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VIA FACSIMILE
Jeffrey Griffis
Chair, Government of the District of Columbia
Board of Zoning Adjustment
441 4th Street, N.W., Suite 210 South
Washington, D.C. 20001

Re: 2210 Adams Place N.E.: Bannum's Position on Jurisdiction and Estoppel

Dear Mr. Griffis:

Bannum, Inc. (Bannum") has respectfully requested an enlargement of time to December 8, 2005 submit its opening brief due to the death of counsel's father. Both the District and the ANC have consented to this request.

Bannum submits its position that this Board lacks jurisdiction over this revocation of Bannum's Certificate of Occupancy ("COO"). Assuming for the sake of argument this Board has jurisdiction over a revocation, the Department of Consumer and Regulatory Affairs ("DCRA")'s decisional actions to rescind the revocation and re-revoke the same COO while an Administrative Law Judge ("ALJ") case was pending before the Office of Administrative Hearings are void. In any event, even if the revocation is valid, DCRA revocation is equitably estopped from revoking Bannum's COO.

Background

On or about March 24, 2000 and April 3, 2000, the Federal Bureau of Prisons ("BOP") issued a number of requests for proposal ("RFP") including RFP Nos. 200-0593-MA and 200-06-04-MA. Second Declaration of David Lowry, Ex. 1. To submit a compliant proposal, Bannum had to verify that it had zoning by submitting documentation from local zoning officials whose approval or concurrence was required under applicable law, here, to DCRA officials. Exs. 2-3.

A. DCRA's Decision Finding Proper Zoning at 2210 Adams Place N.E.

Bannum identified a warehouse at 2210 Adams Place N.E. as an appropriate building for renovation to function as a federal Community Correctional Center ("CCC"). The facility is located in a Commercial-Manufacturing ("C-M") zoning district. As required by the BOP, Bannum notified the Mayor, his Chief of Staff and the Chief of Police of its intent to open a CCC at this location. Ex. 2.

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EXHIBIT NO. 33

Board of Zoning Adjustment
District of Columbia
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EXHIBIT NO. 33

By letter entitled "Temporary Correctional Facilities" dated December 11, 2000, Bannum, through its counsel, Holland and Knight, also advised the DCRA of its intent to operate a federal CCC at 2210 Adams Place, N.E. and sought confirmation that the proposed temporary CCC would be permitted as a matter-of-right in a C-M district under 11 DCMR §801.7(k) ("Section 801.7(k)). The Holland and Knight letter stated:

> "This office represents Bannum, Inc. ("Bannum"), a company that provides residential rehabilitation services to individuals referred by appropriate committing authorities. Bannum proposes to lease property in the C-M or M District for use as a Community Corrections Center ("CCC") under a contract with the U.S. Department of Justice. Individuals are referred to the facility directly by the court system either to serve their entire sentence in confinement at the CCC or to complete their confinement at a CCC after a portion has been served as [sic] a federal institution.
>
> The property at 2210 Adams Place, N.E. is located in the C-M-2 District. Under Section 801.7(k) of the zoning regulations, a "[t]emporary detention or correctional institution on leased property for a period not to exceed three (3) years" is permitted as a matter of right in the C-M District. Accordingly, Bannum's proposed use of the property as a residential Community Corrections Center can be established as a matter of right at the Adams Street location.
>
> If you concur with our interpretation of this section of the zoning regulations, kindly indicate so by signing on the line provided below." Ex. 4.

DCRA Zoning Administrator Michael Johnson signed Bannum's letter on or about that date. Id.

This Board held that this letter was a formal DCRA administrative decision that was appealable when it was issued by DCRA. BZA March 31, 2004 Order, p. 9. As stated in his Second Declaration and as Mr. Lowry will testify, because of this official order, the BOP accepted Bannum's proposal and Bannum agreed to contractually commit itself to the BOP contract. Bannum realized that the zoning available was only for a three-year period and thus, in its final proposal revision only committed to perform the BOP contract for that period. Exs. 2, 5. Bannum also submitted the DCRA decision letter and excerpts from the BOP RFP. Exs. 2.

Before accepting the proposal, the BOP directed Bannum to notify the Ward 5 Councilman of the intent to open a federal CCC in his ward. Exs. 1, 6. Bannum provided excerpts of its BOP statement of work with this letter. Id., 3rd page.

Although Bannum is unaware of any response to its letter to the Ward 5 Councilman, the BOP strongly suggested that Bannum notify the Mayor, Chief of Police and local D.C. Councilman. Exs. 1-2. Bannum did so by letters dated April 10, 2001. Ex. 7. Bannum's letters requested that any concerns be directed to the BOP.

On November 5, 2001, the Councilman for Ward 5 wrote a letter to the BOP asking that the BOP terminate its plans to open the CCC at 2210 Adams Street N.E. The reason given was that of the 6 existing halfway houses, with a combined capacity for 546 persons, three bordered on or were in Ward 5. Ex. 8. Although there is a "cc" to Bannum on this letter, Bannum believes it did not receive this letter and based on discussions with all Bannum employees, is certain that neither the Councilman nor the BOP conveyed this objection to Bannum. Ex. 1.

B. The BOP Awards Bannum a CCC Contract

Upon information and belief, the BOP did communicate with District officials and apparently resolved the Councilman's complaint. Bannum believes that as a result of their assurances, on November 16, 2001, the BOP awarded Bannum the contract. Exs. 1-2. Upon information and belief, Bannum's was the only compliant proposal. Ex. 1.

The BOP contract guaranteed Bannum a 1-year term with BOP having 4 one-year options for a total term of 5 years; however, the BOP contract expressly incorporated Bannum's final proposal revision, which stated that it was based on temporary zoning for a 3-year period. Ex. 1, Ex. 9, (Block 18(a) of the form). Absent new zoning, the maximum contract period was 3 years. Id.

The BOP contract also contained a termination for default clause under which Bannum could be terminated if it failed to provide CCC services in accordance with the contract. If terminated for default, Bannum would face damage claims for excess reprocurement and other costs. In addition, a termination for default is considered a performance failure and would adversely affect Bannum's ability to obtain other CCC contracts, which is its sole means of staying in business. Id.

On November 16, 2001, the BOP sent a letter to the Ward 5 Councilman advising him of the contract award to Bannum. The Ward 5 Councilman responded that he still opposed the CCC. Ex. 10. His letter contained no "cc" to Bannum and again, Bannum was totally unaware of the Councilman's objections. Ex. 1. In spite of notice that the BOP awarded the contract in November 2001, the Councilman wrote no further letters in 2001 or 2002.

Shortly following the contract award, on November 26, 2001, almost one year after receiving DCRA's formal decision that the zoning was proper, Bannum asked the new DCRA Acting Zoning Administrator Olutoye Bello to re-confirm that the temporary zoning authorized previously was proper. Bannum's letter contained the same language as the first decision letter. On or about that date, Mr. Bello also signed on behalf of DCRA, again indicating that Section 801.7(k) zoning at that location was proper. Ex. 4.

C. Bannum Notifies the ANC of DCRA's Zoning Decisions

In April 2002, after public announcements were made that a CCC was going to be operated at 2210 Adams Place N.E., Bannum met with community organizations including ANC 5-B leaders and its then-President, and the PTA and parents at Langdon Elementary School and with local senior citizens. Bannum also met with the general community at the Harbor Light Center. Exs. 1-2.

At the meeting where ANC 5-B leaders attended, Bannum explained the CCC programs. Although he did not physically hand them the letters, Mr. Lowry put the ANC on express notice of the above DCRA decisions confirming Bannum's matter of right zoning for a CCC at 2210 Adams Place N.E and that Bannum had a BOP contract. Id. Bannum passed out excerpts from the BOP Contract's Statement of Work and explained how a CCC functions. No objections were made to the location of the CCC. Id.

D. Bannum Incurs Significant Costs in Preparing to Perform the BOP Contract

In reliance upon DCRA's decisions, and the absence of any objections from any one in the community, in July 2002, Bannum entered into a binding lease for the 2210 Adams Place N.E. property. Ex. 1. The lease was to begin on December 1, 2002. Ex. 11. Bannum also contracted for building design work to prepare to renovate the facility for CCC use and entered into agreements with utility companies. Exs. 1-2.

E. DCRA's Issuance of the Building Permit and COO

On January 17, 2003, DCRA issued to Bannum, Building Permit No. B448325. On January 15, 2003, the Ward 5 Councilman sent DCRA a letter requesting that DCRA issue a stop work order on construction of the renovations at 2210 Adams Place N.E. Ex. 12. On January 22, 2003 Regina James, a new President of ANC 5B, filed an appeal of the building permit to this Board. Ex. 13.

On January 31, 2003, DCRA declined to issue the stop work order requested by the Ward 5 Councilman. In its written response, DCRA assured him that the COO, when issued, would limit the use of CCC as a correctional institution for 3 years. Ex. 14. On February 21, 2003, DCRA denied another request from the counsel for ANC 5-B that the building work at 2210 Adams Place N.E. be stopped. Ex. 15.

F. DCRA Issues Bannum a Certificate of Occupancy

Bannum was advised by DCRA of its decision to proceed in spite of the appeal and DCRA inspections of the renovations to the building continued. On May 2, 2003, DCRA issued Bannum a COO. Bannum then began performance of its BOP contract and the BOP assigned inmates to reside at the facility. Ex. 1.

G. DCRA's Original Notice of Intent to Revoke

On March 31, 2004, the BZA granted the ANC's appeal for reasons other than those raised by the ANC. Both DCRA and Bannum sought reconsideration and a stay which were denied. Bannum appealed the BZA decision to the D.C. Court of Appeals.

On April 27, 2004, DCRA reversed its support of Bannum's zoning and sent Bannum a notice of its revocation of Bannum's COO. The reason given was that based on the Board's decision that zoning did not exist, the COO had been "issued in error." Ex. 16. DCRA gave Bannum the right to a hearing before a DCRA ALJ because the proposed revocation was a "contested case." See DC ST §2-502(8) and DC ST §2-509.

H. ALJ McCoy Continues Any DCRA Revocation Actions

Bannum requested an ALJ hearing. A hearing was scheduled for August 7, 2004 under Case No. 2004 OAD-013 which was assigned to ALJ Henry McCoy. On August 4, 2004, Bannum moved the ALJ to continue any revocation proceeding until the Court of Appeals decided Bannum's appeal on the merits. Ex. 17. On August 6, 2004, ALJ McCoy orally granted Bannum's motion and continued any action on the revocation until the D.C. Court of Appeals issued a decision on the merits.

I. ANC 5-B's Motion for Mandamus is Denied

On September 16, 2004, ANC 5-B filed a motion for mandamus at the Court of Appeals claiming that the ALJ order was improper and seeking to force the District to close Bannum's facility. On October 22, 2004, the Court of Appeals denied the motion, citing DC ST §2-510, a statute giving discretion to agents of the Mayor— here, the ALJ, to issue proper orders within the ALJ's authority in contested cases. Ex. 18.

J. DCRA's Illegal Decisional Actions to Re-Revoke the COO

On October 2004, the "Office of Administrative Hearings Establishment Act of 2001" ("Act"), DC ST §2-1831 et seq. became the law. Under that statute, ALJ functions in D.C. agencies, including without limitation all DCRA cases, were centralized under a newly created Office of Administrative Hearings ("OAH"). All pending ALJ cases, including No. 2004 OAD-013, were transferred to the OAH and subject to the Act.

On April 21, 2005, without seeking dismissal of Bannum's pending OAH case, DCRA purported to "rescind" its April 27, 2004 revocation. No reason was given for this action. In that same letter, DCRA issued a "new" revocation for the same COO, which again was asserted to have been issued in error based solely on the same March 31, 2004 BZA order. Ex. 19. What differed from the first revocation was that Bannum was now given a right to appeal to the BZA pursuant to 12A DCMR §110.6 which cites as authority, DC ST §6-641.09. Id.

DCRA counsel informally told Bannum's counsel that ALJs no longer reviewed these revocation cases under the OAH Act. DCRA counsel also admitted that there had been "pressure" to take this action. Bannum requested that DCRA honor the ALJ Order. On May 4, 2005, DCRA rejected Bannum's request. Ex. 20. DCRA's reasoning was that Bannum did not address the fact that the revocation was "based on a finding of error by the BZA." In short, unless Bannum could show that the BZA had not actually issued that decision, DCRA's revocation would stand.

K. Subsequent DCRA Illegal Revocation Decisional Actions

By letter dated May 13, 2005, DCRA notified Bannum that it was moving forward with enforcement action based on a finding that Bannum was in violation of two zoning regulations identified only as DC ST §6-1406 and Title 11 of the DCMR. Ex. 21. DC ST §6-1406 involved compliance with the D.C. Construction Codes. Bannum had never been charged with violating any Construction Code.

L. DCRA Seeks to Dismiss the Pending OAH Case

By a document dated May 20, 2005, DCRA filed a motion to dismiss Bannum's pending OAH case in which the ALJ continuance order was in effect. DCRA did not argue that OAH lacked jurisdiction over the revocation and use violations. Ex. 22.

M. Bannum Appeals to the OAH

On June 2, 2005, Bannum filed at the OAH, an opposition to the DCRA motion to dismiss and an appeal of the April 21, 2005 revocation and June 13, 2005 notice of violation. Ex. 23. These OAH appeals are pending before ALJ Poindexter under OAH No. CR-05-800000. Bannum had previously filed its protective appeal at this Board.

N. DCRA's June 30, 2005 Order

On June 30, 2005, DCRA issued Bannum a penalty notice citing the BZA Order and "use" violations based on the BZA's order. Bannum was ordered to vacate the premises within 45 days or face penalties. Ex. 24.

The DCRA letter did not cite any investigation that had discovered an imminent danger to the public as is required for the penalty being assessed under DC ST §2-1806.01(a).

LEGAL ARGUMENT

I. The Board Lacks Initial Jurisdiction over Revocations of Certificates of Occupancy

Under the Zoning Act, DC ST §6-641.07(f), this Board was granted jurisdiction over two specific types of actions involving a Certificate of Occupancy ("COO") –

(f) Appeals to the Board of Adjustment may be taken by any person aggrieved, or organization authorized to represent such person, or by any officer or department of the government of the District of Columbia or the federal government affected, by any decision of the Inspector of Buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part upon any zoning regulation or map adopted under this subchapter. (emphasis added).

Notably missing from the statute is any appeal of the revocation of a COO. The legislature is presumed to know that a COO could be revoked and could have included a revocation of a COO in this statute as one of the actions that could be directly appealed to the BZA. It chose not to do so. It is Bannum's position that a revocation is not included because the legislature recognized that unlike the covered appeals involving a COO, immediately upon the act of revocation, the "use" for which the COO was necessary is unauthorized. The result is in an immediate "infraction", which, under the Zoning Act, is to be adjudicated under DC ST §6-641.09. That statute provides for criminal and civil penalties for a "use" without a valid COO:

"... In the event that said regulations provide for the issuance of certificates of occupancy or other form of permit to use, it shall be unlawful to use any building, structure, or land until such certificate or permit be first obtained. It shall be unlawful to erect, construct, reconstruct, alter, convert, or maintain or to use any building, structure, or part thereof or any land within the District of Columbia in violation of the provisions of said sections or of any of the provisions of the regulations adopted under said sections. The owner or person in charge of or maintaining any such building or land or any other person who erects, constructs, reconstructs, alters, converts, maintains, or uses any building or structure or part thereof or land in violation of said sections or of any regulation adopted under said sections, shall upon conviction for such violation on information filed in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants in the name of said District and which Court is hereby authorized to hear and determine such cases be punished by a fine of not more than $100 per day for each and every day such violation shall continue. The Corporation Counsel of the District of Columbia or any neighboring property owner or occupant who would be specially damaged by any such violation may, in addition to all other remedies provided by law, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation or to prevent the occupancy of such building, structure, or land ... Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2." (emphasis added).

The grounds for the revocation do not change the fact that a "use" violation presently existed upon issuance of the revocation. An infraction proceeding under Chapter 18 of title 2 was readily available.

The same cannot be said of the "granting" or "withholding" of a COO. If the appeal involves the denial or withholding of a COO, the use has not begun and there is no basis for an infraction. If the appeal involves alleged improper granting of a COO, the use remains authorized until the Board grants the appeal.

In sum, in accordance with the statutory scheme in the Zoning Act, the BZA and DCRA have historically treated revocations of COOs as immediate infractions to be first appealed to and decided by an ALJ. Rogers Brothers Custodial Services, Inc. v. Board of Zoning Adjustment, 846 A.2d 348 (D.C. 2004); Perkins v. District of Columbia Board of Zoning Adjustment, 813 A.2d 206 (D.C. 2004).

In the past, the BZA was not precluded from appellate review of the zoning law aspects of the ALJ decisions upholding or reversing a revocation. The basis for this Board's jurisdiction over appeals of ALJ decisions is DC ST §2-1803.01:

> "... the District of Columbia Board of Appeals and Review shall entertain and determine appeals timely filed by persons aggrieved by orders issued by hearing examiners pursuant to this chapter or by the Mayor, except that appeals involving infractions of subchapter I of Chapter 6 of Title 6, or the District of Columbia Zoning Regulations shall be entertained and determined by the District of Columbia Board of Zoning Adjustment ..." (emphasis added).

In this case, in accordance with the above statutory scheme, on April 27, 2004, DCRA revoked Bannum's COO and charged Bannum with infractions of the zoning regulations, specifically, 11 DCMR §3203.11 and 12A DCMR §110.6. Bannum sought an ALJ hearing and on August 6, 2004, the ALJ granted Bannum's motion for a continuance until the D.C. Court of Appeals decided the appeal of underlying basis for the revocation—this Board's decision which DCRA stated had made its COO erroneous.

In October 2004, the OAH Act was passed. DC ST §2-1831 et seq. The Act included ALJ review of DCRA's adjudicated cases. No exception was made for DCRA zoning decisions; indeed, DCRA decisions were expressly included without limitation. DC ST §2-1831.03(b)(2). None of the above statutes was changed.

In April 2001, however, DCRA purported to "rescind" and immediately reissue the revocation.[1] DCRA's new revocation of the same COO did not include the immediate infraction of zoning regulations resulting from the revocation itself. The intent was to avoid ALJ review at the OAH based on 12 DCMR §110.6. However, the above regulation correctly cites DC ST §6-641.09 as the authority for this Board's appellate jurisdiction of a revocation. This statute gives this Board jurisdiction to review the zoning law aspect of COO revocation decisions following the adjudication of any penalty by an ALJ under "Chapter 18 of title 2." The existing regulation is totally consistent with prior law. Accordingly, until the ALJ issues his decision on the pending appeal before the OAH on these issues, this appeal is premature.

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[1] As discussed in part II below, this action was itself illegal and void under DC statutes.

Under the Zoning Act and OAH Act, the revocation of a COO is not "any other administrative decision based in whole or in part upon any zoning regulation or map adopted under this subchapter ...." While this Board has taken jurisdiction on that basis in a highly unusual case, Kuri Brothers, Inc., 50 DCR 8115 (2003), this decision preceded the OAH Act, which made the ALJ hearings over DCRA cases without limitation statutory. DC ST §2-1831.03(b)(2). Further, in Kuri, the Board only accepted jurisdiction because (a) Kuri had failed to seek a hearing before the ALJ, and (b) the Board held that the Civil Infractions Act did not apply because a "scope" of use revocation was at issue in Kuri rather than a "use" revocation, a Zoning Act violation.

This Board has recently held that it does not have jurisdiction over violations of the Zoning Act. See Peter Cholharis, Appeal No. 03-001 (April 20, 2004). Thus, alternatively, since a "use" violation existed under the Zoning Act upon revocation of Bannum's COO under Cholharis, this Board lacks jurisdiction over this case.

DCRA should not be permitted to manipulate its administrative process to separate the revocation of the COO from the automatic "use" infraction to effectively require a citizen to appeal to this Board. Yet, DCRA attempts to do just that here by taking the position that it "rescinded" the April 27, 2004 revocation and reissued a new revocation on April 21, 2005 on the same COO for the same reason because Bannum had done "nothing wrong." DCRA's manipulation became patent when on May 13, 2005, DCRA issued Bannum a violation notice. Undeterred by the law, on June 30, 2005, DCRA then issued a penalty without any ALJ review by ordering the closure of the facility in violation of DC ST §2-1801.6(a) (requiring "imminent danger" for the penalty of closure when the Civil Infractions Act otherwise allows for a fine). Ex. 24.

II. The April 21, 2005 DCRA Revocation is Void under the OAH Act

Assuming for the sake of argument that this Board has jurisdiction over revocations of COOs, the Board must grant Bannum's appeal because DCRA's revocation of this COO is void under DC ST §2-1831.13(c). This statute provides:

> "(c) When a case is brought before the Office, any agency that is a party shall take no further decisional action with respect to the subject matter in issue, except in the role of a party litigant or with the consent of all parties, for so long as the Office has jurisdiction over the proceeding." (emphasis added).

That statute, effective in October 2004, stays any decisional action by DCRA on a case that is pending before OAH. The legislative intent was to assure that the ALJs would not have their authority manipulated or undermined by agencies by administrative actions while their cases were pending. Bannum's case was pending on October 2004 (OAH No. CR-05- 80000), as DCRA recognized after the violation had occurred when DCRA filed its motion to dismiss at the OAH. Ex. 22.[2]

[2] No action has been taken by the ALJ on this motion. Bannum sought a hearing at the OAH on the revocation and DCRA's May 13, 2005 violation notice on June 2, 2005. Ex. 23.

DCRA's manipulated "rescission" and re-issuance of a revocation notice on April 21, 2005 are exactly the type of action that the legislature prohibited in this statute. After the Court of Appeals rejected the ANC's position that the ALJ lacked authority to make this order, upon information and belief, the ANC, through counsel caused pressure to be put on DCRA. DCRA's subsequent rescission and revocation were patent attempts to extricate itself from a proper ALJ order continuing proceedings until the Court of Appeals decided Bannum's appeal on the merits.

The District's claim that its actions were not "decisional" has no merit. Nothing in DC ST §2-1831.13(c) addresses the character of decisional actions. All decisional actions are precluded. Further, this decisional action was directly linked to an immediate issuance of a new revocation notice. The substance was identical — the same Bannum COO was allegedly invalid based on the same BZA decision. Accordingly, the revocation is void and Bannum's appeal should be granted.

III. Assuming for the Sake of Argument that the BZA Has Jurisdiction, DCRA Is Equitably Estopped from Revoking its Certificate of Occupancy

Unlike the Board's prior decision on laches, the ANC 5-B did not timely appeal the issuance of the COO and is not asserting it is an aggrieved person in this matter. It is DCRA that should be estopped from revoking the COO. To estop the District of Columbia from disavowing its zoning decisions, Bannum was required to show that in good faith reliance on affirmative acts of a municipal corporation, here DCRA, Bannum made expensive and permanent improvements to a property; and that the equities strongly favor retention of that use. See Saah v. District of Columbia Bd. of Zoning Adjustment, 433 A.2d 1114, 1116 (D.C.1981). This Board has also granted appeals based on estoppel in similar circumstances. Eugene A. Thompson, No. 15264 (May 2, 1990, April 3, 1991 and July 10, 1991); Jerry Jerome, No. 14025 (March 30, 1984). Bannum meets the legal tests.

It is extremely difficult to obtain zoning for a Community Correctional Center ("CCC") in the District of Columbia. The BOP advertised for a CCC but only Bannum was able to potentially locate a facility in the district at 2210 Adams Place N.E.

Before submitting a proposal to the BOP, Bannum's zoning counsel, Holland & Knight advised that a DCRA written decision confirming such zoning should be obtained. DCRA issued this written decision on December 11, 2000, which this Board held was an appealable agency decision. Although the Board ultimately did not require the ANC to appeal the decision within 60 days, Bannum should not be held to have anticipated this result. Bannum relied on DCRA's decision to enter the BOP contract.

On January 23, 2001, Bannum submitted a final proposal revision to the BOP that limited its contractual commitment to the 3 years of temporary zoning it had obtained from DCRA. The BOP did not immediately accept this proposal. Before awarding a contract, in accordance with standard procedure, the BOP required that Bannum contact the office of the D.C. Mayor, the Chief of Police, and the Ward 5 Councilman and inform them of the pending contract. Ex. 6-7.

By letter dated November 5, 2001, the Ward 5 Councilman advised the BOP of his objection. Ex. 8. Although Bannum was "cc'd" on the letter, no one at Bannum was aware of the objection and Bannum has no record of receiving this letter. Ex. 1. Had Bannum known of his objection, it would have acted, as it did in late December 2002 and early January 2003, and as Bannum had successfully done in other cities where Bannum has located CCCs, to attempt to resolve the community's concerns.

On November 16, 2001, the BOP awarded the contract to Bannum. This act, which was taken based on DCRA's zoning decision, bound Bannum contractually for 3 years. If Bannum failed to perform services during that period, the BOP could terminate the contract for default. Bannum would then have been potentially subject to significant monetary liabilities and severe impacts on Bannum's business with its only customer. Ex. 1.

The BOP did advise the Ward 5 Councilman that it had awarded the contract to Bannum again without telling Bannum of this communication. For whatever reason, the Ward 5 Councilman did not attempt to block the contract from going forward for more than a year or otherwise contact Bannum. Id.

As part of its due diligence, and before incurring out of pocket expenses, Bannum was advised to and again sought an affirmative DCRA confirmation that its zoning was proper. On November 23, 2001, DCRA again confirmed its zoning decision. On November 26, 2001, DCRA again confirmed its zoning decision. After receiving this confirmation, Bannum incurred significant expenses in procuring the design of the CCC facility and plans required to obtain the building permit. Att. 1. This design and completion of improvements and construction had to be pre-approved by the BOP before Bannum would be given a notice to proceed.

Aware of misunderstandings about CCCs in communities, such as false claims about the types of prisoners, see Ex. 25, Bannum reached out to the community leaders to explain the program prior to contract commencement. In April 2002, Bannum held a meeting with ANC 5-B officials, including its chairperson.

At that meeting, Bannum did not advise the ANC 5-B officials of a mere possibility that a CCC would be located in their ward. Bannum stated that firm and binding actions had been taken by DCRA and the BOP that showed any reasonable person that, absent an appeal to the BZA, the operation of the CCC at 2210 Adams Place N.E. was certain. Specifically, Bannum advised the ANC 5-B officials that (a) Bannum had obtained a contract with the BOP to operate a federal CCC at 2210 Adams Place N.E., and (b) the DCRA had issued Bannum two decision letters that confirmed Bannum's matter of right zoning at that location. With DCRA already approving its zoning, nothing prevented issuance of the building permit and COO.

In spite of ANC 5-B's possession of this actual knowledge, no objection was made to renovation of and upcoming operation of the CCC at 2210 Adams Place N.E.

For the next 8 months, Bannum continued to incur costs in the reasonable expectation that these ANC 5-B officials had advised their organization of this information and that the organization had decided not to object. Ex. 1. Bannum therefore had a reasonable belief that these DCRA decisions were final and binding.

During this period, Bannum entered into a binding lease that committed it to payments of $5308.00 per month, plus its monthly share of common area maintenance, utilities, and the significant improvements contemplated in the lease and beginning with the operation of the CCC. Ex. 1.

Shortly after BOP approved the building design, on October 9, 2002, Bannum applied for the building permit and COO. On January 8, 2003, a building permit was issued.

On January 15, 2003, the Ward 5 Councilman sent a letter to DCRA objecting to the issuance of the building permit. He urged DCRA to stop Bannum's work on the facility. One week later, ANC 5-B, under different leadership, filed an appeal to this Board. By this time, Bannum had already incurred expenses of about $300,505.41 in preparing for contract performance and for the renovation work with various architects and builders. Ex. 1.

By letters in late January and early February 2003, DCRA made a point of informing Bannum that it had made an affirmative decision to reject the request of the local Ward 5 Councilman to issue a stop work order. DCRA again confirmed its zoning decisions were correct. DCRA then decided that, notwithstanding the ANC's appeal, it would issue Bannum a COO to begin using the facility as a CCC.

