomplish this task will not exceed $10,000.

V. ARCHAEOLOGY

A. Data Recovery Plan

The District will complete a Phase III archaeological data recovery plan for the treatment of eligible archaeological resources located on Square 455, in accordance with the approved Revised Draft Scope of Services, Phase III Archaeological Data Recovery for the D.C. Arena Site, Square 455, Washington, D.C., prepared by the Cultural Resources Department of Parsons Engineering Science and dated August 17, 1995 ("Scope of Services"). The District will ensure that the data recovery plan is implemented in a manner consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 Fed. Reg. 44734) and takes into account the Council's publication entitled Treatment of Archaeological Properties--A Handbook (draft, 1980).

B. Archaeological Reports

1. The District will ensure that all documents prepared to satisfy the terms of this MOA are responsive to contemporary professional standards for archaeology and the Secretary of the Interior's Format Standards for Final Reports of Data Recovery Programs (42 Fed. Reg. 5377).

2. The District will ensure that a draft report describing all activities carried out pursuant to the implementation of the data recovery plan is submitted to NCPC, the SHPO, and the Council for their review and acceptance. NCPC, the SHPO, and the Council will have thirty (30) days after receipt of the draft report to review and provide written comments on the report. The final archaeological report prepared by the District will be responsive to these comments.

3. The District will ensure that all final archaeological reports resulting from the implementation of the approved Phase III data recovery plan are provided to NCPC, the SHPO, the Council, and to the National Park Service's Archaeological Assistance Division for inclusion in the National Archaeological Database.

C. Human Remains

DCALP will ensure that any human remains encountered during the course of this undertaking are treated in a respectful manner. If human remains are encountered, DCALP will notify NCPC and the SHPO immediately.

NCPC and the SHPO will consult to determine treatment and disposition measures that will be consistent with the Council's Policy Statement Regarding Treatment of Human Remains and Grave Goods (adopted Sept. 27, 1988, Gallup, NM) and with D.C. Code Ann. § 6-214 (1986 Supp.).

VI. OUTREACH, EDUCATION AND COLLECTIONS MANAGEMENT

A. Archaeology

During implementation of the archaeological data recovery plan, the District and DCALP will use various means to provide the interested public with information regarding the archaeological investigations.

1. During implementation of the archaeological data recovery plan, the District and DCALP will develop and erect appropriate signage along the fenceline defining the exterior border of the excavation area. The signage will explain what is occurring on the project site, why the work is being done, and the significance of the findings. The District and DCALP will work directly with the SHPO to develop the text of the signage.

2. In consultation with the SHPO and NCPC, the District and DCALP will arrange one media day in which the press will be invited to visit the archaeological excavation conducted at the project site and discuss the research findings to date prior to the completion of the data recovery.

3. In consultation with the SHPO and the Council, the District and DCALP will prepare and publish educational material for dissemination to the District of Columbia's public schools, libraries and other facilities, and groups identified by the District, DCALP, and the SHPO. At a minimum, the material will

    - describe the regulatory context within which the archaeological identification and mitigation was carried out.

    - summarize the history of the Arena Project site and its immediately surrounding community.

    - simply explain and interpret the results of the archaeological excavation.

- explain the significance of the archaeological findings within the local and regional context.

B. Gallery Place Site Exhibit

1. In consultation with NCPC, the SHPO, and the Council, DCALP will develop an exhibit that represents and interprets the historical and architectural development of the Gallery Place Arena site within the context of the surrounding historic districts.

2. The exhibit will include text, graphics, maps, and photographs that will explain why the exhibit was prepared and the archaeological investigations on the site were undertaken, identify the location of historic landmarks and districts in the vicinity, and represent and interpret the evolution of the site within the historic context of downtown.

3. The exhibit will measure between 100 and 150 square feet in area and will be permanently installed in a fully accessible and fully public location (or locations) within the Arena by the date the Arena opens.

C. Curation Facility

1. The District will ensure that all materials and records resulting from archaeological identification and data recovery conducted in connection with this MOA, including but not limited to field notes, photographs, artifact catalogues, architectural drawings, maps, and plans, are permanently stored and maintained in a repository that has been approved by the SHPO and meets the requirements identified in VI.C.2.a. below. Such materials and records will remain the property of the District of Columbia, but the District will consult with NCPC, the Council, and the SHPO regarding their permanent curation.