DCRA's affirmative decisions to refuse to stop the work, to continue inspections, to defend the appeal, and to issue the COO deprived Bannum of any possible reason it could have offered to the BOP to stop the beginning of its performance of the contract to mitigate its losses. Bannum had no choice but to reasonably rely on DCRA's affirmative decisions.

The equities also strongly favor granting this appeal on the grounds of estoppel. As shown above, Bannum did everything a responsible business would do to establish proper zoning. It hired local zoning counsel. It notified the applicable local D.C. authorities of its intent to open a CCC at the location at issue. It followed its counsel's advice to seek written decisions from DCRA that its zoning was proper. With these DCRA decisions in hand and no notice of any objection from any quarter, Bannum entered into a binding contract with the BOP and began to incur the expenses associated with the design of the CCC.

Bannum then held meetings with the community, including the ANC 5-B officials, to explain what a CCC was. Bannum told them it had a BOP contract and that it had zoning. Again, no objections were made. Bannum was issued the building permit and entered into contracts for the renovation and construction of the facility.

Only after these expenses were incurred was an appeal of the building permit filed which Bannum was advised, was untimely. Bannum attempted to resolve the issues with the community and the Councilman. These attempts were unsuccessful apparently based on the inflammatory and inaccurate claims that concerned the residents. Ex. 25. Bannum had every reason to believe its zoning was proper. Its counsel so advised and DCRA defended the appeal, rejected requests to stop work and issued the COO.

In sum, Bannum's hands were tied based on its reasonable reliance on continuing DCRA decisions that its zoning was proper over a period of almost 2 years.

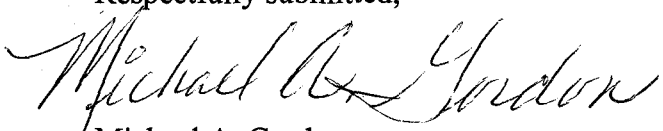
CONCLUSION

As a matter of law, this Board lacks jurisdiction over this appeal as it is premature. Only after an ALJ has ruled on the revocation and penalty will an appeal lie before this Board. Alternatively, the revocation itself is void since it was issued in violation of statute.

As will be shown at the hearing, as a matter of fact and equity, DCRA should be estopped from revoking the COO. Bannum has acted in good faith throughout this process in reasonable reliance on DCRA's decisions and actions. Bannum has been forced to expend significant monies to avoid a default termination. No person has suffered any harm as a result of the operation of this facility which is a benefit to the District of Columbia in preventing recidivism of returning D.C. felons. The cumulative DCRA decisions and affirmative actions, and the overall equities demonstrate that this case is a proper one for estoppel.

Finally, DCRA's revocation is based solely on this Board's decision on the meaning of a regulation that is a matter of first impression. Oral argument on this motion has been heard by the Court of Appeals and a final decision is expected in the near future. While motions for a stay have been denied, the merits decision will be decisive as to both the building permit and this revocation. Given the legal and factual complexities in this case, and the fact that the Court will soon decide the sole basis for DCRA's revocation, Bannum renews its request that a decision on the matter be stayed until the Court of Appeals has ruled.

Respectfully submitted,



Michael A. Gordon
Shawn C. Whittaker
Counsel for Bannum, Inc.

cc. John D. Rich, Esq.
Donald M. Temple, Esq. (via hand delivery)
Bennett Rushkoff, Esq. (via hand delivery)

Exhibit 1: Second Declaration of David Lowry

Exhibit 2: Declaration of David Lowry

Exhibit 3: Excerpts from BOP Solicitation

Exhibit 4: Holland & Knight letters dated December 11, 2000, November 23, 2001

Exhibit 5: Excerpts from Bannum's Final Proposal Revision dated January 23, 2001

Exhibit 6: March 2001 Bannum letter to Councilman Orange

Exhibit 7: April 10, 2001 Bannum letter to DC officials

Exhibit 8: November 5, 2001 Councilman Orange letter to BOP

Exhibit 9: Excerpt of BOP Contract

Exhibit 10: November 30, 2001 Councilman Orange letter to BOP

Exhibit 11: Excerpt from Bannum's Lease Agreement

Exhibit 12: Councilman Orange's letter dated January 15, 2003

Exhibit 13: ANC 5-B Appeal dated January 22, 2003

Exhibit 14: DCRA letter to Councilman Orange dated January 31, 2003

Exhibit 15: DCRA letter to Donald Temple dated February 21, 2003

Exhibit 16: DCRA letter Revoking COO dated April 27, 2004

Exhibit 17: Excerpts from Bannum's Motion for a Continuance to the ALJ dated August 4, 2004

Exhibit 18: DCCA Order denying ANC's Motion for Mandamus

Exhibit 19: DCRA letter Revoking COO dated April 21, 2005

Exhibit 20: DCRA letter Revoking COO dated May 4, 2005

Exhibit 21: DCRA Violation Letter dated May 13, 2005

Exhibit 22: DCRA Motion to Dismiss OAD Case dated May 20, 2005

Exhibit 23: Bannum's OAH Appeal dated June 2, 2005

Exhibit 24: DCRA June 30, 2005 Order to Vacate Premises

Exhibit 25: Flyer Distributed to Ward 5 Citizens

A

SECOND DECLARATION OF DAVID A. LOWRY

STATE OF FLORIDA)
)
COUNTY OF PINELLAS)

1. I, David A. Lowry, am the same David A. Lowry that previously submitted affidavits to District of Columbia Board of Zoning Adjustments ("BZA") in the case involving the Bannum's building permit for 2210 Adams Place N.E. I reconfirm my statements in the prior declaration. The statements below are based on my personal knowledge.

2. On or about March 24, 2000 and April 3, 2000, the Federal Bureau of Prisons ("BOP") issued a number of requests for proposal ("RFP") including RFP Nos. 200-0593-MA and 200-06-04-MA for Community Correctional Center ("CCC") services. Bannum specializes in providing CCC services for the BOP which was Bannum's only customer.

3. To submit a compliant proposal, Bannum had to verify that it had proper zoning by submitting documentation from local zoning officials whose approval or concurrence was required under applicable law, here, to Department of Consumer and Regulatory Affairs ("DCRA") officials. After we located property suitable for a CCC, our local D.C. counsel Holland & Knight, advised us to seek a formal decision letter from the DCRA, which they obtained. According to my attorney, DCRA was physically provided with excerpts from the BOP Statement of Work for a CCC which detailed what services were being performed at the facility. The DCRA official signed the document on December 11, 2000.

4. The BOP required proof that proper zoning was available for the CCC. I considered the letter an official decision that we had zoning. We believed our reliance on that letter was reasonable. This letter was included in Bannum's final proposal revision.

5. The BOP accepted Bannum's proposal based on this letter. I was advised by the BOP that no other offers were received and I know that the BOP has not until this year, issued another solicitation for CCC services in the District of Columbia. However, before accepting the proposal and awarding the contract, the BOP directed me to notify the Ward 5 Councilman of the intent to open a federal CCC in his ward. We did so and gave him excerpts of the BOP Statement of Work. Later, the BOP strongly suggested that Bannum notify the Mayor, Chief of Police and local D.C. Councilman in writing again. We did so.

6. Unknown to Bannum, the Ward 5 Councilman objected to the BOP to locating the CCC in Ward 5. Although there is a "cc" to Bannum on his letter, we do not believe we ever received it because none of my employees were aware of this letter and if I would have known about it, I would have taken steps to see if we could resolve his concerns, as

we did later. Based on my discussions with all Bannum employees, I am certain that neither the Councilman or the BOP conveyed this objection to Bannum orally.

7. On November 16, 2001, the BOP sent a letter to the Ward 5 Councilman advising him of the contract award to Bannum. Bannum did not receive and was unaware of this letter. This letter contained no "cc" to Bannum and again, Bannum was totally unaware of the Councilman's objections to the facility.

8. I can say for a certainty that we would not have submitted a proposal or signed a contract if we had not obtained this DCRA decision letter. Once the contract was signed, we were subject to the BOP termination for default clause. If we did not perform the services for the 3-year period we agreed to, Bannum would face monetary damage claims for excess reprocurement and other costs. More importantly to us, the BOP considers a termination for default as a performance failure. A default would adversely affect Bannum's ability to win other CCC contracts because past performance is always an evaluation factor. Those future BOP contracts are Bannum's sole means of staying in business.

9. As part of our due diligence, and before incurring out of pocket expenses, Bannum again obtained DCRA's confirmation that its zoning at 2210 Adams Place N.E. was proper. On November 26, 2001, DCRA again confirmed its zoning decision. After receiving this confirmation, Bannum incurred significant expenses in procuring the design of the CCC facility and plans required to obtain the building permit. Also, this design had to be pre-approved by the BOP before Bannum would be given a notice to proceed.

10. We were and are aware of misunderstandings about CCCs in communities, such as the false claims about the types of prisoners that were made here. For this reason, Bannum reached out to the community leaders to explain the program prior to contract commencement. In April 2002, after public announcements were made that a CCC was going to be operated at 2210 Adams Place N.E., we and the BOP met with community organizations including ANC 5-B leaders and its then-President, and the PTA and parents at Langdon Elementary School. Bannum also met with the general community at the Harbor Light Center.

11. At the meeting where ANC 5-B leaders attended, I did not physically hand them the DCRA zoning decision letters. However, I specifically told the ANC 5-B leaders that Bannum had a BOP contract and that Bannum had received two DCRA decisions confirming Bannum's matter of right zoning for our CCC at 2210 Adams Place N.E. BOP was there to confirm we had the contract. We also passed out excerpts from the BOP Contract's Statement of Work and explained how a CCC functions.

12. No objections were made to the location of the CCC for the next 8 months. During that period, we entered into a binding lease for the facility which committed us to pay total rent and other charges of $5,308.00 per month, plus common area maintenance fees, utilities and improvements starting on December 1, 2002.

13. By awarding the contract to Bannum, the BOP approved the proposed building design and, therefore, on October 9, 2002, Bannum applied for the building permit and Certificate of Occupancy ("COO"). On December 12, 2002, the Building and Land Regulation Administration, under the auspices of DCRA, issued Bannum a building permit for a "community corrections center." On or about January 16, 2003, the Director of DCRA, David Clark, telephoned me regarding Bannum's building permit for renovation of the property at 2210 Adams Street for use as a CCC. He stated that Councilman Vincent Orange had requested a "Stop Work Order" for Bannum's proposed CCC program. Mr. Clark further stated that because of the Councilman's request he had personally reviewed DCRA's file so as to ensure that everything was done properly. He stated that, based on his review, the only "discrepancy" in the file was that, in his opinion, Bannum would be required to add language to its building permit application which made it clear that our CCC program was a temporary use and was not to exceed three years. Mr. Clark then instructed me to add the following language to the application and resubmit: "Temporary 150 Bed Community Corrections Center On Leased Property for A Period Not to Exceed Three Years." I did as he instructed and shortly thereafter a revised building permit was issued by DCRA.

14. On January 15, 2003, the Ward 5 Councilman sent a letter to DCRA objecting to the issuance of the building permit. By this time, Bannum had already incurred costs of $300,505.41 (including what I understand to be accrued costs) in preparing for contract performance and for the renovation work with various architects and builders. It was not until a week later that the ANC 5-B representative appealed to the BZA.

15. We learned from DCRA about the letters from the Councilman and were told that DCRA had made an affirmative decision to reject the requests to issue a stop work order. Mr. Clark's actions of directing Bannum to amend its building permit application in direct response to what Mr. Clark reported as Councilman Orange's request for stop work order, and DCRA's issuance of the amended building permit on that basis together with the fact DCRA again confirmed to us that its zoning decisions were correct, led Bannum to rely upon the fact that the zoning for the property was appropriate for use in operating our Federal Bureau of Prisons contract. DCRA continued to inspect our work and on May 2, 2003, DCRA decided that, despite actual knowledge of, its participation in, and notwithstanding the ANC's appeal, it would issue Bannum a COO to begin using the facility as a CCC.

16. Although we were concerned about the BZA appeal, DCRA's affirmative decisions to defend the appeal and issue the COO deprived us of any possible reason we could have offered to the BOP to stop or delay the beginning of its performance of the contract. We had no choice but to reasonably rely on DCRA's affirmative decisions and proceed with performance.

17. Had I or anyone at Bannum known of objections to the operation of this facility, we would have acted, as we did in late December 2002 and early January 2003, and as

Bannum had successfully done in other cities where Bannum has located CCCs, to attempt to resolve the community concerns.

I swear under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief. Further affiant sayeth naught.

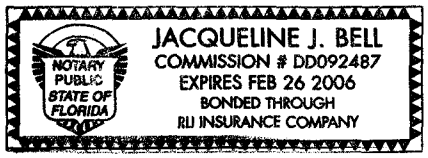
DAVID A. LOWRY

STATE OF FLORIDA)
)
COUNTY OF PINELLAS)

Sworn to me this 6 day of December, 2005 by DAVID A. LOWRY, who is personally known to me or who produced the following as personal identification Known _____ and who took an oath swearing or affirming that the foregoing SECOND DECLARATION OF DAVID A. LOWRY is true and correct to the best of his knowledge and belief.

NOTARY PUBLIC, STATE OF FLORIDA

My Commission Expires:



Bannum, Inc.

		PREPAID EXPENSE	Washington, DC	1305	057
		DATE:	7/31/2003		
Date	**CHECK #**	**PAID TO**	**REGARDING**		**AMOUNT**
7/12/1999		Cathy Bellew			$250.00
		Ck. Rec'd.	Ck. Rec'd. Cathy Bellew		-$127.63
8/13/1999		American Express			$290.65
8/13/1999		American Express			$5.00
1/13/2000	47882	Bill Hunt	Travel Advance		$100.00
3/31/2000		Bill Hunt	Meals-12.96;Trav.65.06		$78.02
3/31/2000		American Express	Travel Advance		$30.00
3/31/2000		American Express	Travel Advance		$273.00
5/31/2000	50099	PIP Printing	copies		$23.01
5/1/2000	49239	Cathy Bellew	Property search		$200.00
		Ck. Rec'd.	Ck. Rec'd. Cathy Bellew		-$44.56
6/13/2000	50199	Kinkos	inv# 32366		$97.20
6/20/2000	50169	Kass & Skalet	Legal		$500.00
7/19/2000	50573	Kinkos	inv# 24200032457		$114.27
8/3/2000		American Express	Holiday Inn		$299.86
8/17/2000		Cathy Bellew	Travel Advance		$106.21
8/31/2000	51291	American Express	Holiday Inn		$141.71
8/31/2000	51467	Sachs	Legal		$277.50
9/13/2000	51701	Cathy Bellew	Travel Reimburse		$127.90
9/29/2000	51701	Cathy Bellew	Travel		$16.56
9/29/2000	51701	Cathy Bellew	Travel		$21.96
9/29/2000	51701	Cathy Bellew	Travel		$18.50
9/30/2000	51764	Avis	Cathy Bellew		$118.38
9/30/2000	49896	Avis	Travel		$230.29
9/30/2000	50330	Avis	Travel		$130.40
10/13/2000	51992	Sachs	Legal		$390.00

4316, 23

10/24/2000	52142	American Express	Travel fee		$15.00
10/24/2000	52142	American Express	Airline ticket-Cathy		$493.00
12/11/2000	53886	Elliot Engineering	Drawings for center		$240.00
12/4/2000	53761	Elliot Engineering	Drawings for center		$140.00
12/27/2000	54146	Elliot Engineering	Drawings for center		$150.00
12/12/2000	A-39	Cathy Bellew	TRAVEL MEALS 9.84		$49.64
2/9/2001	52869	Elliot Engineering	Drawings for center		$140.00
2/20/2001	53088	Holland & Knight	Legal		$3,117.40
2/28/2001	54349	Holland & Knight	Legal		$1,578.90
4/5/2001	54859	Dept of Consumer	Certificate of Occupancy		$62.95
4/12/2001	54914	Holland & Knight	Legal		$827.00
4/16/2001	55033	Dept of Consumer	Filing Fee		$150.00
4/26/2001	55189	office of Sec State	Good Standing Cert		$10.00
5/24/2001	55582	Holland & Knight	Legal		$2,549.90
5/24/2001	55591	Sachs	Legal		$15.00
4/30/2001	Gen. Jou.	Sachs	RCLS		$30.00
11/1/2001	58420	Baltimore County Zoning			$40.00
4/9/2002	61237	D.C. Treasurer	Business Lisc.		$220.00
4/23/2002		Cathy Bellew	Travel		$180.14
5/6/2002	61756	American Express	Airline tickets		$30.00
5/6/2002	61756	American Express	Airline tickets		$331.50
5/6/2002	61756	American Express	Airline tickets		$339.50
5/6/2002	61756	American Express	Airline tickets		$30.00
5/23/2002	62158	Elliot Engineering	Revision- D.C		$220.00
6/3/2002	63334	American Express	Airline tickets		$100.00
6/3/2002	63334	American Express	Hotel fees		$93.43
6/3/2002	63334	American Express	Hotel fees		$171.62
6/3/2002	63334	American Express	Hotel fees		$166.00
6/3/2002	63334	American Express	Hotel fees		$166.00
6/3/2002	63334	American Express	Hotel fees		$176.00
6/25/2002	63736	Joseph Camardo	Legal		$3,209.00
6/28/2002	63847	Joseph Camardo	Legal		$4,251.13
6/3/2002	63337	Avis	Car rental		$194.45
7/10/2002	64006	American Express	Airline tickets		$509.00
8/6/2002	64557	Elliot Engineering	Drawings for center		$25.00
8/28/2002	64962	NOA	Retainer		$5,000.00
9/3/2002	65069	Adams Place	Prepaid Rent		$5,308.00
9/6/2002	65123	American Express			$76.63
9/30/2002	VAR	J CAMARDO	LEGAL		$32,643.25

10/1/2002	62572	Elliot Engineering	Drawings for center		$45.00
10/1/2002	62600	noa	Retainer		$3,015.50
10/3/2002	62679	Elliot Engineering	Drawings for center		$60.00
10/4/2002	62725	D.C. Treasurer	license		$125.00
10/4/2002	62726	Christic Whalen	expeditor		$300.00
10/30/2002	63090	NOA	architecture		$6,470.29
10/24/2002	63137	American Express	travel		$1,911.02
11/26/2002	66848	Meta Engineers PC	engineer		$12,650.95
12/02/02	66959	Ahmet Ozusta, PE	Repairs and Maintenance		$1,750.00
12/05/02	67022	Joseph Camardo	Legal		$50.00
12/11/02	67044	D.C. Treasurer	permit		$5,385.00
12/16/02	67186	NOA	architecture		$28.78
12/17/02	67208	David Lowry	12/3-12/5		$91.43
12/19/02	67281	David Lowry	12/11-12/12		$62.10
12/19/02	67345	J.Y. Contruction	Repairs and Maintenance		$16,649.50
12/20/02	67346	Jason Wachterman	C.L.		$160.00
12/20/02	67354	Charles Hurley	Reimburse Travel		$611.19
12/20/02	67355	Charles Hurley	Contract Labor		$1,000.00
12/20/02	67347	Meta Engineers PC	Drawings for center		$93.79
12/20/02	67352	NOA	architecture		$37.80
1/2/2003	67567	Charles Hurley			$1,000.00
1/2/2003	67566	Charles Hurley			$48.42
1/8/2003	67607	David Lowry			$46.57
1/9/2003	67672	2210 Adams Place			$5,308.00
1/9/2003	67685	JY Contruction			$66,598.00
1/10/2003	67694	American Express			$1,216.74
1/10/2003	67704	Charles Hurley			$150.00
1/22/2003	deposit	Ltr of Credit-Wash			$1,346.67
1/27/2003	67958	Charles Hurley			$9.63
1/27/2003	67958	Charles Hurley			$66.58
1/27/2003	67958	Charles Hurley			$56.06
1/27/2003	67954	Hulon Willis			$12.00
1/28/2003	67950	Meta Engineers PC	Drawings for center		$94.92
1/28/2003	67949	David Lowry			$88.51
1/28/2003	67962	Jason Stough			$221.13
2/1/2003	67989	2210 Adams Place	Rent		$5,308.00
2/7/2003	68192	JY Contruction	LHI		$99,897.00
2/11/2003	68280	2210 Adams Place	CAM fees		$1,136.34
2/11/2003	68287	American Express	Hotel fees		$136.26

2/11/2003	68287	American Express	Hotel fees-travel		$288.82
2/11/2003	68287	American Express	hotel DAL		$260.73
2/27/2003	68645	David Lowry	travel		$39.96
2/27/2003	68645	David Lowry	travel		-$0.02
2/28/2003	68613	Postmaster	postage		$37.00
2/28/2003	68624	Jason Wachterman	C.L.		$560.00
2/28/2003	68336	Charles Hurley	C.L.		$1,000.00
2/28/2003	68618	2210 Adams Place	CAM fees		$2,653.39
2/28/2003	68717	Joseph Camardo	Legal		$42.00
2/28/2003	68814	Charles Hurley	travel/supplies/meals 151.36		$333.76
2/28/2003	reclass	2210 Adams Place	rent		$5,308.40
3/1/2003	68604	2210 Adams Place	RENT		$5,308.00
3/10/2003	68790	Commercial Brokers	Utilities Inst		$630.00
3/12/2003	68860	J.Y. Contruction	contruction		$15,000.00
3/13/2003	VOID	Postmaster	postage		-$37.00
3/14/2003	68942	Hulon Willis	parking		$22.00
3/14/2003	68943	NOA	architecture		$22.70
3/14/2003	68938	David Lowry	meals		$28.96
3/17/2003	68894	Charles Hurley	Contract Labor		$1,000.00
3/17/2003	68896	Jason Wachterman	Contract Labor		$305.00
3/17/2003	68897	Anthony Thomas	Contract Labor		$160.00
3/17/2003	68915	Charles Hurley	travel meals 101.92		$144.12
3/17/2003	69021	Home Depot	supplies		$764.95
3/18/2003	69080	C.T. Carpet	carpet		$4,050.00
3/20/2003	69169	Charles Hurley	day labor		$1,120.00
3/24/2003	69214	Bob Barker Co.	mattresses		$3,807.05
3/24/2003	69214	Bob Barker Co.	mattresses		$25,121.25
3/24/2003	69226	Next Day Blinds	blinds		$440.93
3/25/2003	69228	Charles Hurley	day labor		$1,500.00
3/25/2003	29227	C.T. Carpet	tile		$4,756.00
3/26/2003	29230	Bob Barker Co.	mattresses		$2,450.00
3/26/2003	69271	Alphonzo Carter	paint		$1,140.00
3/26/2003	69270	Anthony Thomas	Contract Labor		$415.00
3/26/2003	69269	Jason Wachterman	Contract Labor		$480.00
3/26/2003	69274	Charles Hurley	Contract Labor		$1,000.00
3/26/2003	69278	Charles Hurley	travel meals 110.36		$314.00
3/31/2003	69293	Hulon Willis	Contract Labor		$852.00
3/31/2003	69285	Bob Barker Co.	mattresses		$4,165.00
3/31/2003	69343	Interior Solutions	building permit		$782.00

3/31/2003	68075	Sam's Club			$158.61
3/31/2003	69403	Hulon Willis	training		$349.44
3/31/2003	69379	Bob Barker Co.	blankets		$1,501.00
3/31/2003		ODV Inc.	drug testing kits		$178.00
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4/2/2003	69348	Charles Hurley	labor		$1,000.00
4/7/2003	69406	Charles Hurley	labor		$900.00
4/8/2003	69427	C.T. Carpet	flooring		$8,867.00
4/8/2003	69427	C.T. Carpet	flooring		-$8,867.00
4/8/2003	69427	C.T. Carpet	flooring		$4,817.00
4/9/2003	69431	David Lowry	travel		$35.20
4/9/2003	69452	2210 Adams Place	rent		$3,292.61
4/10/2003	69468	American Express	accomodation		$1,217.85
4/10/2003	69468	American Express	washer/dryer		$7,476.22
4/10/2003	69468	American Express	accomodation		$1,259.60
4/10/2003	69468	American Express	travel		$40.00
4/10/2003	69468	American Express	travel		$201.00
4/10/2003	69468	American Express	accomodation		$123.20
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4/15/2003	69581	C.T. Carpet	flooring		$4,050.00
4/15/2003	69605	Charles Hurley	labor/travel		$911.15
4/15/2003	69603	Potomac Electric Co	supply electric serv		$5,368.00
4/15/2003	69624	Home Depot	supplies builing		$1,833.93
4/16/2003	69779	Office Depot	storage cabinets		$3,271.92
4/16/2003	69779	Office Depot	office furniture		$5,567.76
4/21/2003	69783	Viking Office Produ	occupational kits		$260.95
4/21/2003	69780	Walter Stephens, Jr	hygiene kits		$109.27
4/21/2003	70071	Office Depot	storage cabinets		$4,851.46
4/21/2003	69762	Meta Engineers PC	Drawings for center		$1,400.00
4/21/2003	69774	Charles Hurley	labor		$160.00
4/23/2003	70092	Walter Stephens, Jr	hygiene kits		$43.47
4/24/2003	69882	Sam's Club			$218.46
4/24/2003	69882	Sam's Club			$27.59

4/24/2003	70023	2210 Adams Place	Rent		$1,712.76
4/24/2003	70023	2210 Adams Place	Rent		$5,675.82
4/25/2003	69909	David Lowry	travel		$72.60
4/25/2003	69887	J.Y. Contruction	contruction		$600.00
4/28/2003	69891	J.Y. Contruction	contruction		$38,700.00
4/28/2003	69892	Jason Wachterman	Contract Labor		$580.00
4/28/2003	69912	Diamond Drilling	slots/holes in roof		$2,200.00
4/28/2003	70213	Walter Stephens, Jr	hygiene kits		$498.44
4/30/2003	69943	Hulon Willis	training		$1,875.00
4/30/2003	69949	Charles Hurley	labor		$1,000.00
4/30/2003	69948	Charles Hurley	travel		$237.55
4/30/2003	69942	Hulon Willis	training		$66.34
4/30/2003	69984	Joseph Camardo	Legal		$1,052.00
4/30/2003	69984	Joseph Camardo	Legal		$3,522.00
4/30/2003	69985	Beltway Fire Equip	fire extingushers		$847.00
4/30/2003	69983	Sam's Club			$88.43
4/30/2003	7006	Bill Willingham	court hearings		$998.78
4/30/2003	70076	Staples	storage cabinets		$8,723.58
4/30/2003	70076	Staples	storage cabincts		$ (835.43)
4/30/2003	70076	Staples	storage cabinets		-$116.31
4/30/2003	70076	Staples	storage cabinets		$465.26
4/30/2003	70203	Home Depot	building supplies		$960.92
4/30/2003	70327	Alcohol Countermeas	test equip		$810.00
4/30/2003	70327	Alcohol Countermeas	test equip		$43.00
4/30/2003	70331	National Hospitality	appliance houschold		$448.38
4/30/2003	70201	Dodson Pest Control	pest scrv		$74.03
5/1/2003	69807	2210 Adams Place	rent		$5,308.00
5/1/2003	69997	Charles Hurley	labor		$480.00
5/2/2003	70003	J.Y. Contruction	construction		$83,247.50
5/2/2003	70015	J.Y. Contruction	construction		$66,598.00
5/5/2003	70021	Hulon Willis	phone exp		$168.00
5/5/2003	70023	2210 Adams Place	rent		-$1,712.76
5/5/2003	70060	Verizon	phonc cxp		$38.12
5/6/2003	69884/055	Catherine Bellew	travel		$1,344.65
5/7/2003	70071	J.Y. Contruction	contruction		$1,370.00
5/8/2003	70065	United Telephonc	phone system purchasc		$1,811.00
5/12/2003	70169	American Express	travcl		$134.40
5/12/2003	70169	American Express	bathroom partitions		$4,444.84
5/12/2003	70169	American Express	air tickets		$459.50

5/12/2003	70169	American Express	travel		$30.65
5/12/2003	70169	American Express	vacuums/sewing machine		$380.66
5/12/2003	70169	American Express	refrigerators/freezers		$3,806.92
5/12/2003	70169	American Express	travel		$58.83
5/12/2003	70169	American Express	computer/software		$1,099.71
5/12/2003	70170	Holland & Knight llp	Legal		$24,639.54
5/13/2003	70208	Alarm Security	door alarms		$1,060.00
5/16/2003	70329	Staples	tables/chairs		$1,647.27
5/16/2003	70329	Staples	tables/chairs		$418.72
5/16/2003	70329	Staples	time recorders/chairs		$1,183.96
5/16/2003	70329	Staples	containers		$159.83
5/16/2003	70422	Walter Stephens, Jr			$115.12
5/17/2003	70259	Charles Hurley	travel		$203.13
5/17/2003	70260	Charles Hurley	labor		$1,000.00
5/17/2003	70261	Donald Holt	directors pay		$625.00
5/19/2003	70295	Kinkos			$335.02
5/19/2003	70290	Office Depot	office supplies		$101.46
5/19/2003	70362	Joseph Camardo	Legal		$2,125.00
5/19/2003	70362	Joseph Camardo	Legal		$250.00
5/19/2003	70362	Joseph Camardo	Legal		$2,095.94
5/19/2003	70423	Charles Hurley	travel		$394.68
5/19/2003	70424	Charles Hurley	labor		$500.00
5/23/2003	70391	Bill Willingham	contra-see below canclld		$296.50
5/30/2003	70539	Avis Rent a car	rental car		$726.46
5/30/2003	70535	Sam's Club	office supplies		$830.17
5/30/2003	70535	Sam's Club	office supplies		$279.85
5/30/2003	70603	Joseph Camardo	Legal		$3,800.00
5/30/2003	70603	Joseph Camardo	Legal		$3,062.50
5/30/2003	70603	Joseph Camardo	Legal		$150.00
5/30/2003	70603	Joseph Camardo	Legal		$899.00
5/30/2003	70603	Joseph Camardo	Legal		$853.43
5/31/2003	70514	Donald Holt			$130.42
5/31/2003	70806	2210 Adams Place	rent		$5,867.07
5/31/2003	70391	Bill Willingham	contra-see above canclld		-$296.50
5/31/2003	70518	United Telephone	phone sys installed		$1,810.94
5/31/2003	69891	J.Y. Contruction	construction		-$38,700.00
5/31/2003	70601	J.Y. Contruction	contruction		$20,000.00
5/31/2003	70659	American Express	travel/accomodation		$8,325.90
6/1/2003		2210 Adams Place	rent		$5,308.00

B

DECLARATION OF DAVID A. LOWRY

1. I, David A. Lowry, am the same David A. Lowry that previously submitted affidavits that were in evidence before the District of Columbia Board of Zoning Adjustments ("BZA"). The statements below are based on my personal knowledge.

2. Bannum has been providing Community Correction Center ("CCC") services to the Federal Bureau of Prisons ("BOP") for nearly 20 years.

3. Bannum has been performing our current BOP contract for CCC services at 2210 Adams Place, N.E. since May 2, 2003. That contract incorporates Bannum's proposal that was specifically premised upon temporary 3-year zoning.

4. As noted in my prior declarations, after receiving confirmation that its zoning was proper from the District of Columbia Consumer and Regulatory Agency ("DCRA") in 2000, Bannum invested approximately $450,000 before an appeal was filed with the BZA. This consisted of architect services, a binding commitment to perform the BOP contract for 2 years, at $1,547,000 per year, and purchased equipment, furniture and other items. Since the BZA appeal, Bannum has expended an additional amounts so that the current total estimated investment is $758,000, consisting of $650,000 renovation costs and $109,000 in purchased equipment, furniture and other items.

5. If Bannum's Certificate of Occupancy ("CofO") is revoked, as the DCRA has stated it will do based solely on the erroneous BZA decision currently pending appeal before this Court, Bannum will be unable to perform its contract, and could be terminated for default under which it would lose the value of this investment. Potentially, Bannum could be suspended or debarred from Government contracting. Since Bannum's only business is

providing CCC services to the BOP, the revocation of the CofO Occupancy could have catastrophic consequences for our entire business.

6. If the CofO is revoked, Bannum would also lose profits of at least $12,000 per day. In addition, Bannum will be forced to lay off key personnel, including managers and professionals, who likely will find employment elsewhere.

7. Since May 2003, Bannum has provided CCC services for hundreds of D.C. residents since its opening. The Department of Justice's current policy only allows assignment to a CCC by the BOP for the last 10% of an offender's sentence pursuant to 18 U.S.C. §3624(c). In accordance with BOP policy, almost all of the residents at our CCC were assigned there by BOP for the last 10% of their sentences; only a few probation violators are there by direct sentence of a court. None were or are pre-trial detainees. Even before BOP issued its new policy in 2002, nationwide, only a tiny percentage of the residents at BOP CCCs have been assigned directly by a court, are pre-trial detainees, are on probation, are on pre-trial release or are awaiting finalization of their parole.

8. Based on my knowledge of the BOP CCC awards since 2000, no other offeror has been able to find proper zoning for a CCC facility except Bannum, although the BOP has advertised requirements for 330 persons, of which Bannum provided facilities for 150 persons. If Bannum's CofO is revoked, the D.C. residents who are currently assigned to Bannum's CCC will either have to be reassigned to another D.C. CCC until its capacity is filled or will be imprisoned by the BOP in a higher security federal prison somewhere in the United States. Once the capacity of D.C. CCCs is filled, there will not be adequate space in CCCs to facilitate a productive transition into the D.C. community of at least hundreds of D.C. offenders who qualify for CCCs.

I swear under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

David A. Lowry
Executive Director
Bamum, Inc.

NOTARY PUBLIC
Theresa B. Williams
My Commission expires: 6-14-09

AFFIDAVIT

STATE OF FLORIDA)
)
COUNTY OF PINELLAS) ss:

I, DAVID LOWRY, being over the age of majority and otherwise competent to make this affidavit state as follows:

1. I am over the age of eighteen (18) and am a resident of Pinellas County, Florida.

2. I am employed as the Executive Director of Bannum, Incorporated ("Bannum") headquartered in Clearwater, Florida.

3. Bannum is in the business of operating Community Corrections Centers ("CCC"s) pursuant to contracts awarded through competitive bidding by the United States Department of Justice, Federal Bureau of Prisons ("BOP") located in Washington, D.C. Bannum has CCCs currently operating in Florida, Alabama, North Carolina, South Carolina, West Virginia, Mississippi, Georgia, Nevada, and Texas.

4. Over the past nearly twenty (20) years, Bannum has successfully performed and completed dozens of CCC contracts for the BOP. More importantly, Bannum has spent countless business resources, and indeed the essence of its business operations and policy-making activities on the development of its business reputation and goodwill. This has been accomplished through Bannum's history of performance in operating current BOP programs and in preparing proposals for current and outstanding BOP solicitations for CCCs that are in the process of being awarded by the BOP.

5. Bannum is solely in the business of operating CCCs and the BOP is its only customer. Over the past almost twenty years, the BOP has awarded Bannum its

CCC program contracts through competitive negotiated procurements after the issuance of requests for proposals ("RFP"s). In each of Bannum's CCC programs, it as the contractor is solely responsible for all operational aspects of the program, including but not limited to the following: personnel hiring and management; real estate acquisition/leasing, renovations and build-out; the provision of food service for the residents; and the provision of all equipment and services necessary for the operation of the CCC.

6. In formulating its proposal for the RFP for CCC services in Washington, D.C., Bannum had to locate a property sufficient to house the program pursuant to BOP standards. Proof of the ability to use at least one proposed property for the program must be submitted to the BOP as part of Bannum's final proposal. In general, once the BOP awards a contract to Bannum, its proposal becomes the contract between Bannum and the BOP. Accordingly, the proof of Bannum's legal right to use the property Bannum submits as part of its bid, including proof of appropriate zoning, then becomes part of Bannum's contractual obligations to the BOP. In other words, the BOP and Bannum, Inc. rely upon the City's representation of zoning and use for a particular property.

7. On or about March 24, 2000 and April 3, 2000, respectively, Bannum received RFP Number 200-0593-MA and RFP Number 200-06-04-MA, from the BOP for CCC services in the Washington, D.C. area. Ultimately, Bannum found a suitable property for lease at 2210 Adams Place, NE, Washington, D.C. ("2210 Adams Place"), and on November 16, 2000 obtained an option to lease the property subject to zoning verification, Bannum's ability to use the property as a CCC, and Bannum's award of the CCC contract.

8. In addition, Bannum began to meet with local officials in an effort to obtain zoning approval from the District of Columbia for the operation of a CCC. Specifically, Bannum representatives made several contacts, or attempts to contact, various D.C. officials and community leaders in the process of attempting to obtain the needed zoning approval. The following is a list of some of Bannum's efforts in this regard:

- November 30, 2000: Bannum notified Mayor Williams, Chief of Staff Omer and Police Chief Ramsey of its intention to locate a CCC at the subject property;
- December 11, 2000: Bannum obtained zoning approval from Michael Johnson, Zoning Administrator, District of Columbia;
- March 12, 2001: Bannum notified Councilman Orange of its plans to locate a CCC at the subject property;
- April 10, 2001: Bannum notified Mayor Williams, Councilman Orange, and Police Chief Ramsey of its intention to locate a CCC at the subject property;
- October 31, 2002: Bannum met with Wholistic Services, the business leasing the space next to Bannum at the subject property, and advised of its intention to locate the CCC at the subject property;
- November 26, 2001: Bannum obtained zoning approval from Olutoye Bello, Zoning Administrator for the District of Columbia;
- In or about February, 2002, Bannum, Inc. engaged the services of a community organizer for the purpose of providing information to the public and the immediate community about Bannum, Inc.'s proposed federal BOP program. One activity our community organizer undertook was to physically walk the neighborhoods and communities surrounding 2210 Adams Place, NE, talking to the public.
- April 18, 2002: Bannum met with area senior citizens at Model Cities Wellness Center after issuance of a public announcement;
- April 18, 2002: Bannum met with ANC three leaders and Mr. Jenkins representing the Mayor at Washington Center for Aging Services (BOP representatives were also in attendance);

- April 18, 2002: Bannum met with PTA and parents at Langdon Elementary School after issuance of a public announcement (BOP representatives were also in attendance);

- April 18, 2002: Bannum met with the general community at Harbor Light Center after issuance of a public announcement (BOP representatives were also in attendance as well as some ANC leaders);

- April 19, 2002: Bannum met with area business owners at Washington Center for Aging Services to discuss the opening of the CCC;

- June 11, 2002: Bannum transported ANC leaders Chappelle and Bowser to Orlando, Florida to review Bannum's program operations at its CCC there;

- October 5-6, 2002: Bannum advertised in the Washington Post for all positions at the CCC;

- January 2, 2003: Bannum attempted to meet with Councilman Orange;

- January 2, 2003: Bannum met with Councilman Orange's Legislative Assistant;

- January 2, 2003: Bannum attempted to meet with Councilmember Patterson, Chairperson, Committee on the Judiciary;

- January 3, 2003: Bannum met with three persons representing what I was lead to believe was the Bryant Street Homeowners Association;

- January 21,2003: Bannum met with "Citizens For A Safe Ward 5" after issuance of a public announcement (BOP representatives were also in attendance);

- February 11, 2003: BOP representatives met with "Citizens For A Safe Ward 5";

- Date Unknown: Bannum met with Councilman Orange's Chief of Staff;

- Date Unknown: Bannum met with Rhonda Chappelle, ANC leader of Ward 5 on two separate occasions; and

- Date Unknown: A Community Organizer with the D.C. Prisoners' Legal Services Project, Inc. was assigned in February, 2001 to assist Bannum in obtaining community support.

9. Ultimately, based in large part upon the representation from the District of Columbia of valid zoning for Bannum's proposed use of 2210 Adams Place as a CCC,

the BOP awarded Bannum the CCC contract on November 16, 2001. Bannum's contract with the BOP calls for Bannum to operate a CCC for one hundred fifty (150) male offenders per day at 2210 Adams Place. The rate to which Bannum is entitled under the contract from the BOP is $80.00 per-man, per-day. Bannum is set to commence performance of the CCC contract on or about, but no later than May 1, 2003. Both the BOP and Bannum heavily and detrimentally relied upon the District of Columbia's representations confirming zoning approval for Bannum's operation of a CCC at 2210 Adams Place. In fact, not only did the BOP award the contract to Bannum on the basis of the District of Columbia's zoning approval, but, upon information and belief, all other bidders were excluded from contract award for failure to provide verification of zoning.

10. In fact, once the District of Columbia provided verification of proper "by-right" zoning Bannum, Inc., specifically relying upon that representation, took the following actions:

a. Signed a lease with the land owner of 2210 Adams Place, N.E. that runs concurrently with Bannum, Inc.'s BOP contract. Bannum, Inc. is currently obligated to pay rent, common area and maintenance fees to the landlord;

b. Entered into a contract with the U.S. Department of Justice, Bureau of Prisons;

c. Entered into a contract for, and paid for, architectural and engineering plans for the renovation of 2210 Adams Place, N.E. for use in the Federal BOP contract;

d. Entered into a contract for construction and renovations at the property.

e. Entered into agreements and contractual obligations with local utilities for the appropriate upgrades of water, sewer, and electricity at the property.

f. Purchased equipment necessary for the operation of a federal BOP CCC at the property. Such property includes, among other things, beds, mattresses, desks, chairs, telephone equipment, office equipment, and fire alarm systems.

To date, Bannum, Inc. has expended in excess of four hundred fifty thousand dollars ($450,000.00) for such items. From this date through May 1, 2003, Bannum, Inc. must obligate another approximately one hundred sixty-four thousand dollars ($164,000.00) in order to be ready to operate its federal BOP contract and in reliance upon the District of Columbia's representations that 2210 Adams Place, N.E. is properly zoned for the said use.

11. In addition, Bannum, Inc. projects cost overruns on the construction contract of as much as seventy thousand dollars ($70,000.00).

12. Currently, without any incoming revenue whatsoever from the federal BOP contract, Bannum, Inc.'s minimum daily fixed operational costs is four thousand one hundred fifty dollars ($4,150.00).

13. The BOP conducted a "pre-site inspection" of Bannum's proposed property at 2210 Adams Place on or about December 12, 2000. The purpose of this BOP "pre-site inspection" was to evaluate the proposed property in accordance with BOP standards for the CCC services contract. In furtherance of the lease agreement with 2210 Adams Place, a representative from Bannum attended said "pre-site inspection," as did

2210 Adams Place agents and three (3) representatives from the BOP. Based in part on this inspection and the representations of the District of Columbia that is it properly zoned therefor, the BOP found that the site acceptable and ultimately awarded Bannum, Inc. a contract on that basis.

14. It is my belief from twenty-four years of experience in contracting with the BOP for CCC services that this program will be an asset to the community in which it is located. It is my further belief that the program will not adversely affect, but rather will promote, public safety in the community.

15. However, it is my further belief from my years of experience contracting with the federal BOP that if Bannum, Inc. cannot begin performance of its contract for CCC services, then the BOP will terminate the contract for default. A termination for default has a very strong adverse effect upon the ability of any contractor to obtain future contracts with the BOP and may well cause Bannum, Inc. to be debarred or in the very least put Bannum, Inc. at a significant competitive disadvantage, which may well lead to the demise of Bannum, Inc.'s business with its only customer, the federal Bureau of Prisons.

David A. Lowry

Sworn to before me this
17th day of April, 2003.

Notary Public

JOHN D. RICH
MY COMMISSION # DD 000003
EXPIRES: September 29, 2005
Bonded Thru Notary Public Underwriters

C

CHAPTER 20 - BOP Inspections

The objective of BOP inspections are to ensure that the contractor is in compliance with applicable laws, regulations, policies, contract requirements, and that fraud, waste, abuse, mismanagement, and illegal acts are prevented, detected, and reported. Once a contract has been awarded, inspections are conducted.

The contractor will receive feedback to inspections in the form of monitoring reports or direct correspondence. This feedback may assign findings which the contractor shall remedy. A finding is determined when evidence indicates that the contractor has failed to meet the performance requirements of the contract. The evidence that supports a finding will be factually sufficient to lead a knowledgeable, reasonable person who is not an expert in the program area to the same conclusion as the reviewer.

The BOP reserves the right to determine the resources, e.g., number and type of staff, number of working days necessary to perform all inspections and monitoring visits as defined in this chapter.

1. PREOCCUPANCY VISIT. After contract award, but before the CO issues the "notice to proceed" the BOP may conduct a preoccupancy visit at the facility. During this visit, the BOP will determine the contractor's ability to begin performance by inspecting, at a minimum, all emergency plans, life/safety and zoning issues for compliance to the SOW.

The contractor shall be in compliance with all aspects of the contract to include emergency plans, life/safety and zoning issues before the CO will issue the "notice to proceed."

a. Emergency Plans. After contract award, but before the CO issues the notice to proceed, the contractor shall submit to the CCM a complete written copy of the facility's emergency plans as required in the SOW.

b. Life/Safety Issues. After contract award, but before the CO issues the notice to proceed, the contractor shall be in compliance with all life safety issues as required by the SOW, unless otherwise indicated by the CCM.

c. Zoning. The contractor shall submit upon request by the BOP, satisfactory proof that all zoning and local ordinance requirements have been met which are necessary for operation and applicable to any proposed performance site(s). Such proof shall be in writing and shall consist of documentation from necessary local officials stating the contract may be performed at the proposed site(s) in accordance with the current zoning and other requirement of the local jurisdiction.

"Necessary local official" means an employee or elected person whose approval or concurrence as to the propriety of the use of the proposed site is required under any and all applicable laws of the state, county, city, town, village, or municipality in which the facility is located.

2. OTHER VISITS. The contractor shall except and accommodate visit(s) or inspection(s) by the BOP, or an investigative authority as indicated in the SOW, at anytime during the life of the contract. Other visits may occur for the purpose of training or to resolve general contract issues.

3. FULL MONITORING. A full monitoring is a thorough inspection and comprehensive review of all aspects of the contractor's operation and facility. The first full monitoring ordinarily occurs not less than 90 days from the issuance of the "notice to proceed." Ordinarily, but not limited to, the contractor is given notice to a full monitoring in advance. A full monitoring may take several days, and will produce a monitoring report.

A monitoring report contains all findings that are sufficient, competent and relevant. The report also outlines appropriate corrective action. The contractor shall respond within 30 days to the CCM when the contractor receives the report. The contractor's response shall address all findings, recommendation or comments and specify a plan of action to correct the findings. The contractor shall also indicate a date when each finding will be corrected. If constraints prevent the contractor from immediately correcting the finding, the contractor shall discuss, at length, in the response the constraints, reason for the constraints, and a realistic time frame for corrective action being completed. This in no way releases the contractor from performing the requirements of the contract.

If the CCM makes any recommendation to modify procedures and practices of the facility operations or physical structure, the contractor shall respond in writing indicating their intent to adapt or accept the recommendation or comment.

If the CCM directs the contractor to modify procedures and practices of the facility operation in accordance with the in requirements outlined in the SOW, the contractor shall respond in writing indicating their compliance.

4. INTERIM MONITORING. An interim monitoring is an unannounced on-site examination of findings noted in a prior monitoring. Ordinarily, the interim monitoring inspects, but is not limited to, those areas which are problematic. It is ordinarily brief and is not intended to be as lengthy and comprehensive as a full monitoring. Subsequent to an interim monitoring, the contractor will receive a letter acknowledging the interim monitoring from the CCM. The letter will also indicate all areas found non-

D

Law Offices
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West Palm Beach
Representative Offices:
Buenos Aires
Tel Aviv

December 11, 2000

MARY CAROLYN BROWN
202-862-5990

Internet Address:
mcbrown@hklaw.com

VIA HAND DELIVERY

Mr. Michael Johnson
Zoning Administrator
Building and Land Regulation
Administration
D.C. Department of Consumer and
Regulatory Affairs
941 North Capitol Street, N.W.
Washington, D.C. 20002

Re: 2210 Adams Place, N.E., Square 4259, Parcel 154/81

Dear Mr. Johnson:

This office represents Bannum, Inc. ("Bannum"), a company that provides residential rehabilitation services to individuals referred by appropriate committing authorities. Bannum proposes to lease the property at 2210 Adams Place, N.E. (Parcel 154/81 in Square 4259) for use as a residential Community Corrections Center under a contract with the U.S. Department of Justice. Individuals are referred to the facility either directly by the court system, under a conditional release from the parole commission or through a transfer from a federal institution in order to make the transition back into society.

The property at 2210 Adams Place, N.E. is located in the C-M-2 District. Under section 801.7(k) of the zoning regulations, a "[t]emporary detention or correctional institution on leased property for period not to exceed three (3) years" is permitted as a matter of right in the C-M District. Accordingly, Bannum's proposed use of the property as a residential Community Corrections Center can be established as a matter of right at the Adams Street location.

000076

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If you concur with our interpretation of this section of the zoning regulations, kindly indicate so by signing on the line provided below.

Thank you for your assistance with this matter.

Very truly yours,

Carolyn Brown

Carolyn Brown

I concur:

Michael D. Johnson 12/11/00

Michael Johnson Date
Zoning Administrator

WAS1 #895142 v1

HOLLAND & KNIGHT LLP

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*Representative Offices

November 26, 2001

MARY CAROLYN BROWN
202-862-5990

Internet Address:
mcbrown@hklaw.com

VIA HAND DELIVERY

Mr. Olutoye Bello
Acting Zoning Administrator
Building and Land Regulation
Administration
D.C. Department of Consumer and
Regulatory Affairs
941 North Capitol Street, N.W.
Washington, D.C. 20002

Re: Temporary Correctional Facilities

Dear Mr. Bello:

This office represents Bannum, Inc. ("Bannum"), a company that provides residential rehabilitation services to individuals referred by appropriate committing authorities. Bannum proposes to lease property in the C-M or M District for use as a Community Corrections Center ("CCC") under a contract with the U.S. Department of Justice. Individuals are referred to the facility directly by the court system either to serve their entire sentence in confinement at the CCC or to complete their confinement at a CCC after a portion has been served as a federal institution.

Under section 801.7(k) of the D.C. Zoning Regulations, a "[t]emporary detention or correctional institution on leased property for period not to exceed three (3) years" is permitted as a matter of right in the C-M District, and by extension, in the M District. Accordingly, Bannum's proposed use of the property as a residential Community Corrections Center can be established as a matter of right in the C-M and M Districts for a period not to exceed three years.

If you concur with our interpretation of this section of the zoning regulations, kindly indicate so by signing on the line provided below.

Thank you for your assistance with this matter.

Very truly yours,

Carolyn Brown

Carolyn Brown

I concur:

11/28/01

Olutoye Bello Date
Acting Zoning Administrator

WAS1 #1035851 v1

E

07/22/2003 11:19 0000000000

BANNUM, INC.
1301 SEMINOLE BOULEVARD
SUITE 126
LARGO, FLORIDA 33770

DAVID LOWRY
EXECUTIVE DIRECTOR

OFFICE: (727) 588-2594
FAX: (727) 588-2689

January 23, 2001

Michelle Aceto
Federal Bureau of Prisons
CCC Contracting
320 First Street N. W.
Washington, DC 20534

Re: RFP 200-0604-MA
Line Items 1 & 2

Dear Ms. Aceto:

This letter is in response to your request for Final Proposal Revision concerning the above referenced RFP. The following represents our response.

As you are aware, Bannum has recently submitted a proposal in response to RFP 200-0628-MA which we believe is identical to the above referenced RFP (0604) in all respects. Along with the submission of all documents required by that RFP, Bannum submitted proof of zoning for a three year period. Accordingly, Bannum wishes to withdraw the property which we submitted in response to this subject RFP (0604) and we now propose to locate this CCC program at 2210 Adams Place N. E., Washington, DC. which is the property that we proposed for RFP 200-0628-MA. That property has been previously inspected by BOP. Attached are copies of a floor plan, Option to Lease and Notification to Public Officials.

Also attached is a copy of a letter of January 17, 2001 which discussed the property, zoning approval and a request to award a contract based on that zoning approval. We wish to incorporate that letter herein as if written in its entirety and to renew our request to award a contract.

Bannum proposes the following manday rates for the above referenced solicitation.

Line Item One:

Base Period	[redacted]
Option Year 1	
Option Year 2	
Option Year 3	
Option Year 4	

BZA
Case No. 16998
Exhibit No. 80

000078

1757

Line Item Two:

Base Period
Option Year 1
Option Year 2
Option Year 3
Option Year 4

Bannum's proposed facility will accommodate both Line Item One and Line Item Two and as such, we propose the following manday rates in the event that we are awarded both line items (minimum – 9,490/maximum – 36,500) to be housed at the proposed facility:

Base Period
Option Year 1
Option Year 2
Option Year 3
Option Year 4

The property discussed herein above is properly zoned for a three year period [redacted]

Please let me know if I can be of any further assistance.

Sincerely,

David A. Lowry

F

Bannum, Inc.
5904 MacCorkle Ave., SW
St. Albans, WV 25177
Phone 304- 768-6625
Fax 304- 768-6467

Cathy Bellow, Operations Director

March 12, 2001

Mr. Vincent Orange, Councilman Ward #5
District of Columbia
441 4th Street, NW, Room 702
Washington, DC 20001

Dear Mr. Orange: CERTIFIED MAIL

The United States Department of Justice has advertised a contract for a residential Community Corrections Center program to be located in the Washington, DC area. The contract estimates that 81 persons will reside at the facility and 19 persons will reside at their respective homes under our staff supervision. Bannum has submitted a proposal to the Department of Justice to locate this Federal program at 2210 Adams Place, NE, Washington, DC.

Bannum will provide housing and related services to those persons from Washington, DC and the immediate surrounding area that are returning to their homes, family, and friends. Our residents will go to work daily and return to the facility after work to sleep. Then, as long as they are honoring their agreement to qualify for the program, they can go visit their family and friends if they wish. They would then return to the facility on weekday evenings at their individual curfew time. Many residents would be allowed to check out on Friday and would not return again until their Sunday night curfew.

Bannum will monitor each resident's movement in the community by periodic on-site and telephone verification of their employment, educational pursuits, family visits, or other whereabouts. Bannum will assist the resident to find employment if they are not employed by making referrals to local employment agencies and local employers which have expressed interest in employing these residents.

Since this is a period of transition for these persons, Bannum simply assists them in re-establishing employment and family ties, locating suitable housing and preparing to function normally within the community to which they are returning. Bannum also makes referrals to local community agencies as appropriate.

Bannum's personnel monitor the program on a 24-hour basis, but there are no locks, bars, or other physical restraints. Bannum will employ a professional staff to include social workers to monitor and guide the residents through this period of transition.

If a resident violates his agreement to remain in the program by missing curfew, by unexcused absence from work, etc., or if the resident fails to return to the facility or decides to leave the facility without our permission, we cannot and will not stop them. In these cases we simply report the resident to the appropriate Federal authorities. Penalties include a return to incarceration.

Bannum's staff are not peace officers, are not permitted to carry weapons of any kind, and are not authorized to physically restrain any person. Bannum's staff do no wear uniforms or possess any other form of identification or powers than any other citizen of Washington, DC.

The type of offenders referred to our program will consist of the following:

a. ***Transfers from Federal Institutions:*** These BOP offenders have served a portion of their sentence in a federal institution and are completing the confinement portion in a CCC.

b. **Direct Court Commitments:** These BOP offenders have been designated to serve their entire terms of confinement in a CCC.

c. **Supervision Cases:** These offenders are referred to the BOP for placement in a CCC by a USPO or PSO due to conditional release supervision requirements. The Supervision requirements may be by order of a Federal Court, the U.S. Parole Commission, or Federal Pre-Trial Services. The BOP may pay for room and board (except for Pre-Trial cases) during the period of time spent in a CCC on conditional release. Some of these cases may also be referred to as "Community Confinement Cases" as described in the Sentencing Reform Act Guidelines.

   (1) **Probationers:** Offenders that are required to reside in and adhere to the program requirements of a CCC as a condition of probation for the time specified by the Court.

   (2) **Supervised Releases:** Offenders that are required to reside in and adhere to program requirements of a CCC as a condition of supervised release for the time specified by the Court.

   (3) **Parolees, Mandatory Releasees:** Offenders that have been paroled or mandatory released from a federal institution. The offenders must reside in, and adhere to program requirements of a CCC as a condition of their parole or mandatory release.