2. By October 1, 1996, the District will provide a repository for the storage and maintenance of archaeological materials and related records ("the collection") found within the District of Columbia. At a minimum, the facility will meet the following requirements.

   a. The repository will measure from 4,500 to 5,000 square feet. Approximately 1,800 square feet of the total will be used to store archaeological materials and records retrieved as a result of the archaeological identification and Phase III data

recovery conducted for the Arena Project. The remaining square footage would be available to store material collected during other, previous archaeological data recovery projects undertaken within the District of Columbia which are not currently stored and maintained in an appropriate facility. (Storage priority will be given to the archaeological material and other historical records and materials which the District of Columbia owns and which reflect its rich history).

b. This facility will be climatically controlled, in physically secure conditions, and accessible to the public for the research and study of these materials.

c. The location of this facility will be mutually agreed upon by the SHPO and the District.

d. The District and the SHPO will establish the administrative protocol for operating this repository.

VII. UNANTICIPATED DISCOVERIES AND EVENTS

A. In the event that during implementation of the data recovery plan, an unanticipated archaeological resource is discovered, the District will immediately consult with the SHPO to determine if the data recovery plan needs to be modified to address this resource. If necessary, the District, in consultation with the SHPO and NCPC, will revise the data recovery plan accordingly.

B. DCALP, through its design/build team, will monitor the Arena's construction for any impact on adjacent and confronting historic properties. The purpose of this monitoring is to ensure that there is no subsidence or adverse impact on such properties resulting from the construction. In the event there is subsidence or adverse impact, the owner of the affected property would be notified immediately and the design/build team would ensure that the impacts are addressed.

VIII. OVERSIGHT

NCPC will monitor the implementation of all of the provisions of this MOA. To assist NCPC in this monitoring responsibility, the District and DCALP will provide NCPC with a brief written status report on their respective obligations on a quarterly basis for the first three years after execution of the MOA. NCPC, in

turn, will provide the status reports to the interested persons on a quarterly basis. The District and DCALP will provide the first status report to NCPC by January 5, 1996.

IX. DESIGNATION OF HISTORIC PROPERTIES

A. The SHPO agrees to facilitate through the existing National Register nomination process the formal evaluation of buildings identified in the Historic Resources Report as eligible for listing in the National Register.

B. The District also agrees not to oppose nomination of the L'Enfant Plan of the City of Washington to the National Register of Historic Places.

X. SECTION 106 COMPLIANCE FOR OTHER FEDERAL ACTIVITIES

In the event that the District receives assistance from other Federal agencies for the implementation of Stipulations I.A. and I.B. of this MOA or the District determines that additional Federal licenses, permits or approvals are required, the respective Federal agency can fulfill its Section 106 responsibilities by accepting the terms of this MOA and specifying that satisfactory fulfillment of the terms of this MOA is a condition of any license, permit, loan or grant, agreements or approvals between the Federal agency and the District.

A. The District will advise the Federal agency of the existence of this MOA early in the application process for additional assistance, licenses, permits or approvals. Likewise, the District will also notify the SHPO and the Council upon application for any Federal assistance, licenses, permits and approvals.

B. If the Federal agency determines that it will fulfill its Section 106 responsibilities by accepting the terms of this MOA, the Federal agency will notify the SHPO and the Council in writing of said acceptance at least thirty (30) days prior to the release of funds or issuance of licenses, permits or approvals.

C. If the Federal agency declines to accept the terms of this MOA or determines that it can comply with only certain provisions of this MOA, the Federal agency may request an amendment to the MOA for its specific undertaking in accordance with Stipulation XI.

XI. AMENDMENTS

If NCPC, DCALP, RLA, or the District determines that it cannot fulfill the terms of this MOA or otherwise deems it necessary to seek an amendment to this MOA, the affected entity will notify the Council and the SHPO and request an amendment to the MOA as set forth in 36 C.F.R. § 800.5(e)(5).

XII. DISPUTE RESOLUTION

If at any time during the implementation of this MOA, the signing and concurring parties object to any plan, action or any failure to act pursuant to this MOA, they may file written objections with NCPC.

A. Within 30 days of receipt of an objection, NCPC will commence consultation with the objecting party, and with other parties or interested persons, as appropriate, in order to resolve the dispute.