(4) **Pre-Trial Services:** An individual required by the Court to reside in and adhere to program requirements of a CCC as a condition of pre-trial release. The duration of residence will be specified by the pre-trial services official referring the case for placement. Pre-Trial status offenders are the sole responsibility of Pre-Trial Services/U.S. Courts.

For your review, we have attached the following:

1.) Bannum's role and mission statement.
2.) Introduction and objective of this contract.
3.) Scope of Work.
4.) Bannum's resident accountability practices.

We look forward to servicing Washington DC and working with you and other officials in establishing this program and ensuring its success.

If I can provide any additional information or be of any further assistance, please let me know.

Sincerely,

Cathy Bellew

Cathy Bellew, Sr. Operations Director

cc: Bannum, Inc
cc: File

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

Lauren S. 17/14/01

C. Signature
X Lauren S
☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

1. Article Addressed to:
Mayor Williams
441 Fourth Street,
NW 11th Floor
Washington DC 20001

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
7000 1670 0007 6479 9317

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
■ Print your name and address on the reverse so that we can return the card to you.
■ Attach this card to the back of the mailpiece, or on the front if space permits.

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) V. Lebow
B. Date of Delivery

C. Signature
X [signature]
☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

WASHINGTON DC APR 18 2001

1. Article Addressed to:
Mr Vincent Orange,
Council Rep Ward #5
441 4th St., NW Room 702
Washington, DC 20001

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Copy from service label)
7000 1670 0007 6479 9294

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

SENDER:
■ Complete items 1 and/or 2 for additional services.
■ Complete items 3, 4a, and 4b.
■ Print your name and address on the reverse of this form so that we can return this card to you.
■ Attach this form to the front of the mailpiece, or on the back if space does not permit.
■ Write "Return Receipt Requested" on the mailpiece below the article number.
■ The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery
Consult postmaster for fee.

3. Article Addressed to:
Mr. Vincent Orange
Ward #5
441 4th Street, NW Rm 702
Washington, DC 20001

4a. Article Number
7099 3400 0005 6102 8604

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)
X [signature]

8. Addressee's Address (Only if requested and fee is paid)

WASHINGTON DC MAR 22 2001

PS Form 3811, December 1994 Domestic Return Receipt

Is your RETURN ADDRESS completed on the reverse side?

Thank you for using Return Receipt Service.

Received Nov-01-01 12:47pm From-3047684012 To-HOLLAND & KNIGHT LLP Page 024

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G

Bannum, Inc.
5904 MacCorkle Ave., SW
St. Albans, WV 25177
Phone 304- 768-6625
Fax 304- 768-6467

Cathy Bellew, Operations Director

April 10, 2001

The Honorable Anthony Williams
Washington, DC
441 Fourth Street, NW, 11th Floor
Washington, DC 20001

Dear: Mayor Williams CERTIFIED MAIL

The purpose of this letter is to inform you that Bannum has submitted an offer for community corrections center (CCC) or "halfway house", services for federal offenders releasing to the Washington DC area. This action is being taken in response to a request for proposal RFP 200-0593-MA issued by the Federal Bureau of Prisons (BOP). The BOP encourages full and open competition in the procurement of these services; consequently, other offerors may also be responding to this RFP.

As part of the CCC contracting process, the BOP requires that all offerors notify and seek input from the local law enforcement authority and two levels of locally elected government officials. This letter will serve as documentation of partial satisfaction of this requirement.

Bannum has submitted a proposal to the Federal Bureau of Prisons to locate this Federal program at 2210 Adams Place, NE. The proposed property is zoned warehouse and is currently being used for that purpose. Should the above listed property not be zoned for our proposed use, then Bannum will make application for all necessary permits and licenses. These necessary permits and licenses are anticipated to be obtained by July 1, 2001. Presently, the building will only require minor renovations to meet Federal Bureau of Prisons safety requirements by the contract performance date of October 1, 2001. These renovations are scheduled to be completed by October 1, 2001.

The total term of the proposed contract is five years. The estimated requirement specifies one hundred thirty beds for males and no beds for females at the beginning of the contract term, with no scheduled population increases through the five-year contract term. These numbers reflect the BOP's best estimates of bed space needs at this time. However, the proposed site will be able to accommodate up to two hundred and sixty offenders, and the BOP may exceed its original

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stimates if there is an unanticipated need for additional bed space in this area. Performance is to begin on October 1, 2001 with contract award approximately 120 days prior to that date.

The BOP has a long history of transferring inmates who are within a few months of release to a contractor-operated CCC for transitional programming. These inmates have often been removed from the community for an extended period of time. Sound correctional practice suggests that CCCs enhance public safety by offering offenders the opportunity to find employment, establish residence, and re-enter the community through a structured, supportive environment.

The BOP takes its responsibility for contract oversight very seriously. Contract language establishes requirements for inmate accountability, programming, life safety, staffing, inmate discipline, urine and alcohol surveillance, and a variety of other areas. These requirements are closely monitored by BOP staff, who provide training and conduct both scheduled and unannounced on-site inspections.

Federal offenders at the CCC will come from three sources: inmates who are transferred from a prison to the CCC for pre-release programming, inmates who are committed directly to the CCC to service short sentences, and offenders under the supervision of the U.S. Probation Office for whom residence at the CCC is a condition of supervision. Nationwide, the average CCC placement is three to four months in length, although longer placements are sometimes made.

Bannum will provide housing and related services to those persons from Washington, DC and the immediate surrounding area that are returning to their homes, family, and friends. Our residents will go to work daily and return to the facility after work to sleep. Then, as long as they are honoring their agreement to qualify for the program, they can go visit their family and friends if they wish. They would then return to the facility on weekday evenings at their individual curfew time. Many residents would be allowed to check out on Friday and would not return again until their Sunday night curfew.

Bannum will monitor each resident's movement in the community by periodic on-site and telephone verification of their employment, educational pursuits, family visits, or other whereabouts. Bannum will assist the resident to find employment if they are not employed by making referrals to local employment agencies and local employers which have expressed interest in employing these residents.

Since this is a period of transition for these persons, Bannum simply assists them in re-establishing employment and family ties, locating suitable housing and preparing to function normally within the community to which they are returning. Bannum also makes referrals to local community agencies as appropriate.

Bannum's personnel monitor the program on a 24-hour basis, but there are no locks, bars, or other physical restraints. Bannum will employ a professional staff to include social workers to monitor and guide the residents through this period of transition.

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If a resident violates his agreement to remain in the program by missing curfew, by unexcused absence from work, etc., or if the resident fails to return to the facility or decides to leave the facility without our permission, we cannot and will not stop them. In these cases we simply report the resident to the appropriate Federal authorities. Penalties include a return to incarceration.

Bannum's staff are not peace officers, are not permitted to carry weapons of any kind, and are not authorized to physically restrain any person. Bannum's staff do no wear uniforms or possess any other form of identification or powers than any other citizen of Washington, DC.

For your review, we have attached Bannum's organization and program history and our role and mission statement.

We look forward to servicing Washington, DC and working with you and other Washington, DC officials in establishing this program and ensuring its success.

The BOP is currently evaluating all proposals that were submitted for this RFP. The BOP and Bannum invite you to express your support for or concerns about this proposed CCC facility. Comments may be directed to Michelle D. Aceto, Contracting Officer, Federal Bureau of Prisons, 320 First Street, NW, Washington, DC 20534. The phone number is (202) 307-3069. Please forward a copy of any correspondence to Bannum at our above listed address or fax number.

If I can provide any additional information or be of any further assistance, please let me know.

Sincerely,

Cathy Bellew

Cathy Bellew, Sr. Operations Director

cc: Bannum, Inc
cc: File

Received Nov-01-01 12:47pm From-3047684012 To-HOLLAND & KNIGHT LLP Page 016

Bannum, Inc.
5904 MacCorkle Ave., SW
St. Albans, WV 25177
Phone 304- 768-6625
Fax 304- 768-6467

Cathy Bellew, Operations Director

April 10, 2001

Charles Ramsey, Chief of Police
Washington, DC
300 Indiana Avenue, NW, 5th Floor
Washington, DC 20001

Dear Chief Ramsey: CERTIFIED MAIL

The purpose of this letter is to inform you that Bannum has submitted an offer for community corrections center (CCC) or "halfway house", services for federal offenders releasing to the Washington DC area. This action is being taken in response to a request for proposal RFP 200-0593-MA issued by the Federal Bureau of Prisons (BOP). The BOP encourages full and open competition in the procurement of these services; consequently, other offerors may also be responding to this RFP.

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Received Nov-01-01 12:47pm From-3047684012 To-HOLLAND & KNIGHT LLP Page 017

318

estimates if there is an unanticipated need for additional bed space in this area. Performance is to begin on October 1, 2001 with contract award approximately 120 days prior to that date.

The BOP has a long history of transferring inmates who are within a few months of release to a contractor-operated CCC for transitional programming. These inmates have often been removed from the community for an extended period of time. Sound correctional practice suggests that CCCs enhance public safety by offering offenders the opportunity to find employment, establish residence, and re-enter the community through a structured, supportive environment.

The BOP takes its responsibility for contract oversight very seriously. Contract language establishes requirements for inmate accountability, programming, life safety, staffing, inmate discipline, urine and alcohol surveillance, and a variety of other areas. These requirements are closely monitored by BOP staff, who provide training and conduct both scheduled and unannounced on-site inspections.

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If I can provide any additional information or be of any further assistance, please let me know.

Sincerely,

Cathy Bellew

Cathy Bellew, Sr. Operations Director

cc: Bannum, Inc
cc: File

Received Nov-01-01 12:47pm From-3047684012 To-HOLLAND & KNIGHT LLP Page 019

Bannum, Inc.
5904 MacCorkle Ave., SW
St. Albans, WV 25177
Phone 304- 768-6625
Fax 304- 768-6467

Cathy Bellew, Operations Director

April 10, 2001

Mr. Vincent Orange, Councilman Ward #5
Washington, DC
441 4th Street, NW, Room 702
Washington, DC 20001

Dear Mr. Orange: CERTIFIED MAIL

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Received Nov-01-01 12:47pm From-3047684012 To-HOLLAND & KNIGHT LLP Page 020

211.

inmates if there is an unanticipated need for additional bed space in this area. Performance is to begin on October 1, 2001 with contract award approximately 120 days prior to that date.

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Received Nov-01-01 12:47pm From-3047684012 To-HOLLAND & KNIGHT LLP Page 021

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We look forward to servicing Washington, DC and working with you and other Washington, DC officials in establishing this program and ensuring its success.

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If I can provide any additional information or be of any further assistance, please let me know.

Sincerely,

Cathy Bellew

Cathy Bellew, Sr. Operations Director

cc: Bannum, Inc
cc: File

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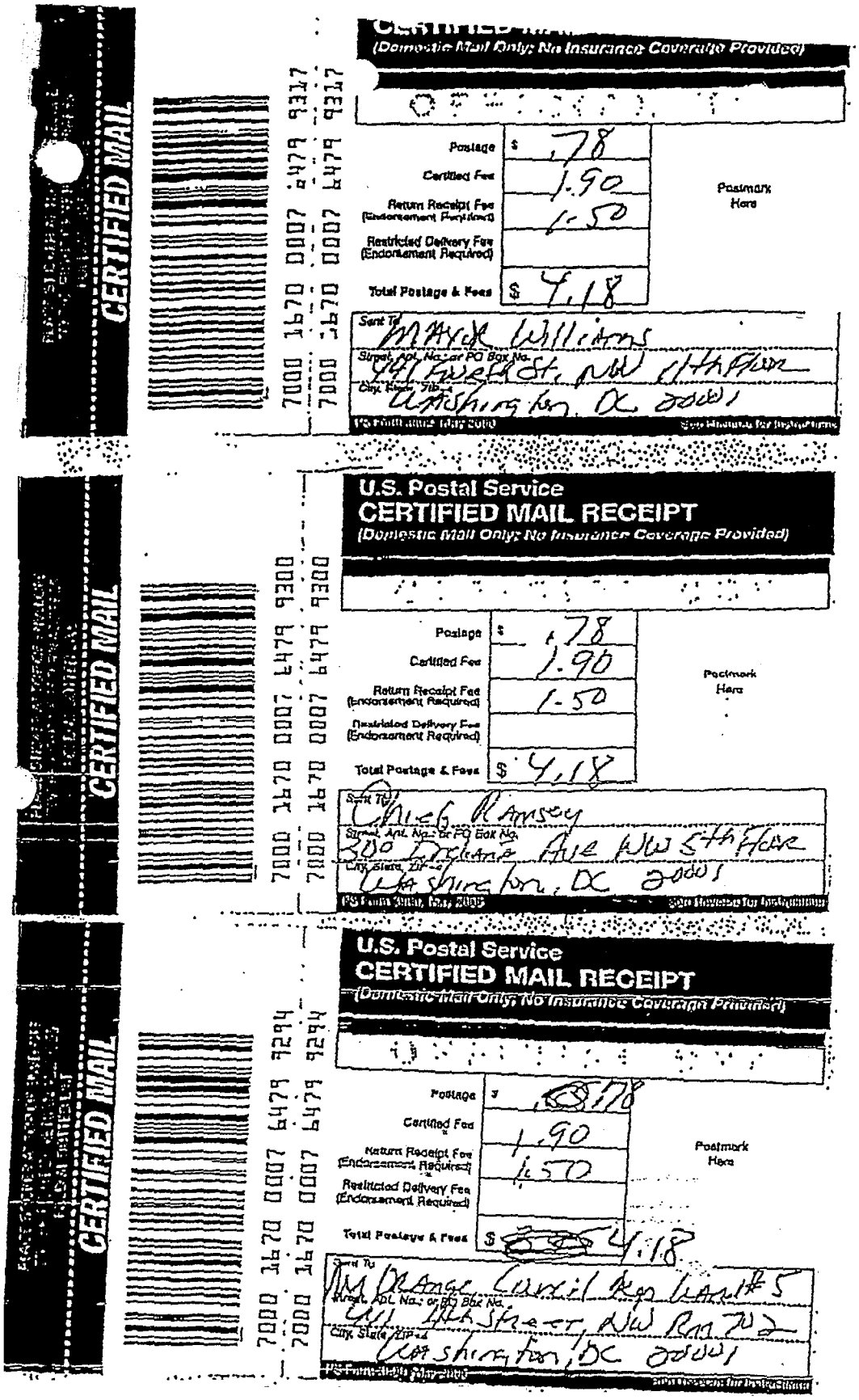

CERTIFIED MAIL

(Domestic Mail Only; No Insurance Coverage Provided)

7000 1670 0007 6479 9317

Postage $ .78
Certified Fee 1.90
Return Receipt Fee (Endorsement Required) 1.50
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $ 4.18

Postmark Here

Sent To: Mark Williams
Street, Apt. No.; or PO Box No.: 441 Fourth St. NW 11th Floor
City, State, ZIP+4: Washington, DC 20001

PS Form 3800, May 2000

CERTIFIED MAIL

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7000 1670 0007 6479 9300

Postage $ .78
Certified Fee 1.90
Return Receipt Fee (Endorsement Required) 1.50
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $ 4.18

Postmark Here

Sent To: Chief Ramsey
Street, Apt. No.; or PO Box No.: 300 Indiana Ave NW 5th Floor
City, State, ZIP+4: Washington, DC 20001

PS Form 3800, May 2000

CERTIFIED MAIL

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7000 1670 0007 6479 9294

Postage $ .78
Certified Fee 1.90
Return Receipt Fee (Endorsement Required) 1.50
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $ 4.18

Postmark Here

Sent To: ANC Orange Council Rep Unit #5
Street, Apt. No.; or PO Box No.: 441 4th Street, NW Rm 20
City, State, ZIP+4: Washington, DC 20001

PS Form 3800, May 2000

080104

Bannum, Inc.
5904 MacCorkle Ave. SW
St. Albans, WV 25177
Phone 304- 768-6625
Fax 304- 768-6467

Cathy Bellew, Operations Director

April 23, 2001

Michelle D. Aceto, Contracting Officer
Department of Justice
Federal Bureau of Prisons
320 First Street, NW
Washington, DC 20534

By Fax/Mail

RE: RFP 200-0604-MA
Washington, DC

Dear Ms. Aceto:

As requested, a copy of the amended public official notification letters and two proof of receipts are attached for your review. Mr. Lowry is forwarding the Amendment Standard Form 30 with blocks 8, 15a, B and C completed under separate cover. The third proof of receipt will be forwarded to your office once received by the US Postal Service.

Should you have questions concerning the contents herein, please contact me.

Sincerely,

Cathy Bellew, Operations Director

cc: Bannum, Inc.
cc: File

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COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

November 5, 2001

Mr. Stewart Rowles
Administrator
Community Corrections Branch
U. S. Department of Justice
Federal Bureau of Prisons
Washington, D. C. 20534

Dear Mr. Rowles:

It has been brought to my attention that Bannum, Inc. has plans to operate a "halfway house" for federal prisoners at 2210 Adams Street, NE. Please let me refer you to my letter dated May 4, 2001 wherein I adamantly stated my opposition to any halfway house for federal prisoners or a prison in Ward 5. My position still remains the same. The community also has voiced its opposition to locating additional halfway houses in Ward 5.

The location where the halfway house is being proposed adjoins a Day Treatment Program for the developmentally disabled. Putting a halfway house that adjoins this facility is totally unacceptable. It poses a serious problem of jeopardizing the safety and security of the clients as well as the personnel.

As stated in the May 4th letter, Ward 5 already has its share of halfway houses. It is already either home or borders three of the six District run halfway houses that house pretrial detainees, court-ordered midemeanants, and sentenced felons. The six halfway houses in the District have a combined bed space capacity of up to 546 offenders. (The Bureau of Federal Prisons (BOP) operates two of the facilities that together house 50 residents.) Of the 546 beds, the three halfway houses in and bordering Ward 5 account for 305 of the total number of beds. Of the remaining 245 beds, 194 are housed in Hope Village, which is located in Southeast Washington. Consequently, the four halfway houses, which are located in three wards (5, 6, and 7) account for 91% of the available beds in the District. Thus, it is my belief that Ward 5 is already shouldering its share in supporting this effort.

As you know CCC#4, which is located in Ward 5, has presented many unintended consequences that came about as a result of locating sizeable concentrations of offenders in the community. In some instances, the offenders did not return to the halfway house and went on to commit violent crimes. There tends to be loitering around the facilities, and the facilities have substantial and real impacts on property values.

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Accordingly, I would ask that you advise Bannum, Inc. of my position, and withdraw any plans that their office may have in locating a halfway house in Ward 5 now or in the future. My position will not change.

If you have questions or need additional information, please contact my Chief of Staff, Estell Mathis-Lloyd on (202) 724-8028.

Sincerely,

Vincent B. Orange, Sr.
Councilmember, Ward 5

cc: Cathy Bellew, Senior Operations Director
Bannum, Inc.

I

AWARD/CONTRACT

1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) ▶ RATING | PAGE OF PAGES 1 17

2. CONTRACT (Proc. Inst. Ident.) NO. J200c-576 | 3. EFFECTIVE DATE 03/01/02 | 4. REQUISITION/PURCHASE REQUEST/PROJECT NO. 186 & 209/Grinley

5. ISSUED BY CODE
U.S. Department of Justice
Federal Bureau of Prisons
Attn: CCC Contracts (5006)
320 First Street, N.W.
Washington, D.C. 20534

6. ADMINISTERED BY (If other than Item 5) CODE
Michelle D. Aceto
(202) 307-0093

7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP Code)
Bannum, Inc.
1301 Seminole Boulevard, Suite 126
Largo, Florida 33770
Attn: Mr. David Lowry
(727) 588-2594

ORIGINAL

8. DELIVERY
DESTINATION
☐ FOB ORIGIN ☒ OTHER (See below)

9. DISCOUNT FOR PROMPT PAYMENT
N/A

10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN: ▶ ITEM G.3(d)

CODE FACILITY CODE

11. SHIP TO/MARK FOR CODE
2210 Adams Place, NE
Washington, DC

12. PAYMENT WILL BE MADE BY CODE
FBOP, Mid-Atlantic Region Office
10010 Junction Drive, Suite 101-N
Annapolis Junction, MD 20701

13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:
☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c)( )

14. ACCOUNTING AND APPROPRIATION DATA
FP 010009T1310 2522 YREGDOC
Funds will be obligated by each deliver order.

15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
1.	Provide residential Community Corrections Center services in accordance with RFP 200-0593-MA Line Item 1 & RFP 200-0604-MA Line Items 1 & 2 (Continued See SF-36)	Line Item One (RFP 200-0593-MA)			
		Min. 4,745	ID	$80.00	$379,600.00
		Maximum 18,250	ID	$80.00	$1,460,000.00
		Line Item Two (RFP 200-0604-MA)			
		Min. 7,300	ID	$80.00	$584,000.00
		Max. 18,250	ID	$80.00	$1,460,000.00
		Line Item Three (RFP 200-0593-MA)			
		Min. 7,300	ID	$80.00	$584,000.00
		Max. 18,250	ID	$80.00	$1,460,000.00
	Minimum Base Period Total			15G. TOTAL AMOUNT OF CONTRACT ▶	$1,547,600.00

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CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. ☐ CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)

18. ☒ AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number RFP 200-0593-MA & RFP 200-0604 including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.

19A. NAME AND TITLE OF SIGNER (Type or print)
DAVID A. Lowry Ex. Dir.

20A. NAME OF CONTRACTING OFFICER

19B. NAME OF CONTRACTOR | 19C. DATE SIGNED | 20B. UNITED STATES OF AMERICA | 20C. DATE SIGNED

BY _____ (Signature of person authorized to sign) | 10-25-01 | BY _____ (Signature of Contracting Officer)

NAME OF OFFEROR OR CONTRACTOR

Bannum, Inc.

ITEM NO.	SUPPLIES/SERVICES (continued #1)	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	Business, Technical, and Past Performance proposals submitted by Bannum, Inc. dated May 22, 2000. Amendment Number 1 dated 4-17-00, Amendment Number 2 dated 7-27-00, Amendment Number 3 dated 4-4-01, Amendment Number 4 dated 10-12-01. Discussion letters dated 08-30-00; 09/12/00; 11-06-00; 12-11-00; First Final Proposal Revision dated 1-23-01 and additional Discussion letters dated 03-28-01; 4-9-01; 4-23-01; 4-27-01; 7-9-01; 7-10-01; 9-4-01. The second Final Proposal Revision Request 09-19-01 and the second Final Proposal Revision dated 09-28-01 and 10-01-01.				
2.	Performance shall begin March 1, 2001, and/or upon Government's issuance of Notice to Proceed.				
3.	Home confinement and Furlough services shall be provided at one-half (1/2) the rate of regular inmate day services.				
4.	Option Years, if exercised, will begin March 1.				
5.	Option Years for the three line items, minimum and maximum number of inmate days and rates are as follows:				
	Line Item One (RFP 200-0593-MA)				
	03/01/03 through 02/29/04 Minimum	4,745	ID	80.00	$379,600.00
	Maximum	18,250	ID	80.00	$1,460,000.00
	03/01/04 through 02/29/05 Minimum	4,745	ID	80.00	$379,600.00
	Maximum	18,300	ID	80.00	$1,464,000.00
	03/01/05 through 02/29/06 Minimum	4,745	ID	80.00	$379,600.00
	Maximum	18,250	ID	80.00	$1,460,000.00
	03/01/06 through 02/29/07 Minimum	4,745	ID	80.00	$379,600.00
	Maximum	18,250	ID	80.00	$1,460,000.00

*U.S. Government Printing Office: 1993 — 342-199/60024

NAME OF OFFEROR OR CONTRACTOR

Bannum, Inc.

ITEM NO.	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	Line Item Two (RFP 200-0604-MA)				
	03/01/03 through 02/29/04 Minimum	7,300	ID	80.00	$584,000.00
	Maximum	18,250	ID	80.00	$1,460,000.00
	03/01/04 through 02/29/05 Minimum	7,300	ID	80.00	$584,000.00
	Maximum	18,300	ID	80.00	$1,464,000.00
	03/01/05 through 02/29/06 Minimum	7,300	ID	80.00	$584,000.00
	Maximum	18,250	ID	80.00	$1,460,000.00
	03/01/06 through 02/29/07 Minimum	7,300	ID	80.00	$584,000.00
	Maximum	18,250	ID	80.00	$1,460,000.00
	Line Item Three (RFP 200-0604-MA)				
	03/01/03 through 02/29/04 Minimum	7,300	ID	80.00	$584,000.00
	Maximum	18,250	ID	80.00	$1,460,000.00
	03/01/04 through 02/29/05 Minimum	7,300	ID	80.00	$584,000.00
	Maximum	18,300	ID	80.00	$1,464,000.00
	03/01/05 through 02/29/06 Minimum	7,300	ID	80.00	$584,000.00
	Maximum	18,250	ID	80.00	$1,460,000.00
	03/01/06 through 02/29/07 Minimum	7,300	ID	80.00	$584,000.00
	Maximum	18,250	ID	80.00	$1,460,000.00
6.	Section F - Deliveries Remove all the Contract Specialists names and replace with ※All Warranted Contract Specialists in Community Corrections Contracting Section.				
7.	Section I- Replace this section with the attached Section I for RFP 200-0593-MA and RFP 200-0604-MA.				
8.	Section G.3(a) add ※Invoices must include appropriate contract number.※				

*U.S. Government Printing Office: 1993 — 342-199/60024

PART II - CONTRACT CLAUSES

SECTION I

CONTRACT CLAUSES

I.1 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

http:www.arnet.gov/far

I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1) CLAUSES

NUMBER	DATE	TITLE
52.202-1	MAY 2001	DEFINITIONS
52.203-3	APR 1984	GRATUITIES
52.203-5	APR 1984	COVENANT AGAINST CONTINGENT FEES
52.203-6	JUL 1995	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT
52.203-7	JUL 1995	ANTI-KICKBACK PROCEDURES
52.203-8	JAN 1997	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR OR IMPROPER ACTIVITY
52.203-10	JAN 1997	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY
52.203-12	JUN 1997	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS
52.204-4	AUG 2000	PRINTED OR COPIED DOUBLED-SIDED ON RECYCLED PAPER
52.209-6	JUL 1995	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT
52.215-2	JUN 1999	AUDIT AND RECORDS--NEGOTIATION
52.215-8	OCT 1997	ORDER OF PRECEDENCE--UNIFORM CONTRACT FORMAT
52.215-10	OCT 1997	PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA
52.215-12	OCT 1997	SUBCONTRACTOR COST OR PRICING DATA
52.215-18	OCT 1997	REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS
52.217-2	OCT 1997	CANCELLATION UNDER MULTIYEAR CONTRACTS
52.219-8	OCT 2000	UTILIZATION OF SMALL BUSINESS CONCERNS
52.219-9	OCT 2000	SMALL BUSINESS SUBCONTRACTING PLAN
52.219-16	JAN 1999	LIQUIDATED DAMAGES--SUBCONTRACTING PLAN
52.222-3	AUG 1996	CONVICT LABOR

52.222-4	SEP 2000	CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME COMPENSATION
52.222-21	FEB 1999	PROHIBITION OF SEGREGATED FACILITIES
52.222-26	FEB 1999	EQUAL OPPORTUNITY
52.222-35	APR 1998	AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA
52.222-36	JUN 1998	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
52.222-41	MAY 1989	SERVICE CONTRACT ACT OF 1965, AS AMENDED
52.222-43	MAY 1989	FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT--PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS)
52.223-6	MAY 2001	DRUG-FREE WORKPLACE
52.223-14	OCT 2000	TOXIC CHEMICAL RELEASE REPORTING
52.224-1	APR 1984	PRIVACY ACT NOTIFICATION
52.224-2	APR 1984	PRIVACY ACT
52.225-13	JUL 2000	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
52.227-1	JUL 1995	AUTHORIZATION AND CONSENT
52.227-2	AUG 1996	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT
52.229-3	JAN 1991	FEDERAL, STATE, AND LOCAL TAXES
52.229-5	APR 1984	TAXES - CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO
52.232-1	APR 1984	PAYMENTS
52.232-8	MAY 1997	DISCOUNTS FOR PROMPT PAYMENT
52.232-11	APR 1984	EXTRAS
52.232-17	JUN 1996	INTEREST
52.232-18	APR 1984	AVAILABILITY OF FUNDS
52.232-23	JAN 1986	ASSIGNMENT OF CLAIMS
52.232-25	MAY 2001	PROMPT PAYMENT
52.232-34	MAY 1999	PAYMENT BY ELECTRONIC FUNDS TRANSFER-- OTHER THAN CENTRAL CONTRACTOR REGISTRATION
52.233-1	DEC 1998	DISPUTES
52.233-3	AUG 1996	PROTEST AFTER AWARD
52.242-13	JUL 1995	BANKRUPTCY
52.243-1	AUG 1987	CHANGES - FIXED-PRICE Alternate I (APR 1984)
52.246-25	FEB 1997	LIMITATION OF LIABILITY - SERVICES
52.248-1	FEB 2000	VALUE ENGINEERING
52.249-2	SEP 1996	TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE)
52.249-8	APR 1984	DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)
52.253-1	JAN 1991	COMPUTER GENERATED FORMS

[End of Clause]

I.2 52.204-1 APPROVAL OF CONTRACT (DEC 1989)

This contract is subject to the written approval of the Acquisition Branch and shall not be binding until so approved.

I.3 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall--

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

[End of Clause]

I.4 52.216-18 ORDERING (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from the date established by the notice to proceed through a period not to exceed the last day of the base period as set forth in Sections B and F, or the last day of an option period, if exercised, as set forth in Sections B and F.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

I.5 52.216-19 ORDER LIMITATIONS (OCT 1995)

(a) Minimum order. When the Government requires supplies or services covered by this contract in an amount of less than7,300 inmate days for the base period and each of the four option years for line items one and two, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) Maximum order. The Contractor is not obligated to honor--

(1) Any order for a single item in excess of 18,250 inmate days for the base period and each of the four option year periods for line items one and two; cited due to this

being an indefinite quanitty type contract.* See below

(2) Any order for a single item in excess of 18,250 inmate days for the base period and each of the four option year periods for line items one and two; cited due to this being an indefinite quantity type contract.* See below

*(An indefinite quantity type contract is one in which the purchaser agrees to buy the minimum quantity identified for the specified services herein from the awardee to fill all the purchaser's needs during the period fo the contract.

(3) A series of orders from the same ordering office within 365 days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitation in paragraph (b) above.

(d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within ten days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

I.6 52.216-22 INDEFINITE QUANTITY (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after 02-28-07

[End of Clause]

I.7 52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor by the last day of the current performance period.

[End of Clause]

I.8 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (NOV 1999)

(a) The Government may extend the term of this contract by written notice to the Contractor by the first day of the ensuing option period; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 60 months.

[End of Clause]

I.9 52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)(DEVIATION)(SECTION F SUBCONTRACT $25,000)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date:

(1) As of the end of any pay period during the period January through March 1st of the year the report is due, or

(2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided; that the information will be kept confidential; that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of $25,000 or more unless exempted by rules, regulations, or orders of the Secretary.

[End of Clause]

I.10 52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

THIS STATEMENT IS FOR INFORMATION ONLY: IT IS NOT A WAGE DETERMINATION.

Employee Class	Monetary Wage
01040 Desk Clerk	GS 4,5
01310 Secretary	GS 5,6
07041 Cook I	WG 7,8
07042 Cook II	WG, 8
07070 Dishwasher	WG 3,4
07100 Food Service Worker	WG 3,4
11150 Janitor	WG 3,4
23370 General Maintenance Worker	WG 6,7
27101 Guard I	WG 4,5
90180 Accounting Clerk I	GS 4,5
A0180 Accounting Clerk II	GS 5,6
B0180 File Clerk	GS 4,5

I.11 52.232-19 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (APR 1984)

Funds are not presently available for performance under this contract beyond September 30. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond September 30, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

[End of Clause]

I.12 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS (MAY 2001)

(a) Definitions. As used in this clause–

"Commercial item" has the meaning contained in the clause at 52.202-1, Definitions.

"Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c) (1) The following clauses shall be flowed down to subcontracts for commercial items.

(i) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $500,000 ($1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subocntracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (FEB 1999) (E.O. 11246).

(iii) 52.222-35, Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era (APR 1998) (38 U.S.C. 4212(a)).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).

(v) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (JUN 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual oblications.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

[End of Clause]

I.13 52.252-6 AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any Justice Acquisition Regulation clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

[End of Clause]

[END OF SECTION]

J

COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

November 30, 2001

Mr. Stewart Rowles
Administrator
Community Corrections Branch
U. S. Department of Justice
Federal Bureau of Prisons
Washington, D. C. 20534

Dear Mr. Rowles:

I am in receipt of your November 16, 2001 letter in which you stated that Bannum Incorporated (Bannum) has been awarded a contract to operate a Community Corrections Center (CCC) at 2210 Adams Place, NE. Let me reiterate to you once again as I have in my previous communications with you in April and again in November, I am deeply opposed to an additional correction facility in ward 5 and will fight the opening of it on all fronts. The community supports me in this effort and will stand strong with me in my fight against the operation of any prison or halfway house in Ward 5. Your continued insistence on placing the Center at 2210 Adams Place, NE against my continued opposition is a total disrespect for my position and that of the Ward 5 community.

As has been stated to you in previous oral and written communication, Ward 5 already has more community correction facilities than any other ward in the District of Columbia. Further, let me inform you, in the event that you do not already know, Mayor Williams is establishing a 12-member advisory commission to recommend sites for community corrections facilities. The panel will recommend a plan of the proposed site to the Mayor and the U. S. Bureau of Prisons within 90 days of its first meeting. I urge you to withdraw your decision regarding 2210 Adams Place and wait for the panel to inform you of locations outside of Ward 5 where the proposed Center and other corrections facilities can be located.

Thank you for your prompt attention to this request.

Sincerely,

Vincent B. Orange, Sr.
Councilmember, Ward 5

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AGREEMENT OF LEASE

This Agreement of Lease ("Lease") is made and entered into this _____ day of July, 2002, by and between 2210 ADAMS PLACE, NE, LLC, a Maryland limited liability company ("Landlord"), and BANNUM, INC., a Kentucky corporation ("Tenant" or "Bannum").

WITNESSETH, that for and in consideration of the mutual benefits to be derived hereby Landlord and Tenant hereinafter covenant and agree as follows:

Section 1 - Premises

Landlord hereby leases and demises to Tenant, the Premises known as part of 2210 Adams Place, NE, Washington, DC (hereinafter referred to as the "Premises") as shown on Exhibit "A" attached hereto and made a part hereof, containing approximately 12,739 square feet of space more or less, and comprising (for purposes of this Lease) forty-two (42%) of the Building. Tenant hereby accepts the Premises in its as-is condition and Landlord shall have no obligation to make any repairs or improvements to the Premises.

Section 2 – Term & Effective Date, Rent Commencement and Tenant Right to Terminate

2.01 Term & Effective Date. The term of this Lease (the "Term") shall begin on the 1st day of December, 2002, (the "Lease Commencement Date") or later date to conform to and run concurrently with the performance of Bannum's Federal Contract # J200C-576 and end upon expiration, cancellation or other termination of base period, all option periods and extensions. However, under no circumstances shall the period of occupancy under this lease extend beyond a period of sixty-six (66) months from the commencement of performance by Bannum of its Government Contract with the United States Department of Justice, Bureau of Prisons ("BOP"). It is provided further that in no event shall the expiration of Bannum's occupancy of the Premises under this Lease be later than December 31, 2009. The date of execution of this Lease shall be the effective ("Effective Date"). Commencing on the Effective Date, all of the non-monetary aspects of this Lease shall be in full force and effect and Tenant shall have access to the Premises during usual business hours for the purpose of planning and design of its tenant improvements as hereinafter described.

2.02 Rent Commencement Date. Tenant's obligation to pay Base Rent and Additional Rent shall commence on the first to occur of the day on which Tenant occupies the Premises and is open for the conduct of its business therein, or December 1, 2002 ("Rent Commencement Date"). Landlord and Tenant shall execute a memorandum in the form attached hereto as Exhibit "B" confirming the Rent Commencement Date; provided, that the execution and delivery of said Memorandum is not a condition precedent to Tenant's obligation to pay Rent on such date.

2.03 Intentionally Omitted.

2.04 Intentionally Omitted.

2.05 This Lease is contingent upon and subject to the following conditions:

(1) Bannum beginning performance and operation of BOP contract number J200C-576 ("Bannum's Government Contract"). In the event the Bureau of Prisons cancels Bannum's Government Contract for any reason, this lease agreement shall become null and void immediately upon such an event, and Bannum will then have no further liability under this lease. Tenant shall promptly notify Landlord of the date on which its performance and operation of Bannum's Government Contract shall commence.

(2) Unconditional written approval, by July 31, 2003, by officials of the City/District of Columbia for Bannum to renovate, open, and operate Bannum's facility at the Premises in accordance with Bannum's Government Contract.

(3) Written approval, by July 31, 2003, by any other governmental or political bodies as required for Bannum's Government Contract to be operated on or at the Premises.

(4) Issuance of all appropriate and necessary licenses and permits as required by local, State, District and/or federal codes and regulations, by July 31, 2003, for the uninterrupted and uncontested conduct of Bannum's business at this property.

2.06 **Tenant Right to Terminate.** Landlord grants Tenant the right to terminate this Lease for failure of any of the conditions set forth in Section 2.05 above by delivering written notice of termination to Landlord by the applicable date, if any; otherwise, this Lease shall remain in full force and effect, with no further right to terminate and with the obligation to pay Rent on the Rent Commencement Date. In the event Tenant validly exercises its right to terminate this Lease, and, provided, that Tenant has not damaged the Premises and is not otherwise in default of this Lease, Landlord shall promptly return any security deposit or pre-paid rent received and the parties shall have no further obligation hereunder.

Section 3 – Rent, Prepaid Rent and Security

3.01 Tenant covenants and agrees to pay to Landlord, as rent ("Base Rent") and additional rent ("Additional Rent"), the amounts hereinafter provided during the Term hereof, which Base Rent and Additional Rent shall be payable without deduction, counterclaim, set-off or demand. Base Rent and Additional Rent may hereinafter together be referred to as "Rent". All Rent shall be paid in equal monthly installments, in advance, on the first day of each calendar month during such Term, together with any increases in Base Rent and Additional Rent as set forth herein.

3.02 As used herein a "Lease Year" shall mean that period of twelve (12) consecutive calendar months commencing on the first day of the calendar month in which the Lease Commencement Date occurs and each consecutive twelve-month period thereafter. The first Lease Year shall commence

on December 1, 2002 or later date as defined in Section 2.02 herein above.

3.03 If the Term shall commence on a day other than the first day of a calendar month, Rent shall be paid in advance at the rate specified below for the remaining portion of the month in which the Term commenced. Tenant will also pay, at the expiration or other termination of this Lease, a proportionate part of said Rent for the part of month then expired.

3.04 All payments of Rent shall be made to Walter N. Propps, Agent, unless and until Landlord shall otherwise notify Tenant, in writing, after which Tenant will make said payments of Rent to such person or corporation and at such place as Landlord, may, from time to time, designate.

3.05 Rent shall be in the following amounts:

a) For the first twelve months following the Rent Commencement Date, Base Rent shall be at the rate of $5.00 per square foot, which is the sum of $63,695 per annum, or $5,308 monthly. The per day Base Rent for this period is $176.93.

b) For months thirteen through twenty four following the Rent Commencement Date, Base Rent shall be at the rate of $5.10 per square foot, which is the sum of $64,969.00 per annum, or $ 5,414.09 monthly.

c) For months twenty five through thirty six following the Rent Commencement Date, Base Rent shall be at the rate of $5.20 per square foot, which is the sum of $66.268.38 per annum, or $ 5,522.37 monthly.

d) For months thirty seven though forty eight following the Rent Commencement Date, Base Rent shall be at the rate of $5.31 per square foot, which is the sum of $67.593.75 per annum, or $ 5,632.82 monthly.

e) For months forty nine through sixty following the Rent Commencement Date, Base Rent shall be at the rate of $5.41 per square foot, which is the sum of $68,945.63 per annum, or $ 5,745.48 monthly.

f) In the event that the period of actual occupancy of the Premises extends beyond the period of sixty (60) months from the Rent Commencement Date, it is understood and agreed that Base Rent shall increase on each anniversary date (from the Rent Commencement Date) by an amount equal to two percent (2%) of the Base Rent in effect prior thereto, which increased amount shall be payable in equal monthly installments until the adjustment at the time of the next anniversary date, if any there be.

3.06 <u>Prepaid Rent.</u> Upon execution and delivery of this Lease by Tenant, Tenant shall pay Landlord the Base Annual rent for the first month of the term, in the amount of five thousand three

hundred and eight dollars ($5,308.00). Prior to Landlord applying it to the first installment of Base Annual Rent, this sum shall be held without interest by Landlord as additional security for the payment and performance by Tenant of all of Tenant's obligations, covenants, conditions and agreements under this Lease.

3.07 Security. Tenant agrees that upon execution and delivery of this Lease, Tenant shall deposit with Landlord the sum of five thousand three hundred eight and no/100 dollars ($5,308.00) ("Security Deposit") as security for the prompt, full and faithful performance by Tenant of each and every provision of this Lease and all of the obligations of Tenant hereunder. Said Security Deposit shall be held by Landlord or Landlord's agent without interest. In addition thereto, upon execution and delivery hereof, Tenant shall deliver to Landlord the personal guaranty of Arnold Rich, in the form attached hereto as Exhibit "C" ("Guaranty"), which guaranty shall be in the stated amount of two (2) months of Base Rent then in effect during the continuance of this Lease. In the event that Tenant is in default hereunder, Landlord may use, apply or retain the whole or any part of the Security Deposit and/or may call on the Guaranty for the payment of (a) any Rent or any other sum of money which Tenant may not have paid or which may become due after the occurrence of such default, (b) any sum expended by Landlord on Tenant's behalf in accordance with the provisions of this Lease or (c) any sum which Landlord may expend or be required to expend by reason of Tenant's default, including any damages or deficiency in the re-letting of the Premises. The use, application or retention of the security deposit or any portion thereof by Landlord shall not prevent Landlord from exercising any other right or remedy provided for hereunder or at law and shall not operate as a limitation on any recovery to which Landlord may otherwise be entitled. In the event that Tenant shall fully and faithfully comply with all the provisions of this Lease, the security deposit or any balance thereof, without interest thereon, shall be reimbursed to Tenant within sixty (60) days after the expiration of the Term when the Premises are properly vacated, inspected and keys returned and no further issues or liabilities remain under this Lease. In the event of any rightful or permitted assignment of this Lease by Tenant to any assignee or subleases, the security deposit shall be deemed to be held by Landlord as a deposit made by the assignee and Landlord shall have no further liability with respect to return of such security deposit to the assignor. In the event of a transfer of Landlord's interest in the Premises, Landlord shall have the right to transfer the security deposit to the transferee thereof. In such event, Landlord shall be deemed released by Tenant from all liability or obligation for the return of such security deposit, and Tenant agrees to look solely to such transferee for the return of the security deposit. In no event shall any mortgagee (which shall include any holder of a deed of trust or other security deposit) of the Premises, or any purchaser of the Premises at any public or private foreclosure sale under any mortgage or deed of trust held by any such mortgagee or its successors or assigns, have any liability or obligation whatsoever to Tenant or Tenant's successors or assigns for the return of all or any part of the security deposit in the event any such mortgagee or purchaser at a foreclosure sale becomes a mortgagee in possession and/or succeeds to the interest of Landlord under this Lease by reason of default by Landlord under any such mortgage or deed of trust or under any other circumstances whatsoever. Tenant acknowledges that it is delivering the security deposit to Walter N. Propps, as agent for Landlord. Walter N. Propps, shall be privileged at any time (whether before or after claim is made therefor by Tenant) to deliver any portion or all of the security deposit to Landlord or to apply any portion or all of the security deposit

as Landlord may direct and in the event of any dispute between Landlord and Tenant as to the application of any portion of the security deposit, Tenant shall make no claim against Walter N. Propps with respect to any security deposit so delivered or applied but shall look solely to Landlord for satisfaction of any such claims. Notwithstanding the foregoing, Tenant shall have the right, in lieu of delivering the personal guaranty of Arnold Rich, on the Effective Date, to tender Landlord or Landlord's Agent the additional sum of Ten Thousand Six Hundred Sixteen Dollars ($10,616) in cash which, when combined with the previously identified cash deposit shall total Fifteen Thousand Nine Hundred Twenty Four ($15,924), and shall be the Security Deposit, and shall be governed by the provisions hereof pertaining to the cash form of security.

Section 4 – Covenants of Landlord

Landlord hereby covenants and agrees as follows:

4.01 To permit Tenant quiet enjoyment of possession of the Premises during the Term subject to the provisions of this Lease, or for so long as Tenant shall pay all Rent provided for herein and carry out all other obligations herein made binding upon Tenant.

4.02 To furnish only such services and facilities as may be specifically set forth in this Lease, if any, and no other.

4.03 To make such repairs as become necessary after obtaining actual knowledge of the need for such repairs, with respect to the foundation, roof (excluding sky-lights and signs) and exterior structural walls (but no plate glass, windows, window glass, doors or the interior surfaces of any walls or ceilings) of the Premises, as well as pipes and conduits located beyond the boundaries of the Premises (including, but not limited to, gas lines and waste lines), and in the structural components of the building in which the Premises are located (the "Building"), and all repairs to any sidewalk(s) or parking lot adjacent to the Premises; provided, however, that Landlord shall not be required to make any repairs necessitated by reason of any act omission of Tenant, or its employees, agents, licensee, invitees, or anyone claiming under Tenant, or caused by any alteration, addition or improvement made by Tenant or anyone claiming under Tenant or anyone entering the Premises by force, and that if Landlord does make any such repairs Tenant shall promptly upon demand reimburse Landlord the cost thereof.

Section 5 – Covenants of Tenant

Tenant hereby covenants and agrees as follows:

5.01 Not to use the Premises for any disorderly or unlawful purpose, but only for conducting therein of a Residential Community Corrections Center in accordance with Bannum's Government Contract.

5.02 To obtain at Tenant's expense, as and when required by applicable laws, and thereafter to

maintain full force and effect, and to furnish copies to Landlord, upon receipt, any and all permits, licenses and the like, required to permit Tenant to occupy the Premises for the purpose herein stated. In connection herewith, Tenant acknowledges that it has investigated zoning, building code and other local laws and regulations. Tenant acknowledges that the current zoning applicable to the Premises may place a three (3) year restriction on the planned and permitted use within the Premises. Tenant agrees that it shall bear the responsibility, at its sole risk and expense, to obtain any necessary governmental approvals to extend the period of permitted use of the Premises for its intended purpose. Landlord covenants and agrees to cooperate in Tenant's efforts to obtain any required approvals, and Tenant agrees to reimburse Landlord for its actual and reasonable expenses associated therewith. Tenant covenants and agrees not to operate its business within the Premises without compliance with applicable zoning and other laws. Tenant acknowledges that Landlord has no responsibility to Tenant in the event that Tenant does not obtain the required approvals to extend the period of its use. In the event that Bannum cannot obtain governmental approval to extend the period of permitted use of the premises, Bannum can cancel the lease and will have no further liability under this lease.

5.03 To keep the Premises, the entrance(s) and approaches thereto clean and free from rubbish, to keep any lawn mowed, to remove snow and ice from the adjacent sidewalks and any loading dock areas, and to keep the show windows and sign neat, clean and in good order; and not to store any material or trash of any nature whatever on the exterior of the Premises, nor to erect any screen or fence.

5.04 To pay all charges, for all utilities, including, but not limited to, electricity, gas, fuel, water, sewer charges and telephone services for the Premises, as they become due and payable and to transfer all accounts therefor to Tenant's name at the outset of the Term. All utilities serving the Premises that can be separately metered, may be separately metered by Tenant, at Tenant's sole cost and expense. The charge for any utilities not separately metered shall be paid to Landlord as additional rent, based upon Landlord's reasonable estimate of the amount of the charge for such utility consumed by Tenant in the Premise. Notwithstanding the foregoing, Tenant covenants and agrees that it shall cause its Premises to be separately metered or sub-metered for the purpose of establishing charges for the utilities described in the first sentence above, and shall open accounts in its own name with the utility companies.

5.05 To refrain from keeping gasoline or other inflammable material, or any explosives, in the Building or parking and storage areas, if any, except as provided in Section 5.21 (b) hereof and from doing any act or thing which may make void or voidable, or increase the cost of, Landlord's insurance against fire and other casualty, and to conform to all rules or regulations from time to time established by the appropriate insurance rating organization.

5.06 Commencing on the Rent Commencement Date, and continuing for so long as Tenant occupies the Premises, Tenant shall pay Landlord monthly (or on demand if request for payment thereof is made other than on a monthly basis), or shall pay third parties if Tenant has accounts for such goods, services, or utilities with such parties, as follows:

A. All cost directly attributable to the Premises.

B. Forty-two percent (42%) of the real estate taxes. If there is any change by the taxing body in the period for which any of the real estate taxes are levied, assessed or imposed, Landlord shall have the right, in its sole discretion, to make appropriate adjustments with respect to computing increases in real estate taxes, if applicable, provided Tenant is not thereby unduly prejudiced. Real estate taxes which are being contested by Landlord shall be included for purposes of computing Tenant's share of real estate taxes under this paragraph. Landlord shall have no obligation to contest, object to or litigate any levying, assessment or imposition of real estate taxes, and may settle, compromise, consent to, waive or otherwise determine any such real estate taxes without the consent of Tenant.

As used herein, real estates taxes shall mean all taxes and assessment, general or special, ordinary or extraordinary, foreseen or unforeseen, assessed, levied or imposed upon the Building in or the land on which the Premises are located (the "Land"), or assessed, levied or imposed upon the fixtures, machinery, equipment or systems in, upon or used in connection with the operation of the Building or the Land under the current or any future taxation or assessment system or modification of, supplement to, or substitute for such system, and whether or not based on or measured by the receipts or revenues from the Building or the Land (including all taxes and assessments for public improvements or any other governmental purpose and any gross receipts or similar taxes). Real estate taxes shall include the reasonable expenses (including but not limited to attorneys' fees) incurred by Landlord solely in obtaining or attempting to obtain a reduction of such taxes, rates or assessments. Further, provided that in no event shall the expenses to be assessed against Tenant for this purpose exceed the amount saved in real estate taxes due from Tenant during the balance of the Term.

C. Forty-two percent (42%) of common area, maintenance expenses ("CAM Charges"). "CAM Charges" shall include and means all of Landlord's costs for maintaining and operating the property and building except for those costs directly attributable to Tenant under 5.06(A) above, and shall include, but not be limited to: utility costs; lighting for the property and parking lot; parking lot maintenance, resurfacing, restriping and repair; fence maintenance and repair; exterior painting; cleaning and maintenance of the grounds; security of the building and grounds; management fees; Landlord's insurance for the property; costs of repair to utility pipes and conduits; exterior signs, if any; and, any other costs and charges which may arise pertaining to common areas. Notwithstanding the foregoing, CAM Charges shall not, during the first year following the Rent Commencement Date, exceed a charge of more than Eighty Cents ($0.80) per square foot of the Premises ("CAM CAP") and, thereafter, the CAM CAP shall not, in any subsequent year of occupancy, increase from the CAM CAP for the next prior year by an amount greater than seven and one-half per cent (7.5%). With respect to any charge in the nature of a capital expenditure, such cost shall be allocated to the Premises pro-rata based on the forty-two percent (42%) allocated cost formula described above; provided, that in each such case the cost included in the CAM Charge shall be based on an amortization schedule reasonably determined by Landlord, it being understood that the range of the amortization period, depending on the nature and projected period of use of the particular item, shall

be from five (5) years to fifteen (15) years. For example, for any resurfacing of the parking lot, the amortization period will be five (5) years, and for any capital item relating to the roof the amortization period shall be fifteen (15) years.

In no event shall Tenant be liable for a CAM Charge for an expense which duplicates a cost for which Tenant is directly responsible under this Lease.

D. For each calendar year, Lease Year or fraction thereof during the Term, prior to determination of the actual amount payable by Tenant under Sections 5.06(A), (B) or (C) above, Tenant shall make monthly installment payments toward such share on an estimated basis, based on Landlord's estimate of such charges, costs and expenses on the entire building, respectively for such calendar year or Lease Year, as such estimated payments may be increased by Landlord in good faith from time to time. Tenant shall pay Landlord, commencing with the first monthly installment of Base Rent payable under this Lease and on the first day of each month thereafter, one-twelfth ($1/12^{th}$) of Landlord's good faith estimate of Tenant's share of all such charges, costs and expenses on the entire building. If Landlord does not determine its estimate for the then current year of Tenant's share of such charges, costs and expenses on the entire building until February 1 or later, the first such installment after such estimate shall include the monthly payments retroactive to January 1 of the same calendar year. After the end of each calendar year, Landlord shall determine the actual charges, costs and expenses on the entire building for such calendar year. Landlord shall provide to Tenant after the end of each calendar year a statement of the amount payable as Tenant's share of charges, costs and expenses on the entire building. Within thirty (30) days after the delivery of such statement, Tenant shall pay to Landlord any deficiency between the amount shown as Tenant's actual share and the estimated payments made by Tenant toward such amounts. In the event the Term commences or expires during a calendar year, Tenant's share of such charges, costs and expenses shall be determined by multiplying the amount of Tenant's share for the full calendar year by a fraction, the numerator of which is the number of calendar months during such calendar year falling within the Term and the denominator of which is twelve (12). Tenant's liability for the final payment of Tenant's share shall survive the expiration of the Term. The phrase "charges, costs and expenses" includes all items referred to in Sections 5.06 (A), (B) and (C)).

E. All items of expense referred to in this Section 5 shall be "Additional Rent" within the meaning of this Lease.

F. The cost of any repairs to the exterior walls, foundation or roof or any other structural portions of the Premises, if and to the extent such repairs were made necessary by the act or neglect of Tenant or of the agents, employees, licensees, invitees or anyone claiming under Tenant, or anyone entering the Premises by force.

G. The cost of any other repairs or act of maintenance paid by Landlord which Tenant has herein undertaken to make or do.

H. All court costs, legal fees and other expenses incurred by Landlord in effecting the

collection of the rents from Tenant, the curing of any default on the part of Tenant in performance of any of its obligations hereunder and/or obtaining possession of the Premises.

5.07 Subject to Section 7 below, to make, at Tenant's expense, (a) such alterations, modifications and improvements to the Premises as may be required by the building or other applicable regulations in the jurisdiction in which the Premises are located, or by Landlord's insurance carrier to avoid cancellation of, or an increase in the cost of, Landlord's insurance, or to secure adequate additional insurance coverage, unless such alterations, modifications and improvements would be required without reference to the use being made of the Premises, and (b) such alterations, modifications or improvements to the Premises as may be required for the safety and health of Tenant's employees pursuant to the Williams Steiger Occupational Safety and Health Act of 1970 (OSHA), as the same may be amended or implemented from time to time; but no other alterations, modifications or improvements nor any other alteration, modification, addition, installation or improvement Tenant may wish to make, shall be made unless Landlord shall first have given written approval of the plans and specifications therefore, and shall have been protected, to Landlord's satisfaction, against any cost or damage incident thereto, and unless Tenant shall first have secured all necessary building and other permits and all of same, when made, shall, unless Landlord elects otherwise as provided in Paragraph 5.12 hereof, become the property of Landlord and shall remain upon and be surrendered with said Premises as a part thereof at the end of the term of this Lease. Landlord agrees that it will not unreasonably withhold its consent to any such alteration, modification, addition, installation or improvement. If Tenant should make any, alterations, modifications, additions, installations or improvements without Landlord's consent, Tenant hereby agrees to indemnify Landlord from any liability which may devolve upon Landlord as a consequence thereof.