B. Within 30 days of initiating such consultation, NCPC will determine whether the objection can be resolved. If NCPC determines that it cannot be resolved, NCPC will forward all documentation relevant to the dispute to the Council and other signatories to this MOA, and request that the Council comment. Within 30 days after receiving the documentation, the Council will either:

   1. provide NCPC with recommendations, which NCPC will take into account in resolving the dispute; or

   2. notify NCPC that it will comment pursuant to 36 C.F.R. § 800.6(b), and proceed to comment. Any Council comment provided in response to such a request will be taken into account by NCPC in accordance with 36 C.F.R. § 800.6(c)(2) with reference to the subject of the dispute.

C. NCPC's responsibility to carry out all actions under this MOA that are not the subject of dispute will remain unchanged.

D. If an issue is submitted to the dispute resolution process set forth in this stipulation, then any time-limitations imposed by this MOA that are related to the disputed issue are suspended until NCPC provides a written determination as to how the dispute will be resolved or how it will take into account the Council's comments. The time period for completion of the related task will begin to run again when NCPC has issued a written notice to the parties to this MOA of its determination.

E. This provision does not preclude the interested persons from notifying NCPC of any objections that they may have to the manner in which this MOA is being implemented. NCPC will determine whether any action is necessary to address the issues raised.

XIII. ADMINISTRATIVE CONDITIONS

A. Professional Qualifications: All studies conducted under the terms of this MOA will be carried out or directly supervised by appropriate trained persons who meet the Secretary of the Interior's Professional Qualification Standards (48 Fed. Reg. 44738) for the particular field of study in which they are working. The District of Columbia will retain staff or consultants meeting these standards for the purposes of implementing the terms of this MOA.

B. The signing and concurring parties to this MOA agree to perform their respective obligations, including the execution and delivery of any documents or approvals as may be necessary or appropriate, in a timely fashion consistent with the terms and provisions of this MOA.

C. The terms of this MOA will be binding on all signing and concurring parties and any other federal or state/city agency that will become a party to this MOA and their respective successors and assigns.

D. This MOA may be executed in multiple original counterparts, each of which will be deemed an original, and which together will constitute one and the same MOA.

* * * * *

Execution and implementation of this MOA evidences that NCPC has afforded the Council a reasonable opportunity to comment on the Arena Project and its effects on historic properties, including National Historic Landmarks, and that NCPC has taken into account any such effects.

Signed:

NATIONAL CAPITAL PLANNING COMMISSION

By: Reginald W. Griffith — Date: September 26, 1995
Title: Executive Director

DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICER

By: Hampton Cross — Date: September 26, 1995
Title: State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: Cathryn Buford Slater — Date: September 28, 1995
Title: Chairperson of the Advisory Council on Historic Preservation

Concur:

THE DISTRICT OF COLUMBIA

By: The Honorable Marion Barry — Date: September 26 1995
Title: Mayor

THE DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

By: Merrick Malone — Date: September 26, 1995
Title: Secretary of the RLA

DC ARENA L. P., a District of Columbia limited partnership

By: Washington Sports & Entertainment Inc., a District of Columbia corporation, its general partner

Date: September __, 1995

By: Abe Pollin
Title: President

NATIONAL BUILDING MUSEUM

By: Susan Henshaw Jones
Title: President and Director

Date: September 29, 1995

APPENDIX A

RESOURCES WITHIN THE AREA OF POTENTIAL EFFECT DETERMINED TO BE ADVERSELY AFFECTED IN THE HISTORIC RESOURCES REPORT

RESOURCE	ELIGIBILITY STATUS
Resources with Multiple Elements	
L'Enfant Plan for the City of Washington, including effects on the following properties that occur by virtue of their placement in the L'Enfant Plan: the Old Patent Office, General Post Office, White House Grounds, U.S. Treasury, Pension Building, General Accounting Office, Central Public Library and Martin Luther King Memorial Library	Determined Eligible as NHL by the National Park Service in 1994; individual elements received D.C. Landmark status in 1971.
Pennsylvania Avenue National Historic Site (PANHS)	Listed as NHS in 1966; D.C. Landmark.
Downtown Historic District (DHD), as expanded	DHD determined Eligible for the NR in 1984; D.C. Landmark. Expansion determined eligible for NR by NCPC in 1995.
Individual Resources	
Old Patent Office 7th, 9th, F and G Streets	Designated a NHL in 1965; listed in the NR in 1966; contributing building to the PANHS and DHD; D.C. Landmark.
General Post Office 7th, 8th, E and F Streets	Listed in NR in 1969; Designated a NHL in 1971; contributing building to PANHS and DHD; D.C. Landmark.
White House and Grounds 1600 Pennsylvania Avenue, N.W.	Designated a NHL in 1960*; D.C. Landmark.
U.S. Treasury Building Southwest Corner, 15th Street and Pennsylvania Avenue, N.W.	Designated a NHL and listed in NR in 1971; contributing building to PANHS; D.C. Landmark.
Martin Luther King Memorial Library 903-933 G Street, N.W.	Determined eligible for the NR by the D.C. SHPO and the GSA.
Myrene Building 703 6th Street, N.W.	Listed in the NR in 1994; contributing building to the DHD, if amended; D.C. Landmark.
Moran Building 501-509 G Street, N.W.	Listed in the NR in 1983; contributing building to the DHD, if amended; D.C. Landmark.