5.08 Tenant covenants and agrees to maintain and repair, at its sole risk and expense, its Premises and all of the heating, air conditioning, ventilation, plumbing, electrical, fire suppression and alarm, security and other operating systems and equipment within and servicing its Premises, to obtain and maintain all necessary licenses and permits in connection therewith, and to obtain and maintain at its expense any and all service contracts which may be required to accomplish same. Tenant indemnifies and holds harmless Landlord and its agents and representatives from and against any and all claims and liabilities arising from or relating to Tenant's failure to comply with the foregoing.

5.09 To make no claim against Landlord and to assume the responsibility of defending, at Tenant's expense, any claim which shall be made against Landlord by any agent, employee, licensee or invitee of Tenant or by others claiming the right to be on or about the Premises through or under Tenant for any injury, loss or damage to person or property occurring upon the Premises or the approaches thereto or the parking facilities in or adjacent thereto from any cause other than the gross negligence or willful misconduct of Landlord; and, otherwise, to save Landlord harmless and indemnified from all loss, damage, liability or expense incurred, suffered, or claimed by reason of Tenant's neglect or use of the Premises or approaches thereto or the parking facilities in or adjacent thereto or by reason of any injury, loss or damage to any person or property thereon not caused by the gross negligence or willful misconduct of Landlord, and to be answerable for all nuisances caused or suffered thereon.

5.10 To obtain and pay premiums upon Bannum's insurance policy protecting both Landlord and Tenant as named Insureds. Bannum's policy, which covers all of the facilities it operates pursuant to contracts with the BOP, has a limit of four million dollars ($4,000,000) in the aggregate, and two million dollars ($2,000,000) per occurrence. Such policy shall name Landlord and Landlord's Agent as additional insureds. Tenant shall furnish Landlord with an endorsement form from its insurance carrier evidencing such coverage within fifteen (15) days after full execution and delivery of this Lease, and in the event of any changes thereto, Tenant shall furnish supplemental certification of said coverage. Tenant shall, upon receipt, furnish a copy of its then-effective insurance policy. Tenant shall have the coverages listed on Attachment 5.10, which is attached hereto and made a part hereof, in place and applicable to the Building and the Premises on the Effective Date. Walter N. Propps, Agent, and/or Walter N. Propps is expressly relieved from any duty to see that this insurance, or any procured under the requirements of this Lease, is obtained by Tenant. Tenant shall provide Landlord with proof of insurance via an Accord 27 form issued by an insurance company or broker, or any other similar form or document which evidences Tenant's insurance coverage. Tenant shall also obtain worker compensation insurance as required by law and deliver evidence of same to Landlord at the same time it delivers other evidence of insurance hereunder.

5.11 This Lease is subject and subordinate to the lien of any and all mortgages (which term "mortgages" shall include deeds of trust and similar security instruments) and ground or other underlying leases which may now or hereafter encumber or otherwise affect the Land, the Building, or both, as well as the obligation to pay any and all renewals, extensions, modifications, recasting or refinancing thereof; provided, however, that in the event the mortgagee under any such mortgage, or ground lessor under any such ground lease, shall require this Lease to be superior and paramount to such mortgage or ground lease, Tenant agrees to execute and deliver any documents required for such purpose within ten (10) days after delivery of such documents to Tenant. This paragraph shall be self-operative and no further instruments of subordination need be required by any mortgagee, trustee or ground lessor. Nevertheless, if requested by Landlord, Tenant shall promptly execute any certificate or other document specified by Landlord in confirmation of this subordination. Tenant hereby constitutes and appoints Landlord as Tenant's attorney-in-fact to execute any such certificate or document on behalf of Tenant if Tenant does not execute it within ten (10) days after receiving it. Tenant agrees that, if any proceedings are brought for the foreclosure of any such mortgage, Tenant, if requested to do so by the purchaser at the foreclosure sale, shall attorn to the purchaser, shall recognize the purchaser as Landlord under this Lease, and shall make all payments required hereunder to such new Landlord without deduction or setoff. Tenant waives the provisions of any law or regulation, now or hereafter in effect, which may give or purport to give Tenant any right to terminate or otherwise adversely affect this Lease or the obligations of Tenant hereunder in the event that any such foreclosure or termination or other proceeding is prosecuted or completed. Tenant further covenants and agrees that, if requested by Landlord as a result of a request in writing by its lender, or by a prospective lender in the event of a refinancing of the property of which the Premises is a part, or by the prospective lender of a prospective purchaser of the Property, Tenant shall exercise its best efforts in good faith to cooperate with Landlord's lender or prospective lender or a prospective purchaser by providing, on a confidential basis, financial information demonstrating Tenant's creditworthiness and credit status.

5.12 To remove from the Premises within ten (10) days after expiration or other termination of this Lease, all personalty not belonging to Landlord, and to surrender possession of the Premises and all fixtures and furnishings connected therewith in good repair, order and condition in all respect, reasonable wear and use thereof and damage by accidental fire or other unavoidable casualty only excepted; and if Tenant shall have made any alterations, additions, installations or modifications in or to the Premises, whether consented to by Landlord or not, Tenant shall, if requested to do so by Landlord in writing prior to the expiration of the Term, remove the same or such thereof as may be specified in such notice, and repair any damage caused by such removal, all at Tenant's expense. Notwithstanding the foregoing duty to remove and restore the Premises after Tenant vacates the Premises, upon Tenant's vacation of the Premises Tenant will not be required to remove any sprinkler system, fire alarm system, heating or HVAC systems or plumbing work(to the extent such plumbing works have been installed below the level of the concrete slab), which Tenant has installed during its occupancy. If Tenant shall fail to perform any of the foregoing obligations, Landlord shall have the right to declare itself owner of such property to dispose of it in whatever manner Landlord considers appropriate without waiving its right to claim from Tenant all expenses and damage caused by Tenant's failure to remove the property, and Tenant shall not have any right to compensation or claim against Landlord as a result. Such disposition may, at Landlord's sole option, include the sale of all or some of such property, in which event the proceeds of any such sale shall be applied toward the expenses thus incurred, and Tenant agrees to pay any balance promptly. Tenant shall have no right to remove any fixtures, which are attached to the Premises.

5.13 Not to operate any machinery in the Premises which may cause excessive vibration or damage to the Premises; nor to use a loud speaker which can be heard outside the Premises, or to extend curb service to customers.

5.14 Not to place any exterior advertising signs or awnings upon the Premises, not to place any advertising signs or posters on the interior of any show windows, and not to change the color of the exterior painting, without the written approval of Landlord, which will not be unreasonably withheld as to any requirement of the BOP.

5.15 Not to execute any assignment, licenses, sub-lease or mortgage of this Lease, or the Premises, or of any part thereof, without first having obtained the written consent of Landlord which consent Landlord shall have no obligation to grant.

Tenant agrees to pay to Landlord as additional rent hereunder an administrative fee in the amount of Three Hundred Dollars ($300.00), plus reasonable attorneys' fees incurred by Landlord, in connection with any request by Tenant for Landlord to give its consent to any assignment, transfer, mortgage, encumbrance or subletting by Tenant. In addition, in the event of any subletting or assignment by Tenant, Landlord shall have the right to increase the amount of the security deposit required pursuant to Section 6.12 hereof in any amount determined by Landlord in its sole discretion, in which case Tenant shall deposit the full amount of such increase in said security deposit within five (5) business days following a written request therefore from Landlord.

5.16 To inspect all portions of the Premises, both interior and exterior and all machinery and equipment therein, so it may promptly detect the need for repairs to any of the same; to make such repairs as it is herein obligated to make, and to notify Landlord in writing of the need for any repairs it is herein obligated to make under the provisions of Paragraph 4.03.

5.17 To permit Landlord to show the Premises to prospective purchasers at all reasonable times and to prospective Tenants at all reasonable times within one hundred eighty (180) days prior to the expiration of the Term, and to exhibit notices for lease or sale within one hundred eighty (180) days prior to the expiration of the Term.

5.18 Intentionally omitted.

5.19 The proceeds of all insurance herein required shall be applied first to the repair or replacement of the Items so insured, unless this Lease is terminated under the provisions of Paragraph 6.01 hereof.

5.20 Intentionally omitted.

5.21 (a) As used in this Lease, the term "Hazardous Material" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "infectious wastes", "hazardous materials" or "toxic substances" now or subsequently regulated under any federal, state or local laws, regulations or ordinances including, without limitation, oil, petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, and including any different products and materials which are subsequently found to have adverse effects on the environment or the health and safety of persons.

(b) Tenant shall not cause or permit any Hazardous Material to be generated, produced, brought upon, used, stored, treated, discharged, released, spilled or disposed of on, in, under or about the Premises, the Building, or the Land (hereinafter referred to collectively as the "Property") by Tenant, its affiliates, agents, employees, contractors, subtenants, licensees, assignees or invitees, except for quantities of merchandise and supplies which are used by Tenant in the ordinary course of its business, which shall be stored, used and disposed of in accordance with all applicable governmental laws and regulations. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all actions (including, without limitation, remedial or enforcement actions of any kind, administrative or judicial proceedings, and orders or judgments arising out of or resulting therefrom), costs, claims, damages (including without limitation, attorneys', consultants', and experts' fees, court costs and amount paid in settlement of any claims or actions), fines, forfeitures or other civil, administrative or criminal penalties, injunctive or other relief (whether or not based upon personal injury, property damage, or contamination of, or adverse effects upon, the environment, water tables or natural resources), liabilities or losses arising from a breach of this prohibition by Tenant, its affiliates, agents, employees, contractors, subtenants, licensees, assignees or invitees.

(c) In the event that Hazardous Materials are discovered upon, in, or under the Property, and any governmental agency or entity having jurisdiction over the Property requires the removal of such Hazardous Materials, Tenant shall be responsible for removing those Hazardous Materials arising out of or related to the use or occupancy of the Property by Tenant or its affiliates, agents, employees, contractors, subtenants, licensees, assignees or invitees but not those of its predecessors. However, Tenant shall not, under any circumstances, be responsible for any preexisting Hazardous Materials or conditions. Notwithstanding the foregoing, Tenant shall not take any remedial action in or about the Property or any portion thereof without first notifying Landlord of Tenant's intention to do so and affording Landlord the opportunity to protect Landlord's interest with respect thereto. Tenant immediately shall notify Landlord in writing of: (I) any spill, release, discharge or disposal of any Hazardous Material in, on or under the Property or any portion thereof; (ii) any enforcement, cleanup, removal or other governmental or regulatory action instituted, contemplated, or threatened (if Tenant has notice thereof) pursuant to any laws respecting Hazardous Materials; (iii) any claim made or threatened by any person against Tenant or the Property or any portion thereof relating to damage contribution, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Materials; and (iv) any reports made to any governmental agency or entity arising out of or in connection with any Hazardous Materials in, on under or about or removed from the Property or any portion thereof, including any complaints, notices, warnings, reports or asserted violations in connection therewith. Tenant also shall supply to Landlord as promptly as possible, and in any event within five (5) business days after Tenant first receives or sends the same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises, the Property or Tenant's use or occupancy thereof.

(d) The respective rights and obligations of Landlord and Tenant under this Paragraph 5.21 shall survive the expiration or earlier termination of this Lease.

5.22 Landlord makes no representation or warranty of any nature concerning compliance of the Building with the Americans with Disabilities Act (the "ADA"), which compliance with the ADA may not exist as of the Lease Commencement Date, and Tenant shall be responsible, at its sole cost and expense, for compliance of the Premises with the ADA.

Section 6 – General Provisions

6.01 Casualty Clause: This Lease is made on condition that if the Premises, or any part thereof, or the approaches thereto, be destroyed or damaged by fire or other unavoidable casualty covered by a Landlord's fire and extended coverage policy, so as to render said Premises and/or approaches unfit for use and occupancy, a just and proportionate part of the Rent, according to the nature and extent of the injury to said Premises and/or approaches, shall be suspended and abated until said Premises and approaches shall have been put in as good condition for use and occupancy as at the time of such damage or destruction, or until this Lease shall be cancelled and terminated as next hereinafter provided, as the case may be. It shall be the duty of Landlord to determine and to notify Tenant in writing, within sixty (60) days after such damage or destruction, the date by

which the Premises can be fully restored, with reasonable diligence. If the date by which such restoration can be completed, as stated in Landlord's notice, shall be later than six (6) months after such damage or destruction, then either party hereto shall have the right, to be exercised within thirty (30) days after receipt of such notice from Landlord, to cancel and terminate this Lease, by giving to the other party a written notice of its desire so to cancel and terminate; but if this Lease shall not be so cancelled, it shall remain in full force and effect and Tenant shall reoccupy the Premises when fully restored. However, if the date by which such restoration can be completed, as stated in Landlord's notice, shall be earlier than six (6) months after such damage or destruction, this Lease shall remain in full force and effect, and Tenant shall reoccupy the Premises when fully restored; provided, however, that if, at the expiration of a period of six (6) months following such damage or destruction, the Premises shall not have been fully restored as a result of some cause beyond Landlord's control, Landlord shall have the right to complete such restoration, provided it shall use reasonable diligence in doing so, without thereby affording to Tenant the right to cancel this Lease. All rights of subrogation against Tenant are hereby waived unless such waiver shall make void or voidable any insurance Landlord may have upon the Premises. In case of damage to or destruction of the Premises by an uninsured casualty, and if the estimated cost of repair or restoration shall exceed thirty-five percent (35%) of the then-estimated replacement cost of the Premises, Landlord, at its option, may cancel and terminate this Lease as of the date of such damage or destruction by giving Tenant a written notice to this effect within sixty (60) days of such damage or destruction, but, if Landlord shall not so elect to terminate, all of the provisions hereinbefore contained respecting an insured casualty shall be equally applicable to such non-insured casualty. If such casualty jeopardizes Bannum's ability to perform under Bannum's Government Contract, Tenant may, in its discretion, by giving written notice to landlord, immediately terminate this lease.

6.02 Tenant Holding Over: If Tenant shall not immediately surrender the Premises on the day after the expiration or termination of the Term, then Tenant shall, by virtue of this Lease, become a tenant at sufferance at a monthly rental equal to one hundred fifty percent (150%) of the monthly installment of Base Annual Rent due under the terms of this Lease. Tenant, as a tenant at sufferance, shall be subject to all of the conditions and covenants of this Lease (including payment of Additional Rent) as though the tenancy had originally been a monthly tenancy. During any holdover period each party shall give to the other at least thirty (30) days prior written notice to quit the Premises, except in the event of a nonpayment of Base Annual Rent or of Additional Rent when due, or of the breach of any other covenant by Tenant, in either of which events Tenant shall not be entitled to any notice to quit, the usual thirty (30) days notice to quit being expressly waived; provided, however, that in the event that Tenant shall hold over after expiration of the Term, then at any time prior to the acceptance, Landlord, at its election or option, may re-enter and take possession of the Premises forthwith, without process, or by any legal action or process in force in the jurisdiction in which the Building is located. Notwithstanding the foregoing, this provision shall not be construed as consent by Landlord to such a holding over.

6.03 Condemnation: If the whole or a substantial part of the Premises and/or the approaches thereto such as would materially impair the conduct of the Tenant's business, shall be taken, or condemned by any competent public authority, either party shall have the right, by giving notice to

the other, not more than sixty (60) days after the date on which title shall vest in such authority to terminate this Lease, then the term of this Lease shall cease and terminate as of the said date of title vesting or such earlier date as may be required by Tenant to re-locate to alternative approved property. In case of any taking or condemnation, whether or not the term of this Lease shall cease and terminate, the entire award shall be the property of Landlord, and Tenant hereby assigns to Landlord all its rights, title, and interest in and to any such award. The foregoing notwithstanding, Tenant shall be entitled to claim in the condemnation proceedings such awards as may be allowed for its relocation expenses and other cost that can only be awarded to Tenant, but only if such awards shall be made by the condemnation court in addition to and stated separately from the award made by it for the Land and the Building or part thereof so taken and damages to the remainder. In no event shall Tenant be entitled to any award for the unexpired portion of the Term of this Lease.

The current minimum rent and additional rent accruing subsequent to any taking or condemnation, shall be apportioned as of the date of vesting of title, and if the term of this Lease shall not have ceased and have been terminated as of said date, Tenant shall be entitled to a pro-rata reduction in the annual minimum rent payable hereunder, based on the proportion that the floor area in the space taken bears to the entire floor area of the Premises immediately prior to such taking.

6.04 Tenant's Default-Landlord's Remedies:

(a) It is mutually covenanted and agreed that if Tenant shall fail to keep and perform all of the covenants, conditions and agreements herein made binding upon Tenant, or if Tenant shall vacate or abandon the Premises, or if the estate hereby created shall be taken on execution or other process of law, or if Tenant shall petition to be declared or shall be declared bankrupt or insolvent according to law, or if a receiver or other similar officer shall be appointed to take charge of all or any part of the property of Tenant, or if any assignment shall be made of Tenant's property for the benefit of creditors, then and in each such case, at the sole option of Landlord, Tenant's right of possession shall thereupon cease and Landlord shall be entitled to possession of the Premises and to re-enter the same without further demand of Rent or demand of possession of said Premises, and may forthwith recover possession thereof by whatever process of law may be available in the jurisdiction in which the Premises may be located, any notice to quit or of intention to re-enter being hereby expressly waived by Tenant, or Landlord may, if permitted by applicable law, retake possession over all persons and property therefrom without becoming liable in damages, unless resulting from its agents. In the event of such re-entry or re-taking, Tenant shall nevertheless remain liable and answerable for the full Rent which has accrued to the date of such re-taking or re-entry, and for damages for the deficiency or loss of Rent which Landlord may thereby sustain in respect of the balance of the Term; and in such case, Landlord shall have the right, but shall not have the duty, to let the Premises for the benefit of and as the agent for Tenant, in liquidation and discharge, in whole or in part, as the case may be, of the liability of Tenant hereunder; and such damages, at the option of Landlord, may be recovered at the time of the re-taking or reentry, or in separate actions from time to time as Tenant's obligation to pay Rent would have accrued if the Term had continued, or from time to time as said damages shall have been made more easily ascertainable by re-lettings, or such action, at the option of Landlord, may be deferred until the expiration of the Term, in which

latter event the cause of action shall not be deemed to have accrued until the expiration of said Term. Landlord, however, may refrain from terminating Tenant's right of possession, and in such case, may enforce against Tenant the provisions of this Lease for the full Term hereof.

(b) If any person other than Tenant shall initiate the action which shall entitle Landlord to terminate this Lease as aforesaid, it is understood and agreed that Landlord will defer terminating this Lease until the expiration of a period of thirty (30) days after written notice from Landlord to Tenant that such action shall have been taken.

(c) No waiver by Landlord of any breach of any covenant or condition herein contained shall operate as a waiver of the covenant or condition itself or of any subsequent breach thereof; nor shall any such waiver be implied should a compromise between the parties be effected after Landlord shall have initiated any action in regard thereto.

(d) While Walter N. Propps, Agent shall be collecting the Rent due from Tenant, he is hereby authorized by Landlord to expend such sums as may be reasonably necessary in connection with the enforcement of payment of Rent and the securing of possession of the Premises in case of Tenant's default and to reimburse itself from said Rent to the extent that it may be available therefore. Landlord agrees to pay Walter N. Propps, Agent any of such expenses not so reimbursed, promptly upon demand.

6.05 Agents' Commission: The parties to this Lease recognize Walter N. Propps and his successors and assigns ("Propps"), as the leasing agents for the Premises during the initial Term of this Lease.

Landlord agrees to pay to said Propps, for its services in procuring this Lease, a commission of six percent (6%), of all Base Annual Rent paid by Tenant during the initial Term of this Lease.

If this Lease shall be terminated prior to the end of the Term hereof or during any extension term by mutual agreement between Landlord and Tenant, Landlord agrees, nevertheless, to pay Propps in cash in one lump sum at the date of such cancellation, a sum equal to six percent (6%) of the Base Annual Rent that would have been payable during the unexpired portion of the then current term, but for such termination.

It is expressly understood and agreed that, absent any agreement between Landlord and Tenant to the contrary, the foregoing provisions relating to commissions payable to Propps shall survive the transfer or assignment of Landlord's interest under this Lease and/or any sale or conveyance of the Premises, and if any such transferee shall fail or refuse to pay such commissions when due as provided above, Landlord shall remain liable therefore just as though such transfer had not been made, and shall pay the same promptly upon the demand of Propps.

6.06 Management Fee: Landlord recognizes Walter N. Propps, as the managing agent for the Premises in accordance with any separate management agreement between Landlord and Walter N.

Propps, and agrees to pay to Walter N. Propps the management fee specified in said agreement.

6.07 Limitation on Liability: It is expressly understood and agreed that no liability shall be imposed upon Landlord because of any injury or damage to person or property, or because of any interference with any services and facilities listed under Paragraph 7 caused by accidents, repairs, riots, strikes or any reason beyond the reasonable control of Landlord, and that Landlord shall be under no duty to restore any of such services and facilities or to make any of the repairs for which Landlord is obligated under this Lease, except after receipt of written notice from Tenant of a need therefor. Neither Landlord, nor its agent, as designated under Paragraph 6.05, shall be under any duty to inspect the Premises during Tenant's occupancy thereof unless and until Tenant has notified Landlord in writing of the need of repairs for which Landlord is responsible; however, Landlord and its agent may enter the Premises at any reasonable time for the purpose of inspecting the same or performance of any repairs under the provisions of Paragraph 4.03.

6.08 Force Majeure: Each party shall be excused from performing any obligation or undertakings provided for in this Lease (other than the obligations of Tenant to pay any and all items of Rent as the same become due under the applicable provisions of this Lease) for so long as such performance is prevented or delayed, retarded or hindered by act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor unions, condemnation, requisition, laws, orders of government or civil or military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of the party prevented, retarded, or hindered thereby, including reasonable delays for adjustments of insurance.

6.09 Late Charges and Interest: In the event that any installment or payment of any Rent or Additional Rent or other charges required by this Lease to be paid to Landlord by Tenant is not postmarked to Landlord within seven (7) days after the same is due and payable, then for each and every late payment in addition to the payment then in arrears, Tenant shall immediately pay to Landlord as Additional Rent a late charge equal to five percent (5%) of the payment then in arrears. In addition, such unpaid installment shall bear interest until paid at the rate of eighteen percent (18%) per annum. In the event that any payment from Tenant by check is returned by the financial institutions on which it is drawn for any reason, a service charge of Fifty Dollars ($50.00) shall be due and payable as additional rent in addition to the service charge set forth above. In addition, Tenant shall pay to Landlord, within fifteen (15) days of receipt of an invoice therefor, any fee imposed upon Landlord by its bank as a result of any returned check. Notwithstanding the imposition of such late charge, service charge and interest, Tenant shall be in default under this Lease if any or all payments required to be made by Tenant are not made at the time herein stated, and neither the demand for, nor collection by, Landlord of such late service charge and interest shall be construed as a cure of such default on the part of the Tenant.

6.10 Rules: Tenant covenants that it and its agents, servants, employers and guests shall faithfully keep, observe, and perform such rules and regulations in which Landlord may from time to time

make for the Premises and which are established by Landlord for the general well-being, safety, care and cleanliness of the Premises, and which shall not violate or be inconsistent with the scope of work of Bannum's Government Contract with the BOP. Tenant agrees to conduct its business at all times in a reputable manner, maintaining at all times an adequate staff of employees. Tenant shall promptly comply with all laws and ordinances and lawful orders and regulations affecting the Premises and the use and occupancy of same and shall pay all fines and other penalties levied as a result of any violation thereof.

6.11 Intentionally omitted.

6.12 Estoppel Certificates: Tenant shall, without charge, at any time and from time to time, within fifteen (15) days of Landlord's request or within fifteen (15) days of the request of any ground lessor, if any, the holder of any indebtedness secured by the Land, the Building, or both, any purchaser of the Land, the Building, or both, or any person designated by Landlord, execute, acknowledge and deliver to such requesting party a written estoppel certificate certifying, as of the date of such estoppel certificate, the following: (a) whether or not Tenant is in possession of the Premises; (b) whether or not this Lease is unmodified and in full force and effect (or if there has been a modification, that the Lease is In full force and effect as modified and setting forth such modifications); (c) that the Term has commenced and the full rental is now accruing; (d) the amounts of Base Annual Rent and Additional Rent currently due and payable by Tenant; (e) that Tenant has accepted possession of the Premises and is currently operating its business therein; (f) that any improvements required by the Lease have been made by Landlord to the satisfaction of Tenant; (g) whether or not there are then existing any setoffs, charges, liens, claims or defenses against the enforcement of any right hereunder, including Base Annual Rent or Additional Rent (and, if so, specifying the same in detail); (h) that no Base Annual Rent (except the first installment thereof) had been paid more than thirty (30) days in advance of its due date; (i) that Tenant has no knowledge of any then uncured defaults by Landlord of its obligations under this Lease (or, if Tenant has such knowledge, specifying the same in detail); (j) that Tenant is not in default; (k) that the address to which notices to Tenant should be sent is as set forth in the Lease (or, if not, specifying the correct address); and (l) any other reasonable certifications requested by Landlord. Any statement delivered pursuant to this paragraph may be relied on by an owner of the Building, any prospective purchaser of the Building, any ground lessor or prospective ground lessor, any mortgagee or prospective mortgagee of the Building, the Land or both or of Landlord's interest therein, or any prospective assignee of such mortgagee.

6.13 Miscellaneous:

(a) In case two (2) or more persons shall constitute Tenant hereunder, the covenants, obligations and agreements herein made binding upon Tenant, shall be the joint and several obligations of such persons, and in the event of the death of any one or more of them, the survivors or survivor shall succeed to all of Tenant's right, title and interest hereunder; and this Lease shall be binding upon and shall inure to the benefit of not only the parties hereto, but also their respective heirs, personal representatives, successors and assigns.

(b) All notices required or desired to be given by either party to the other shall be addressed and sent, by registered or certified mail, return receipt requested, first-class postage prepaid, or by personal delivery, or overnight mail or courier that provides written notice of delivery, if to Landlord, to Walter N. Propps, Agent, at 7319 Burdette Court, Bethesda, MD 20817, and, if to Tenant to Barnum, Inc., 2165 Sunnydale Boulevard, Suite C, Clearwater, Florida 33785, Attention: John Rich, Corporate Counsel. Either party may, by written notice to the other, designate a new address to which such notices shall be directed. Such communications, if sent by overnight courier or registered or certified mail, shall be deemed to have been given two (2) days after the date of mailing. If any mortgagee shall notify Tenant that it is the holder of a mortgage affecting the Premises, no notice, request or demand thereafter sent by Tenant to Landlord shall be effective until a copy of same shall be sent to such mortgagee in the manner prescribed in this at such address as such mortgagee shall designate.

(c) This Lease constitutes the entire agreement of the parties in respect of the Premises, and there are no oral agreements between the parties.

6.14 Indemnity. Tenant indemnifies and holds harmless Landlord from and against any and all claims, demands, actions, causes of action, damages, losses, or other liabilities of whatever nature, including reasonable attorneys' fees and litigation expenses, arising from or relating to Tenant's failure to meet any of its obligations under this Lease, any injury or damage caused third parties by the acts or omissions of Tenant, and the construction of Tenant Improvements

Section 7 - Construction of Tenant Improvements

7.01 Landlord acknowledges that Tenant contemplates performing construction work within the Premises ("Tenant Improvements"). A conceptual plan is attached hereto and made a part hereof as Attachment 7.01. This plan, together with a general written description of the kind of work to be performed, represents the nature and extent of the Tenant Improvements contemplated by Tenant. Tenant covenants and agrees to retain a licensed architect and appropriate licensed consulting engineers.

7.02 Tenant's architect will prepare plans and specifications for the Tenant Improvements in accordance with all legal requirements. Tenant will submit said plans and specifications to Landlord for its review and approval, which shall not be unreasonably withheld. Landlord shall have a period of thirty (30) business days after receipt of such plans within which to review (and cause its consultants to review) said plans and specifications. If Landlord approves same, it shall give Tenant written notice of approval within said period. If Landlord does not approve same, or has comments with respect to said plans and specifications, then Landlord shall, within said period, notify Tenant of the reasons for its rejection of the plans or its comments which, if satisfied by Tenant would result in the approval of such plans by Landlord. Any review of revised plans and specifications by Landlord subsequent to the initial review shall be conducted within five (5) days of submission thereof by Tenant. If necessary, this process shall be repeated until the plans are approved.

7.03 The action between Tenant as Plaintiff and Landlord as Defendant in the United States District Court for the District of Columbia, Civil Case No. 02-0059 (RWR) (" Subject Litigation") is stayed in accordance with the Settlement Agreement pending approval of the proposed plans and specifications. If no approval is given within thirty (30) days after the plans and specifications are submitted by Tenant to Landlord the stay will be immediately lifted and the subject litigation will be reinstated. If the Landlord approves the plans and specifications within thirty (30) days after receipt, the Subject Litigation will be dismissed with prejudice. In the event of a termination for any of the reasons set forth in paragraph 2.05 prior to the approval of the plans and specifications, the Subject Litigation shall be immediately dismissed with prejudice.

7.04 Once the plans and specifications are approved, Tenant shall, at its sole risk and expense, submit such documentation as may be required by the appropriate governmental authorities, including, but not limited to, the BOP, District of Columbia, or any other governmental body, agency, or authority, to obtain all necessary governmental approvals to proceed and continue construction of the Tenant Improvements. Tenant, and its contractor(s), shall at all times comply with all governmental requirements during the performance of the work. Tenant's contractor(s) shall also provide Tenant and Landlord certificates evidencing contractor(s)' liability insurance coverage for the work. Provided, that Tenant shall have obtained Landlord's required approval of plans and specifications as aforesaid, Landlord shall cooperate with Tenant in connection with Tenant's efforts to obtain building permits required for the construction, including executing necessary consents required by applicable governmental authorities, including, but not limited to, the BOP, District of Columbia, or any other governmental body, agency, or authority.

7.05 Tenant covenants and agrees that it shall not commence construction of the Tenant Improvements until: (1) Tenant shall have obtained all necessary governmental approvals as hereinafter defined ("Governmental Approvals"); (2) Landlord shall have approved Tenant's plans and specifications ("Landlord Approval"); (3) Tenant shall have delivered to Landlord a copy of the executed construction contract(s) between Tenant and the contractor, together with a copy of a schedule of values of the cost of such construction signed by Tenant and its contractor; and (4) Tenant has delivered a letter of credit to Landlord as described below.

7.06 To secure Tenant's faithful performance of its obligations during construction of the Tenant Improvements, Tenant shall provide Landlord an irrevocable stand-by letter of credit from the Bank of America to Landlord in the amount of $100,000, which letter of credit shall be in the form of Exhibit "D" attached hereto and made a part hereof. Such letter of credit shall be for the benefit and in the name of Landlord and shall be delivered to Landlord prior to the commencement of construction. Said letter of credit shall remain in full force and effect in favor of Landlord until the tenant improvements have been completed and Landlord shall have received true copies of final waivers of claims and releases of liens from contractors and subcontractors.

7.07 Any work shall be performed by Tenant or its contractors in a good and workmanlike manner and in accordance with all applicable legal and insurance requirements. In the event any liens are filed against the Premises as a result of any repairs, maintenance, alterations or improvements made directly or indirectly by or for Tenant, Tenant shall, at its sole expense, discharge or bond off the

same within twenty-five (25) days from the date on which Tenant receives notice of the filing of the lien from Landlord. In the event that Tenant shall fail to bond off or discharge any such lien, Landlord, at its option, in addition to other remedies herein provided, may bond off or pay such lien or claim for the account of Tenant and all such sums so advanced by Landlord shall be paid to Landlord upon demand as additional rent.

Section 8 – Special Provisions

8.01 Assignment by Walter N. Propps

Landlord and Tenant further agree that Walter N. Propps may assign his rights and responsibilities hereunder to any approved third party upon notice to Landlord and Tenant as provided in Section 6.14(b) hereof. In such event, Landlord and Tenant, jointly and severally, upon the making of said notice, hereby release the said Walter N. Propps from any further duty, obligation and/or responsibility hereunder.

8.02 Tenant's Parking

Landlord has assigned twenty-two (22) parking spaces to the tenant that occupies that portion of the Building other than the Premises. Tenant is, therefore, assigned the remaining spaces available. It is further understood and agreed that Landlord in its sole discretion may change the location of Tenant's parking spaces from time-to-time.

8.03 Waiver of Subrogation

All rights of subrogation against Landlord by Tenant or by Tenant against Landlord are hereby waived unless such waiver shall make void or voidable any insurance carried by said party.

8.04 Waiver of Jury Trial

Landlord and Tenant waive all rights to trial by jury in any proceeding which may be instituted by either party against the other arising under or by virtue of this Lease.

8.05 Attorneys Fees

In the event of any dispute under this Lease, the prevailing party shall be entitled to recover, in addition to any other remedy or relief to which it is entitled, reasonable attorney's fees, expert witness and consultant fees, and the costs of litigation or arbitration.

8.06 Time

Time is of the essence as to all matters contained in this Lease.

8.07 Duration of Offer to Lease

This instrument constitutes an offer to Lease the Premises on the terms and conditions contained herein. If said offer is not accepted by Tenant, by the execution and delivery by not later than 5:00 p.m. on Wednesday, July 31, 2002, of two (2) fully-executed and initialed counterparts hereof, then this offer to Lease shall, without further notice or action of any kind, be withdrawn and of no further force and effect. It is understood and agreed that upon execution and delivery hereof by Tenant, that the parties will cause the Consent Order and Stay of Proceedings to be filed with the United States District Court for the District of Columbia as evidence that the subject litigation described therein is conditionally settled.

8.08 Licensed Brokers in Transaction

Tenant acknowledges that Franklin Paulson, managing member of Landlord, is a licensed real estate broker in the District of Columbia, and that Walter Propps, Landlord's managing agent, a licensed real estate broker in the District of Columbia, has a right to acquire an interest in the Landlord entity.

[Signature Block Appears on Next Page]

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names and affixed their seals, on the day and year first hereinabove mentioned (in case either party is a corporation, its name has been hereunto subscribed and its seal hereunto affixed and attested by its duly authorized officers, and such corporation has appointed their respective attorneys-in-fact, to acknowledge and deliver this lease according to law).

WITNESS OR ATTEST:

LANDLORD:
2210 Adams Place, NE, LLC

BY: _____

TENANT:
BANNUM, INC.

(Corporate Seal)

_____

BY: _____

LEASING AGENT: WALTER N. PROPPS

BY: _____

MANAGING AGENT: WALTER N. PROPPS

BY: _____

Personal Guarantor:

_____
Arnold Rich

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names and affixed their seals, on the day and year first hereinabove mentioned (in case either party is a corporation, its name has been hereunto subscribed and its seal hereunto affixed and attested by its duly authorized officers, and such corporation has appointed their respective attorneys-in-fact, to acknowledge and deliver this lease according to law).

WITNESS OR ATTEST:

LANDLORD:
2210 Adams Place, NE, LLC

BY:

TENANT:
BANNUM, INC.

(Corporate Seal)

BY:

LEASING AGENT: WALTER N. PROPPS

BY:

MANAGING AGENT: WALTER N. PROPPS

BY:

Personal Guarantor:

Arnold Rich

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1750

L

COUNCIL OF THE DISTRICT OF COLUMBIA
WASHINGTON, D.C. 20004

January 15, 2003

The Honorable Sharon Ambrose, Chair
Committtee on Consumer
and Regulatory Affairs
Council of the District of Columbia
1350 Pennsylvania Avenue, N. W.
Washington, D. C. 20004

Dear Councilmember Ambrose:

I am forwarding to you a copy of a letter I sent to David Clark, Director of the Department of Consumer and Regulatory Affairs, requesting a "stop work" order on building construction taking place at 2210 Adams Place, NE to prevent the inappropriate opening of a 150 bed corrections facility for the purpose of housing 150 inmates by Bannum, Inc.

I am vehemently opposed to the opening and operation of this facility. First, the area is zoned industrial. Second, Bannum's contract is for 5 years; the permit obtained from DCRA is a temporary permit for three years. Finally, the affected ANC is on record as opposing it.

In addition to requesting a "stop work" order, I am requesting that you, as Chair of the Committee on Consumer and Regulatory Affairs, investigate this matter and hold an oversight hearing to determine why DCRA has issued a permit to construct a residential facility in an industrial zone.

Your immediate attention to this request is appreciated. Thank you.

Sincerely,

Vincent B. Orange, Sr.
Coucilmember, Ward 5

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RECEIVED
D.C. OFFICE OF ZONING
2003 JAN 24 PM 2:50

January 22, 2003

Greetings Members of the Board of Zoning Adjustments,

Advisory Neighborhood Commission 5B hereby appeals the decision of the permit issued by the District of Columbia Department of Consumer and Regulatory Affairs, Building and Land Regulation Administration. Permit Number: B425438.

Advisory Neighborhood Commission 5B is aggrieved by the decision to issue Bannum Center a Building permit/Alter & Repair to renovate the old warehouse located at 2210 Adams Place, Northeast for the purposes of opening a Community Corrections Center. Allegations of the error in the administrative decision are as follows:

1)2210 Adams Place, NE is zoned as Industrial District with a classification of C-M-2, not as a Residence District. A Community Corrections Center is prohibited in a C-M-2 zone. The District of Columbia Municipal Regulations Title 11 Zoning, page 8-2, 801.2(b) states, 'For the purpose of this subsection, a community-based residential facility shall not be considered a commercial use'.

According to the Zoning regulations of the District of Columbia, community-based residential facility is defined as, 'a residential facility for the persons who have a common need for treatment, rehabilitation, assistance, or supervision in their daily living. This definition includes, but not limited to, facilities covered by D. C. Law 2-35, The Community Residence Facilities Licensure Act of 1977, and facilities formerly known as convalescent or nursing home, residential halfway house or social service center, philanthropic or eleemosynary institution, and personal care home.

BZA
Case No. 16998
Exhibit No. 2

It goes on to state, 'If an establishment is a community-based residential facility as defined in this section, it shall not be deemed to constitute any other use permitted under the authority of these regulations. A community-based residential facility may include separate living quarters for resident supervisors and their families. All community-based residential facilities shall be included in one (1) or more of the following subcategories: (a) Adult rehabilitation home - facility providing residential care for one (1) or more individuals sixteen (16) years of age or older who are charged by the United States Attorney with a felony offense, or any individual twenty-one (21) years of age or older, under pre-trial detention or sentenced court orders;' Please reference page 1-14 of the same title.

2) Holland and Knight LLP letters, dated December 11, 2000 and November 26, 2001, respectively, document the fact that the center is for residential rehabilitation services as referred by appropriate committing authorities. See enclosures.

3)Holland & Knight LLP letters, dated December 11, 2000 and November 26, 2001, respectively, cite Section801.7(k) of the zoning regulations, Temporary detention or correctional institution on leased property for a period not to exceed three (3) years. See 8-3 of the same title. However, the letters from Holland & Knight are contradictory. One letter states to finish out their entire sentence at the site and the other letter reference conditional release from the parole commission or through a transfer from a federal institution in order to make a transition back into society. Which one is it a correctional institution or a Halfway house?

4) In a public meeting on January 21, 2003, Bannum said, they are spending $500,000 to renovate the old warehouse and when I

asked when the three years are up, where do they plan to relocate? The representative from Bannum is under the impression that they can simply reapply as a matter of right use. Although they can reapply, in order to extend beyond the three years, a use variance would be required. No one has informed Bannum of this. In fact, if the Zoning Administrator had examined the lease or the contract with the Bureau of Prisons (both in excess of three years) or the extent of the renovation being undertaken, he could have determined that there is no intent to comply with the "temporary" provision of the Section 801.7(k).

The representatives from Bannum admitted in a public meeting, held January 21, 2003 that the Community Correctional Center is a halfway house with the ability of the residents to leave the facility to look for employment. Detention or correctional institutions clearly require permanent detention or incarceration, not work release.

Finally, this location is not conducive to productive and supportive environment. It is actual a place of desolation with little or no lighting in the area. No bus line travels to this area. With a population of 150 residents, in one location, we feel that the community will be adversely impacted.

Respectfully,

Regina James, Chairperson, Advisory Neighborhood Commission 5B

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and F ılatory Affairs

RECEIVED
2003 FEB -4 PM 3:34
COUNCILMEMBER ORANGE

Office of the Director

January 31, 2003

The Honorable Vincent B. Orange, Sr
Ward 5 Councilmember
Council of the District of Columbia
1350 Pennsylvania Avenue NW
Washington DC 20004

Ref: . 2210 Adams Street NE

Dear Councilmembet Orange:

This is in response to your letter dated January 15, 2003, in which you asked that a stop work order be placed on construction taking place at the referenced address.

The intended use, a 150-bed community corrections center, is institutional. The property is located in a C-M-2 zone, which permits such a use.

The building permit that was issued for this property (#B425438) does not have a three-year expiration date. However, pursuant to DCMR 11, 801.7 (k), a..."temporary detention or correctional institution on leased property" is limited to a period of use not to exceed three years in a C-M zone, unless a special exception has been approved by the Board of Zoning Adjustment. DCRA will ensure that the certificate of occupancy for this property, when issued, specifically limits the use of this property as a correctional institution to three years, as stated in the zoning regulations.

Do not hesitate to contact me if you have additional questions.

Sincerely,

David A. Clark
Director

cc: Theresa Lewis
Denzil Noble
Robert Kelly

941 North Capitol Street, N.E., Suite 9500, Washington, D.C. 20002
Phone: (202) 442-8947 Fax: (202) 442-9445

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VERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REC LATORY AFFAIRS

Building and Land Regulation Administration
Office of the Administrator

February 21, 2003

Donald Temple Esq.
Temple Law Offices
1200 G Street NW
Suite 370
Washington DC 20005

RE: 2210 Adams Street NE Zone, C-2-M

Dear Mr. Temple:

This letter is in response to your letter dated February 7, 2003, concerning the referenced address. The intended use, a 150-bed community corrections center, is institutional. The property is located in a C-M-2 zone, which permits such a use.

The building permit that was issued for this property (#B425438) does not have a three year expiration date. However, pursuant to DCMR 11, 801.7 (k), a...."temporary detention or correctional institution on leased property" is limited to a period of use not to exceed three years in a C-M zone, unless a special exception has been approved by the Board of Zoning Adjustment. DCRA will ensure that the certificate of occupancy for this property, when issued, specifically limits the use of this property as a correctional institution to three years, as stated in the zoning regulations.

In your letter you indicate that the approval of a construction permit was not consistent with the District of Columbia laws. It would assist us in providing a response if you could provide us with the sections of the codes and or laws to which you refer.

Your concerns involving previous Zoning Administrators' concurrences on non-governmental stationary have been addressed. This practice is no longer used by this office.

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941 North Capitol Street, N.E., Suite 2000, Washington, D.C. 20002
Phone: (202) 442-4455 Fax: (202) 442-4863

228.

Should you have questions, contact me at 442-4455.

Sincerely,

Denzil Noble
Acting Administrator

Cc David Clark
Theresa Lewis
Robert W. Kelly

#166441

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Office of the Director

April 27, 2004

BY PERSONAL SERVICE
David A. Lowry, Executive Director
BANNUM, INC.
2210 Adams Place, N.E.
Washington, D.C. 2000

and

BY FACSIMILE
Shawn C. Whittaker, Esquire*
9055 Comprint Street, Suite 340
Gaithersburg, Maryland 20877

Re: 2210 Adams Place, N.E.
Washington, D.C. 20002

NOTICE OF INTENT TO REVOKE CERTIFICATE OF OCCUPANCY NO. CO53679

This is official notice to you that the Department of Consumer and Regulatory Affairs, Building and Land Regulation Administration (DCRA), proposes to revoke the Certificate of Occupancy, No. CO53679, issued to the Bannum Corporation. Said permit was issued on or about May 2, 2003, and authorized the company to operate a "temporary correctional institutional[sic]" at the premises located at 2210 Adams Place, N.E, in Washington, D.C. This notice is issued pursuant to D.C. Official Code § 1-1509 (a)(2003) which states: "In any contested case, all parties thereof shall be given reasonable notice of the afforded hearing by the Mayor or the agency as the case may be . . ."

The charges and specifications in support of this action are as follows:

CHARGE I. You are in violation of D.C. Mun. Reg. tit. 11 § 3203.11 which reads, in pertinent part: ". . . [T]he issuance of a certificate of occupancy for the use of a structure, or part thereof, if the establishment of the use is dependent upon the erection, construction, conversion, or alteration of the structure, or part thereof; provided: (b) A building permit shall be issued in compliance with § 3202."

* Mr. Whittaker has agreed to accept service for his client, Bannum Corporation, although he is not the registered agent for service.

SPECIFICATION A. On or about September 9, 2003, the Board of Zoning Adjustment (BZA or Board) issued an oral decision in Appeal No. 16988 of the Advisory Neighborhood Commission 5B, taken from the administrative decision of David Clark, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B425438 (for the renovation of a warehouse for use as a community corrections center), and revised Building Permit No. B448325. A written decision was issued by the BZA on March 31, 2003. The order became final ten days after receipt of the written decision pursuant to 11 DCMR § 3125.9 (2003).

The BZA concluded, among other things, that both the building permit issued to the Bannum Corporation on December 12, 2002 for a 'community corrections center' to "[c]hange tenant warehouse space to 150-bed Community Corrections Center," and the subsequent revised building permit, issued on January 17, 2003 (restricting the use for three year period), were issued in error by DCRA.

The 'use' designated in the building permit - - a community corrections center - - was not a permitted use in a C-M-2 District. Specifically, the Board rules that the facility does not meet the requirements of § 801.7(k), (i.e., the alterative optional 'use' which DCRA had contemplated). The BZA determination regarding the permitted use of the subject property is similarly applicable to the Certificate of Occupancy No. CO53679, issued to Bannum, on or about May 2, 2003. The certificate, which authorized the company to operate a "temporary correctional institutional[sic]" at the premises located at 2210 Adams Place, N.E., in Washington, D.C., was also issued in error since the building was never approved for that use. Given, the BZA decision prohibiting the 'use' requested by Bannum in its application for a building permit and certificate of occupancy, and the 'use' authorized by DCRA when it granted the building permit and the certificate, Bannum cannot continue to occupy the premises under Certificate of Occupancy, No. CO53679. Moreover, the revoked certificate cannot serve as a basis for any other certificate of occupancy.

CHARGE 2. You are in violation of D.C. Mun. Reg. tit. 12 § 110.1.1, which requires "... a building or structure hereafter erected shall not be used or occupied in whole or in part until the certificate of occupancy has been issued by the code official, in accordance with this Section and Title 11 DCMR, the District of Columbia Zoning Regulations." *Id.*, D.C. Mun. Reg. tit. 12 § 110.1.1 (January 9, 2004). Section 110.5 reads in pertinent part: "[T]he Director is authorized to revoke a certificate of occupancy pursuant to ... Sections 110.5.1 through 110.5.5." Section 110.5.1 provides: "[A]ny certificate of occupancy previously issued or issued pursuant to Section 110 shall be revoked by the Director, after notice, if the actual occupancy does not conform to that permitted."

SPECIFICATION A. On or about May 2, 2003, Bannum Corporation applied for, and obtained a Certificate of Occupancy, No. CO53679, which authorized the company to

operate a "*temporary correctional institutional[sic]*" at the premises located at 2210 Adams Place, N.E., in Washington, D.C. Following an appeal, the BZA found the building permit for the subject property had been issued in error. The proposed use of the facility as a "temporary correctional facility" was not permitted at that location. DCRA, therefore, has notice that the actual occupancy of the premises at 2210 North Adams Place, N.W., in Washington, D.C., cannot be used for the purpose requested by Bannum Corporation or approved in the certificate of occupancy. Since the certificate was issued for a 'use' which the BZA determined was not permitted in a C-M-2 District, the continued occupancy of the facility directly contravenes the Order and Decision of the Board of Zoning Adjustment. BZA Order 16998 (Sept. 9, 2003). Pursuant to the BZA decision, the Director is exercising his authority to revoke the certificate.

You have the right to challenge this proposed action to revoke your certificate of occupancy. In order to exercise this right you must request a hearing in writing within fifteen (15) days of your receipt of notice. Your request should be mailed first class U.S. mail postage pre-paid and addressed to E. Savannah Little, Esq., Chief Administrative Law Judge, Department of Consumer and Regulatory Affairs, Office of Adjudication, 941 North Capitol Street, N.E., Suite 9100, Washington, D.C. 20002. Alternatively, you may hand-deliver your written request for a hearing to the same address within fifteen (15) calendar days of your receipt of this notice.

Additionally, if you decide to challenge this proposed action, please send a copy of your request for a hearing, pleading or other written communication in this case to Lisa A. Bell, Esquire, Office of the General Counsel, Department of Consumer and Regulatory Affairs, 941 North Capitol Street, N.E., Suite 9100, Washington, D.C. 20002. Please note that if you do not request a hearing within the time specified in this notice, or if you fail to appear to a scheduled hearing, you shall be deemed to have conceded the validity of the charges and specifications stated in the notice and a final notice of revocation will be entered against you.

Should you request a hearing, you will be notified by the Office of Adjudication of the hearing date and time.

You may appear personally at such hearing and you may be represented by legal counsel. You have the right to produce witnesses and evidence in your behalf and to cross examine witnesses against you, to examine evidence produced, and to have subpoenas issued on your behalf to require the production of witnesses and evidence.

If you or any witnesses you intend to call are deaf or, because of a hearing impediment or language barrier, cannot readily understand or communicate the spoken English language.

you or your witness may apply to the Office of Adjudication for the appointment of a qualified interpreter.

If you have any questions, you may contact, Julie S. Lee, Esq., Acting General Counsel, on (202) 442-8475.

Sincerely,

Denzil Noble
Administrator
Building and Land Regulation
Administration

cc: David Clark, Director, DCRA
Theresa Lewis, Deputy Director,
Operations
Leila Franklin, Deputy Director
for Compliance and Investigations
Savannah Little, Esquire, Chief
Administrative Law Judge, OAD
Julie S. Lee, Esq., Acting General Counsel
Winnie Huston, Compliance Officer, OIWM

Q

HOLMES, SCHWARTZ & GORDON
ATTORNEYS AT LAW

WASHINGTON, D. C. AND
NEW YORK REGIONAL OFFICES

17 WEST JEFFERSON STREET
SUITE 202
ROCKVILLE, MARYLAND 20850
TELEPHONE: (301) 340-1251
TELECOPIER: (301) 340-1253

August 4, 2004

VIA HAND DELIVERY
E. Savanah Little, Esquire
Chief Administrative Law Judge
Department of Consumer and Regulatory Affairs
Office of Adjudication
941 North Capitol Street N.E., Suite 9100
Washington, D.C. 20002

Re: 2210 Adams Place N.E.; Bannum's Position and Request for Postponement

Dear Ms. Little:

Bannum, Inc. presents the following letter in support of its position that Government should not revoke its Certificate of Occupancy ("CofO") for 2210 Adams Place, N.E. for use as a federal Community Corrections Center ("CCC"), a "temporary correctional institution" for a period not to exceed three years. See 11 DCMR §801.7(k) ("Section 801.7(k)"). Bannum believes, as did the District of Columbia Consumer and Regulatory Agency ("DCRA"), before and during the proceeding before the Board of Zoning Adjustments ("BZA"), that DCRA's zoning for this CCC was completely legal.

DCRA's current notice of intent to revoke the CofO[1] was based solely on the BZA order finding Bannum's building permit was improperly issued for lack of matter of right zoning. Attachment ("Att.") 1. Bannum appealed the BZA's order to the District of Columbia Court of Appeals. The Court's briefing schedule, issued after denying ANC 5-B's motion for summary affirmance, shows that briefing will be completed by October 2004 which likely will result in a decision this year. Att. 2. Bannum requests postponement of these proceedings until the Court decides the appeal.

Bannum also filed a motion for a stay of the BZA order and to enjoin the revocation of the CofO, an outcome of these proceedings[2], which is pending. Since the revocation of the CofO is based solely upon the BZA's order, if as expected, the Court reverses that order, nothing will support revocation of the CofO. Indeed, in its opposition to Bannum's motion, DCRA's position is that the BZA's order is not final because a written decision on Bannum's and DCRA's motions for reconsideration has not been issued. This raises questions as to whether DCRA has a basis to revoke Bannum's CofO.

---

[1] The Advisory Neighborhood Commission ("ANC") 5-B, which appealed the issuance of Bannum's building permit because of allegedly illegal zoning did not appeal the CofO to the BZA.

[2] While Bannum has other legal arguments not addressed in the BZA order, see pp. 9-10 infra, Bannum sought injunctive relief because DCRA took no position on these arguments at the BZA and issued the notice of intent to revoke the CofO.

Given the harm to Bannum and to the public from a revocation of the CofO, and the Court's likely reversal of the BZA's order, we respectfully request DCRA postpone its hearing and/or its ruling until the Court of Appeals decides the appeal, or at least, until the Court decides Bannum's motion to stay. The grounds supporting Bannum's request for postponement or reversal of DCRA's notice of intent to revoke the CofO follows.

1. DCRA was Correct in Issuing the Building Permit and Certificate of Occupancy

The BZA's interpretation of the zoning regulations distorts their plain meaning, rules of statutory construction, and case law, and is in direct conflict with the DCRA's positions taken before and after the BZA decision was issued.

In 2000, and again in 2001, DCRA gave Bannum written confirmations that the federal Community Corrections Center at issue here was properly zoned and issued a building permit in a Commercial-Manufacturing ("C-M") under 11 DCMR §801.7(k) ("Section 801.7(k)") for 3 years as a "temporary detention or correctional institution on leased property for a period not to exceed three (3) years".

DCRA was on more than sufficient notice of the nature of the facility—a temporary correctional institution. By letters dated December 11, 2000 and November 26, 2001, Bannum, through counsel, advised DCRA:

> This office represents Bannum, Inc. ("Bannum"), a company that provides residential rehabilitation services to individuals referred by appropriate committing authorities. Bannum proposes to lease property in the C-M or M District for use a Community Corrections Center ("CCC") under a contract with the U.S. Department of Justice. Individuals are referred to the facility directly by the court system either to serve their entire sentence in confinement at the CCC or to complete their confinement at a CCC after a portion has been served as [sic] a federal institution.
>
> The property at 2210 Adams Place, N.E. is located in the C-M-2 District. Under Section 801.7(k) of the zoning regulations, a "[t]emporary detention or correctional institution on leased property for a period not to exceed three (3) years" is permitted as a matter of right in the C-M District. Accordingly, Bannum's proposed use of the property as a residential Community Corrections Center can be established as a matter of right at the Adams Street location.
>
> If you concur with our interpretation of this section of the zoning regulations, kindly indicate so by signing on the line provided below." Atts. 3-4.

R

District of Columbia
Court of Appeals

FILED
OCT 22 2004
DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 04-AA-345

BANNUM, INC.,

Petitioner,

v.

BOARD OF ZONING ADJUSTMENT,

Respondent,

REGINA JAMES, ANC 5B COMMISSIONER,

Intervenor.

BEFORE: Glickman and Washington, Associate Judges, and Nebeker, Senior Judge.

ORDER

On consideration of intervenor's motion to require the District of Columbia Department of Consumer and Regulatory Affairs to enforce final order of Board of Zoning Adjustment, petitioner's motion for extension of time to file response and lodged response, respondent's motion for extension of time to file response and lodged response, respondent's motion for extension of time to file brief, and intervenor's motions for extension of time to file brief, it is

ORDERED that petitioner's and respondent's motions for extension of time to file response are granted and the Clerk shall file the lodged responses. It is

FURTHER ORDERED that intervenor's motion to require the District of Columbia Department of Consumer and Regulatory Affairs to enforce final order of Board of Zoning Adjustment is denied. To the extent that intervenor's motion seeks relief as a petition for writ of mandamus, it is also denied. See D.C. Code § 2-510 (a)(2) (2001); *United States Ex. Rel. McLennan v. Wilbur*, 282 U.S. 414 (1931); *Debevoise v. Back*, 359 A.2d 279 (D.C. 1976). It is

FURTHER ORDERED that respondent's and intervenor's motions for extension of time to file brief are granted and both briefs shall be filed by November 19, 2004.