Government and Institutional Banking
VA1845
1970 Chain Bridge Road
McLean, VA 22102

WACHOVIA

May 11, 2004

Mr. Claude E. Bailey
General Counsel
Washington Convention Center Authority
801 Mount Vernon Place, NW
Washington, DC 20001

Re: Old Washington Convention Center Site

Dear Claude:

Joe Fanone forwarded to me the letter dated April 13, 2004 of the Advisory Neighborhood Commission 2F ("ANC") addressed to Geoffrey H. Griffis of the Board of Zoning Adjustment relating to the BZA Application No. 17145 as well as the Resolution adopted by the ANC imposing certain conditions for utilization of the old convention center site as a parking facility.

Conditions 5, 14, 15 and 18 are unacceptable to the Bank since they will impair the ability of the Washington Convention Center Authority to maximize the utilization of the parking facility. As to condition no. 5, the parking proforma provided to us assumes that buses will utilize the parking facility far in excess of the 30 buses referenced. Although, the proforma does not distinguish between daily and long term parking, we are concerned about the ability of the Washington Convention Center Authority to meet its obligations under the loan from us if weekly or monthly parking is determined to be necessary in order to generate the revenues needed to repay the loan. I am hopeful that the ANC will reconsider its position regarding these matters.

I would be happy to discuss these issues in further detail, if you like.

Sincerely yours,

Linda S. Abravanel

INTERIM UTILIZATION OF SITE FOR THE HOMELESS **Attachment 5**

This addresses the questions raised at the public hearing concerning:

1. Possible Interim Use of the Former Convention Center Building as a Homeless Shelter
2. Possible Use of a Portion of the Proposed Interim-Use Parking Lot Area as a Site for Trailers or Temporary Structures to House the Homeless.

Possible Use of the Former Convention Center: Upon the Washington Convention Center Authority's (WCCA's) vacating the former convention center site in July 2003, the site reverted back to the District of Columbia government. The site was not used and maintained for the past year, and the existing facility now poses a financial, security and safety liability risk.

The mechanical and electrical systems are obsolete and cannot be repaired without a major financial investment. During the winter months, numerous water pipes throughout the facility ruptured and flooded both the upper and lower levels. Due to this, the ceiling structures collapsed and over the months mold and other fungus developed, causing further decay of the various structures. The District had to remove the majority of the moldy carpeting, leaving exposed mastic and rough concrete. In addition the plumbing fixtures throughout the facility have been removed leaving exposed sewer connections. Aside from lobby areas, the remaining space is windowless. There is no possibility for natural light natural or ventilation.

In its present condition the facility could not be occupied or brought up to building occupancy codes without a major capital investment and a long lead-time to complete the work.

Possible Use of the Proposed Parking Lot: The WCCA entered into a lease with the District of Columbia government to demolish the former convention center structure and operate a parking lot that will also be used for special events. The Authority is securing the financing for the demolition of the former convention center through a commercial mortgage loan. The loan is to be a non-recourse loan to be repaid from the operation of the parking lot and/or the proceeds from the long-term development of the site. The District is responsible for any shortfall. (However, the lender's lien on the site may not exceed $17 million). It has been determined that the lot must be able to provide approximately 1000 parking spaces to generate revenue sufficient to meet the financial obligations of the loan. Fees associated with the special events will also be used to offset the debt. Based on the design and the programming of the site the usage of the entire site will be required to offset the debt without requiring additional subsidies from the District government. The cost estimates do not consider the additional utility and infrastructure work that would be necessary to support temporary housing on the site in a manner that would: 1) not expose the shelter-occupants, and the thousands of people using the remainder of the site, to safety hazards, and: 2) not expose the WCCA and the District to additional liability issues.