PER CURIAM

Copies to:

Donald M. Temple, Esq.
Temple Law Offices
1200 G Street, NW
Suite 370
Washington, DC 20005

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Zoning Administrator

David A. Lowry, Executive Director
BANNUM, INC.
2210 Adams Place, N.E
Washington, D.C 20001

NOTICE OF REVOCATION OF CERTIFICATE OF OCCUPANCY NUMBER C53679.

This is official notice that the District of Columbia Department of Consumer and Regulatory Affairs (Department) revokes Certificate of Occupancy Number C53679 effective ten (10) days from the date of service of this notice. This action is taken pursuant to 12A DCMR § 110.5.3 (2004), which authorizes the Director to revoke a Certificate of Occupancy that has been issued in error.

On May 2, 2003, the Department issued to Bannum, Inc. Certificate of Occupancy Number C53679 ("C of O") The C of O authorized Bannum, Inc. to use the property located at 2210 Adams Place, N.E., Washington, D.C. as a "temporary correctional institution." The Department's grant of the C of O was based upon the issuance of a building permit to Bannum, Inc. for construction of a community corrections center. On January 24, 2003, community members appealed to the Board of Zoning Adjustment (BZA) challenging the Department's issuance of the building permits issued December 12, 2002 and January 17, 2003 (revised) to Bannum, Inc. for construction of a community corrections center. On March 31, 2004, the BZA, in the matter of *Advisory Neighborhood Commission 5B*, (BZA Appeal Number 16998), found that the building permits were issued in error in that, *"a community corrections center was not a permit use in a C-M-2 District" and "the facility did not meet the requirements of Section 801.7(k)."*

Upon receipt of the above-referenced BZA order, the Department, on April 27, 2004, issued to you a Notice of Intent to Revoke Certificate of Occupancy Number C053679. The April 27, 2004 Notice of Intent to Revoke is hereby Rescinded.

You are invited to deliver comments and/or objections to the subject Notice of Revocation at least two (2) business days prior to the effective date of the revocation. Your response shall be submitted to the Zoning Administrator at the Department of Consumer and Regulatory Affairs, Office of the Zoning Administrator, 941 North Capitol St., N.E., Suite 2000, Washington, D.C. 20002. Notwithstanding the delivery of comments and/or objections, your Certificate of Occupancy is revoked ten (10) days from the date of service of this notice unless you are notified by the Zoning Administrator that the revocation is rescinded.

RIGHT TO APPEAL

You have the right, pursuant to 11 DCMR § 3200.2 (2003) and 12A DCMR § 110.6 (2004), to appeal this decision to the BZA. Should you decide to appeal the Department's decision, your appeal must be made pursuant to the requirements set forth in the District of Columbia's Zoning Regulations, D.C. Mun. Reg. tit.11 (2004), and must be filed at the Office of Zoning, Board of Zoning Adjustment, 441 Fourth Street, N.W., Suite 210S, Washington, D.C. 20001.

If you decide to appeal, you should also send a copy of your appeal, pleading or written communication to the Department of Consumer and Regulatory Affairs, Office of the General Counsel, 941 North Capitol St., N.E., Suite 9400, Washington, D.C. 20002.

If you have any questions, you may contact my office at (202) 442-4576.

Date: APRIL 21, 2005

Toye Bello
Zoning Administrator

cc: Shawn C. Whitaker, Esquire.
9055 Comprint Street, Suite 340
Washington, D.C. 20877

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR

May 4, 2005

BANNUM, INC.
c/o Shawn C. Whittaker, Esq.
Suite 340
9055 Comprint Court
Gaithersburg, Maryland 20877-1310

Re: 2210 Adams Place N.E.: Bannum's Request for a Stay of Revocation

Dear Mr. Whittaker:

This letter acknowledges receipt of Bannum's April 25, 2005 letter requesting a stay of the revocation of the certificate of occupancy (C/O # 53679 issued 5/2/2003)[1] under which your client, Bannum, Inc., currently operates a "Temporary Correctional Institution on leased property for a period not to exceed three years, with an expiration date of May 2, 2006. The revocation is effective May 5, 2005 pursuant to an extension granted by the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) at the request of the trial court in Bannum's recently filed TRO action.

As you correctly state in your letter, the DCRA's notice of revocation is based solely on a March 2004 Board of Zoning Adjustment (BZA) decision (see BZA Appeal # 16998) that the agency erred in issuing the building permit upon which certificate of occupancy was predicated. Although DCRA considered the arguments put forth in your April 25, 2005 letter, it declines to base its decision on your request by deciding those issues. Instead, DCRA concludes that your comments and objections are not sufficient to warrant extension of the revocation date, or recission of the notice of revocation, where they do not address the fact that DCRA's revocation notice is based on a finding of error by the BZA.

The April 21, 2005 notice of revocation is unambiguous as to your right of appeal of this action to the BZA. You have taken the necessary steps to preserve your right of appeal by filing with the BZA not only a motion to stay DCRA's enforcement action, but also an appeal of the notice of revocation.

[1] In its April 11, 2005 notice of revocation, DCRA invited Bannum to submit comments and objection in opposition to the revocation. The DCRA treats Bannum's April 25, 2005 letter as the invited objections and comments.

Please be advised that, notwithstanding the appeal filed before the BZA, nothing in this letter should be construed to foreclose DCRA's right to enforce the occupancy or use of the building without a certificate of occupancy.

You may contact my office at 202-442-4576. Thank you in advance of your cooperation.

Sincerely,

Toye Bello
Zoning Administrator

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR

May 4, 2005

BANNUM, INC.
c/o Shawn C. Whittaker, Esq.
Suite 340
9055 Comptint Court
Gaithersburg, Maryland 20877-1310

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The April 21, 2005 notice of revocation is unambiguous as to your right of appeal of this action to the BZA. You have taken the necessary steps to preserve your right of appeal by filing with the BZA not only a motion to stay DCRA's enforcement action, but also an appeal of the notice of revocation.

[1] In its April 21, 2005 notice of revocation, DCRA invited Bannum to submit comments and objection in opposition to the revocation. The DCRA treats Bannum's April 25, 2005 letter as the invited objections and comments.

Please be advised that, notwithstanding the appeal filed before the BZA, nothing in this letter should be construed to foreclose DCRA's right to enforce the occupancy or use of the building without a certificate of occupancy.

You may contact my office at 202-442-4576. Thank you in advance of your cooperation.

Sincerely,

Toye Bello
Zoning Administrator

U

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR

May 13, 2005

BY PERSONAL SERVICE AND CERTIFIED MAIL
BANNUM, INC
2210 Adams, Street, N.E.
Washington, D.C. 20001

Re: Certificate of Occupancy No. 53679 (issued 5/2/03)

Dear Mr. Whittaker:

The Certificate of Occupancy held by Bannum, Inc. for the community correctional facility at 2210 Adams Street, NE Washington, D.C. was revoked effective May 5, 2005. An inspection of the premises conducted May 12, 2005, by the Department of Consumer and Regulatory Affairs (DCRA), revealed that Bannum, Inc. is still occupying and operating a facility at 2210 Adams Street, N.E., Washington, D.C.

The occupancy of the premises is in violation of both the zoning regulations, Title 11 of the D.C. Municipal Regulations, and the D.C. Official Code § 6-1406 (2004). Bannum, Inc. is advised that the DCRA is referring this matter to the Office of the Attorney General for enforcement action, and intends to seek sanctions, fines, penalties, and other relief provided for by law.

Sincerely,

Toye Bello
Zoning Administrator

cc: Patrick Caravan, Director
Marceline Alexander, Deputy Director
Julie Lee, General Counsel

By Facsimile
Shawn Whittaker, Esquire
9055 Comprint Court
Gaithersburg, Maryland 20877-1310

V

District of Columbia
Office of Administrative Hearings
Post Office Box 77718
Washington, D.C. 20013-8717

Department of Consumer and Regulatory Affairs,	)	
	)	
v.	)	2004-OAD-013
	)	
Bannum, Inc.	)	

Motion to Dismiss

The Department of Consumer and Regulatory Affairs (DCRA) hereby requests a dismissal of Bannum, Inc.'s (Bannum) appeal of the Notice of Intent to Revoke a Certificate of Occupancy (Notice) issued to Bannum on or about April 27, 2004.[1] The Notice has not been adjudicated by this Court or its predecessor, the Office of Adjudication.

On April 21, 2005, DCRA rescinded the Notice and issued a new Notice of Revocation that became effective on May 5, 2005. That Notice properly provided that Bannum's appeal rights were to the Board of Zoning Adjustment (BZA).[2]

---

[1] The Certificate of Occupancy approved the use and operation of the premises for a community correctional center at 2210 Adams Street, N.E., Washington, D.C. On or about March 31, 2004, the Board of Zoning Adjustment (BZA) ruled that DCRA erred in the issuance of a building permit to Bannum for the construction of a community correctional facility, thus rendering the Certificate of Occupancy invalid. *See*, BZA Appeal No. 16998. At the time the BZA issued its decision, Bannum was operating the facility pursuant to Certificate of Occupancy, No. C053679.

[2] Bannum appealed the enforcement action and requested a stay to the BZA and D.C. Superior Court, D.C. Court of Appeals and U.S. District Court in which related matters were pending. All of Bannum's requests for a stay of the enforcement actions were denied.

Given that the instant enforcement action by DCRA has been rescinded, and the adjudication of the new enforcement action lies in another forum, there is no matter pending for resolution before this forum.

Respectfully submitted,

Lisa A. Bell, Esquire
Office of the General Counsel
D.C. Department of Consumer and
Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20001
(202) 443-8475

Certificate of Service

I hereby certify that a copy of the foregoing has bee sent, first class mail, postage prepaid, on May 20 2005, to:

Shawn Whitaker, Esquire
9055 Comprint Court
Gaithersburg, Maryland 20877-1310

W

District of Columbia
Office of Administrative Hearings
Post Office Box 77718
Washington, D.C. 20013-8717

Department of Consumer and Regulatory Affairs,	)	
	)	
v.	)	No.
	)	
Bannum, Inc.	)	

NOTICE OF APPEAL OF DCRA VIOLATION LETTER

Bannum, Inc., 8726 Old C.R. 54, Suite E, New Port Richey, Florida 34653, (727) 588-2594 (telephone), (757) 588-2689 (facsimile), through undersigned counsel, hereby appeals the Department of Consumer and Regulatory Affairs ("DCRA") March 4, 2005 revocation of Bannum's Certificate of Occupancy ("CofO") to operate a Community Correctional Center for the Federal Bureau of Prisons at 2210 Adams Place N.E. as a matter of right under 11 DCMR §801.7(k). This revocation was previously stayed by an order of Judge Henry McCoy on August 6, 2004, following a public hearing. An oral transcript of that order exists.[1]

Bannum also appeals DCRA's letter dated on May 13, 2005, in which DCRA stated that Bannum was operating its CCC without a valid CofO in violation of DC ST §6-1406 and Title 11 of the District of Columbia Municipal Code ("DCMR"). DCRA stated in the notice of violation that it intended to seek enforcement and penalties and other relief provided by law. As discussed below, Bannum has never been charged with any violation of a Construction Code under DC ST §6-1406 and the above DCRA actions are otherwise illegal.

[1] Bannum is currently seeking to have Judge McCoy's order enforced as part of its opposition to a motion to dismiss filed by DCRA apparently on May 20, 2005 under No. 2004-OAD-013, also filed today.

FACTUAL BACKGROUND

A. Bannum's Requirement to Secure Approved Zoning for the BOP Contract

Bannum, a Kentucky corporation, has specialized in providing correctional institution services to the BOP since 1984. Bannum operated 16-17 CCCs in the United States pursuant to BOP contracts.

On or about March 24, 2000 and April 3, 2000, the BOP issued a number of requests for proposal ("RFP") reflecting a need for CCC services in the Washington, D.C. area including RFP Nos. 200-0593-MA and 200-06-04-MA. The BOP's need for Bannum's CCC arose as a result of the impending closure of Lorton Prison in 2002 and the transfer of authority over D.C. felons and their confinement to the BOP under the NCRA.

The BOP RFPs required the offeror to locate a suitable property for a CCC, properly zoned, that would house the offenders BOP selected under BOP standards. To submit a compliant proposal, Bannum had to verify that it had zoning by submitting documentation from local zoning officials whose approval or concurrence was required under applicable law, here, to DCRA officials.

Bannum identified a warehouse at 2210 Adams Place N.E. as an appropriate building for renovation to function as a federal CCC. The facility is located in a Commercial-Manufacturing ("C-M") zoning district. It has the advantage of being in an area that is isolated from residential areas by railroad tracks and commercial businesses.

B. DCRA Issues a Decision Finding Zoning for a CCC Proper at 2210 Adams Place N.E.

In November 2000, Bannum notified the Mayor, his Chief of Staff and the Chief of Police of its intent to open a CCC at this location. Ex. 1.

By letter entitled "Temporary Correctional Facilities" dated December 11, 2000, Bannum, through its counsel, also advised the DCRA of its intent to operate a federal CCC at 2210 Adams Place, N.E. and sought confirmation that the proposed temporary CCC would fall within matter-of-right zoning in a Commercial-Manufacturing zone ("C-M") under 11 DCMR §801.7(k) ("Section 801.7(k)). The letter stated:

> "This office represents Bannum, Inc. ("Bannum"), a company that provides residential rehabilitation services to individuals referred by appropriate committing authorities. Bannum proposes to lease property in the C-M or M District for use as a Community Corrections Center ("CCC") under a contract with the U.S. Department of Justice. Individuals are referred to the facility directly by the court system either to serve their entire sentence in confinement at the CCC or to complete their confinement at a CCC after a portion has been served as [sic] a federal institution.
>
> The property at 2210 Adams Place, N.E. is located in the C-M-2 District. Under Section 801.7(k) of the zoning regulations, a "[t]emporary detention or correctional institution on leased property for a period not to exceed three (3) years" is permitted as a matter of right in the C-M District. Accordingly, Bannum's proposed use of the property as a residential Community Corrections Center can be established as a matter of right at the Adams Street location.
>
> If you concur with our interpretation of this section of the zoning regulations, kindly indicate so by signing on the line provided below." Ex. 2.

DCRA Zoning Administrator Michael Johnson signed Bannum's letter on or about that date. With this DCRA approval, on January 23, 2001, Bannum sent a letter to the BOP advising that the property was only zoned for a three year period. Bannum also submitted to the BOP, the DCRA decision letter and excerpts from the BOP RFP.

C. In Reliance on DCRA's Zoning Approval, the BOP Awards Bannum a CCC Contract

In reliance on the DCRA's confirmation of proper zoning for the proposed CCC, on November 16, 2001, the BOP awarded Bannum the contract.

Shortly following the contract award, as part of its due diligence before beginning preparations to perform, on November 26, 2001, Bannum asked the new DCRA Acting Zoning Administrator Olutoye Bello to re-confirm that the temporary zoning authorized previously was proper. Bannum's letter contained exactly the same language as the first decision letter signed by Mr. Johnson. On or about that date, Mr. Bello also signed on behalf of DCRA, stating that Section 801.7(k) zoning at that location was proper. Ex. 4.

D. Bannum Incurs Significant Costs in Preparing to Perform the BOP Contract

In reliance upon DCRA's determinations and the building permit, Bannum entered into a binding lease for the 2210 Adams Place N.E. property that was to begin on December 1, 2002. Ex. 1, ¶10. Bannum also contracted for building design work to prepare to renovate the facility for CCC use and entered into agreements with utility companies. Id.

E. DCRA Issues Bannum the Building Permit

When the design was approved, on October 9, 2002, more than 6 months after notifying the ANC of the DCRA decisions, Bannum submitted an application for a building permit to DCRA.

On January 8, 2003, when advised by DCRA that the application and permit were in error, Bannum submitted a revised application to DCRA stating the proposed use as a "3 year temporary use community corrections center."

On January 17, 2003, DCRA then issued to Bannum, Building Permit No. B448325. The corrected permit was revised to read "3 yr temporary use," and authorized use for a "[t]emporary 150 bed community corrections center on leased property for a period not to exceed (3) years." Ex. 3.

F. DCRA's Affirmance of Proper Zoning Over the BZA Appeal and Other Objections

On January 15, 2003, the Ward 5 Councilman wrote to DCRA to request that DCRA issue a stop work order on construction of the renovations at 2210 Adams Place N.E. On January 24, 2003 Regina James, a new President of ANC 5B, filed an appeal of building permit No. 425438 to the BZA.

On January 31, 2003, DCRA declined to issue the stop work order requested by the Ward 5 Councilman. DCRA assured the Ward 5 Councilman that the Certificate of Occupancy ("CofO"), when issued, would limit the use of the CCC as a correctional institution for 3 years. On February 21, 2003, DCRA denied another request from counsel for ANC 5-B that work be stopped.

On approximately May 1, 2003, the renovation of the CCC was completed. Bannum had previously applied for a Certificate of Occupancy ("CofO") for a "temporary correctional institution on leased property for a period not to exceed 3 years."

In spite of the ANC 5-B appeal and requests for suspensions, on May 2, 2003, DCRA issued Bannum a CofO No. CO 53679 for a "temporary correctional institutional on leased property for a period not to exceed three (3) years" for a community corrections center at 2210 Adams Place, N.E. Ex. 4. The CofO specifically stated that it "expires on May 02, 2006." This last DCRA decision enabled Bannum to comply with its BOP contract and begin operations in May 2003 at a cost at the time of the appeal of approximately $450,000. Ex. 1. Bannum began operating a CCC at that site in May 2003. ANC 5-B did not appeal DCRA's issuance of the CofO to the BZA.

On March 31, 2004, the BZA granted the appeal of ANC 5-B, reversing DCRA's decision to issue the building permit No. B425438 to Bannum. Ex. 5.

DCRA and Bannum sought reconsideration but the motion was denied. Bannum filed an appeal of the BZA order at the D.C. Court of Appeals.

G. DCRA Reverses Itself and Sends Bannum a Notice of Intended Revocation

On April 27, 2004, based solely on the BZA order, DCRA abruptly reversed its support of Bannum's zoning and sent Bannum a notice of intention to revoke Bannum's CofO. In this letter, DCRA gave Bannum the right to a hearing before a DCRA ALJ in accordance with DC ST §2-502 and §2-509 (providing for hearings in a "contested case" based on vested rights in an issued CofO), and D.C. Municipal Regulations ("DCMR"). See 12A DCMR § 108.13.1 (2004). Ex. 6.

Bannum first attempted to obtain a stay of this revocation proceeding from the D.C. Court of Appeals. Opposing counsel representing the District opposed, in part, because the DCRA ALJ might stay the revocation.

On August 4, 2004, Bannum moved the DCRA ALJ to enjoin any revocation until the D.C. Court of Appeals decided Bannum's appeal on the merits.

On August 5, 2004, the D.C. Court of Appeals denied Bannum's motion for a stay. However, on August 6, 2004, at a public hearing, Judge Henry McCoy, the ALJ, on notice of the Court of Appeals motions panel's ruling, August 4, 2004 Motion, Attachment 2, granted Bannum's motion and stayed any revocation action by DCRA until the D.C. Court of Appeals issued a decision on the merits.[2] Bannum had continued to legally operate the CCC facility under that ALJ order.

Bannum's appeal at the D.C. Court of Appeals proceeded in the usual course. All briefs were filed by January 20, 2005, and oral arguments are expected to be scheduled shortly.

[2] As noted above, a transcript of the Judge McCoy's oral order exists and is available to confirm this ruling.

H. DCRA "Rescinds" Its Prior Notice of Revocation

On April 21, 2005, without any reason, DCRA has abruptly "rescinded" the April 27, 2004 notice of intended revocation which DCRA issued to Bannum. A new "notice of revocation" of Bannum's CofO was issued. Ex. 7.

This new notice of revocation of the CofO was not really new. It was again, based solely on the March 31, 2004 BZA order regarding zoning for Bannum's building permit. What differed was that Bannum was now given a right to appeal to the BZA. Bannum was advised that an appeal to the BZA would not stop DCRA from revoking the CofO. No mention was made of the ALJ's binding stay order or the pending case before this Office.

Bannum again sought a stay of this revocation action from the DCRA and the D.C. Court of Appeals, and brought an action for a TRO in federal district court. After a telephone conference with the federal court on April 29, 2005, DCRA agreed to withhold action on the revocation until May 5, 2005.

Bannum then filed an appeal to and sought a stay from the BZA, and filed an action for injunctive relief in the D.C. Superior Court.

On May 4, 2005, the motions panel of the D.C. Court of Appeals denied Bannum's motion for a stay stating that the Court lacked jurisdiction over the CofO revocation because a petition for appeal had not been filed and the new revocation was properly before the BZA (Bannum had filed an appeal to the BZA on May 2, 2005). The motions panel also noted that Bannum's stay included claims made in Bannum's earlier motion to stay filed prior to the August 6, 2004 ALJ hearing which had been denied because Bannum had not shown a likelihood of success on the merits. Ex. 8.

No mention was made by the motions panel of the legality of the DCRA "rescission" and the ALJ Order that had previously stayed proceedings.

By letter dated that same day, May 4, 2005, DCRA rejected Bannum's request for a stay of the revocation of the CofO. Ex. 9. DCRA's reasoning was that Bannum did not address the fact that the revocation was "based on a finding of error by the BZA." In other words, unless Bannum could show that the BZA had not actually issued that decision, DCRA had to revoke the CofO. DCRA avoided even mentioning, much less justifying, the "rescission" of the prior notice or why DCRA believed it could completely ignore the ALJ's existing order staying the revocation.

On May 5, 2005, the D.C. Superior Court denied Bannum's motion for injunctive relief based solely on dictum in the D.C. Court of Appeals motion's panel's decision regarding the fact that Bannum's claims regarding the BZA appeal had not meet the injunction standard for "likelihood of success on the merits." Ex. 10. The D.C. Superior Court also did not address DCRA's "rescission" and DCRA's refusal to comply with the existing ALJ stay order.

On May 6, 2005, the federal district court denied Bannum's motion for a TRO based on principles of abstention and potential issue preclusion.

On May 9, 2005, the BZA scheduled a decision on Bannum's motion to stay for June 7, 2005. As expected, DCRA did not suspend its attempts to end Bannum's operation of the BOP CCC facility.

By letter dated May 13, 2005, DCRA notified Bannum that it intended to move forward with enforcement action and will seek fines and other relief provided by law. Ex. 11.

DCRA cited as a basis for an enforcement action, two "zoning" regulations, DC ST §6-1406 and Title 11 of the DCMR. However, DC ST §6-1406 involves compliance with the D.C. Construction Codes. Bannum has never been charged with a violation of any Construction Codes. Yet, DCRA now intends to seek enforcement of penalties and other remedies against Bannum on this basis.

These DCRA actions led to a "cure notice" letter from the BOP to Bannum on May 20, 2005. Ex. 12. The BOP letter gave Bannum 10 days to cure the DCRA revocation that was viewed as endangering performance of Bannum's contract or the BOP might terminate Bannum's contract for default.

By a document dated May 20, 2005, DCRA filed a "motion to dismiss" with the new Office of Administrative Hearings ("OAH"), to which, since October 2004, all ALJ cases pending were transferred. Ex. 13.

On May 31, 2005, the BOP extended the time for responding to the cure notice until June 8, 2005, the day after the BZA will rule on Bannum's motion to stay the revocation. If the BOP elects to terminate the contract, it will do so, almost exclusively if not entirely as a result of DCRA's illegal revocation of Bannum's CofO, and it will shut the CCC down without the conclusion of the D.C. Court of Appeals case, the conclusion of the BZA Appeal, as well as this appeal.

As discussed below, as a matter of law, DCRA's actions in revoking Bannum's CofO are illegal. Unless the BZA (which previously denied Bannum's motion for a stay of its Order), or this Office enforces the ALJ's August 6, 2004 stay order and/or enjoins the DCRA before June 8, 2005, Bannum will have no D.C. business to protect resulting in irreparable harm to the company.

Accordingly, Bannum respectfully requests that DCRA's motion should be denied, the existing ALJ stay order given effect, and DCRA's revocation in violation of that order and DC ST §2-1831.13(c) should be declared a nullity and ordered rescinded.

COUNT I: Bannum Has Violated No Construction Codes

DCRA's May 13, 2005 notice of violation states that an inspection was done of the premises and alleges that Bannum is currently operating in violation of Construction Codes. DCRA cited DC ST §6-1406 but did not specify any Construction Codes that Bannum had violated. This is because the revocation of Bannum's CofO was not based on any violation of the Construction Codes. See DCRA's Notice of Intended Revocation dated April 21, 2005, Ex. 7. Bannum is not in violation of any Construction Codes and never had notice that it supposedly was in violation until it received this letter. Accordingly, Bannum appeals that determination and requests that it be dismissed.

COUNT II: DCRA's Revocation and Enforcement Actions Are Null and Void

Effective October 2004, a new OAH was established under the "Office of Administrative Hearings Establishment Act of 2001" ("Act"). DC ST §2-1831 et seq. All Office of Adjudication ("OAD") cases, the predecessor entity that adjudicated contested cases that were pending on October 2004, including No. 2004-OAD-013 were transferred to the OAH's jurisdiction.

After the transfer of No. 2004-OAD-013 to this Office, DCRA took decisional actions to revoke Bannum's CofO on May 4, 2005, and to enforce an alleged violation for operating without a CofO on May 13, 2005. These actions violated this Office's authority under DC ST §2-1831.13(c) which precludes agency decisional actions when a case is pending before this Office.

This Office must take action to enforce its jurisdiction, rules and independence from DCRA.

No legal basis supports DCRA's conduct. DCRA decisions continue to be subject to the OAH. DC ST §2-1831.3(b).

While a new regulation, 12A DCMR §110.6, effective December 2004, states that appeals of CofO revocations are to be before the BZA, that regulation was not made retroactive and does not specifically preclude this Office from exercising jurisdiction under the statutes that supported its jurisdiction previously. Indeed, there is no statutory basis for this regulation. The types of appeals to the BZA in DC ST §6-641.07(f) do not cover a revocation of a CofO:

> (f) Appeals to the Board of Adjustment may be taken by any person aggrieved, or organization authorized to represent such person, or by any officer or department of the government of the District of Columbia or the federal government affected, by any decision of the Inspector of Buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part upon any zoning regulation or map adopted under this subchapter. (emphasis added).

The difference in a statute governing appeals of agency decisions "granting or refusing" building permits or "granting or withholding" a CofO and the statutes governing appeals to the OAD, now the OAH, is apparent. In hearings of "contested cases" before the OAH, a hearing is provided for disputes over vested rights which a person directly possesses under law. In this case, Bannum's vested right is the right to operate Bannum's facility which DCRA granted to Bannum in the CofO.

In contrast, the BZA statute provides hearings only to "aggrieved persons" or "affected" D.C. agencies relating to either (a) the "granting" of a CofO, i.e. appeals to persons who object to the granting of a vested legal right to another person, or (b) the

"withholding" of a CofO by a person who does not possess this legal vested right. In the context of this statute, the phrase "administrative decision based in whole or in part upon any zoning regulation or law" can only mean an administrative decision not involving the revocation of a vested right. Such interests are property rights legally distinguishable from "nuisance" type cases by aggrieved or affected persons for which an appeal is provided at the BZA. Compare Konstantopoulos v. Town of Whately, 424 N.E.2d 210, 384 Mass. 123 (1981) at 424 N.E.2d at 216 with Goto v. District of Columbia Board of Zoning Adjustment, 423 A.2d 917, 922 (D.C. 1980). See Rogers Brothers Custodial Services, Inc. v. Board of Zoning Adjustment, 846 A.2d 348 (D.C. 2004). Only after the ALJ has ruled on a contested case, can it proceed to the BZA. That is why prior to December 2004, all hearings based on the revocation of a CofO were before the DCRA ALJ, and not the BZA. See 12A DCMR §108.13 (2004).

Indeed, the new regulation purporting to change this statutory scheme is itself illegal since it was promulgated without any statutory authority and is in conflict with the existing statutory scheme.

In any event, as noted above, this new regulation placing these appeals before the BZA was not made retroactive and has no bearing on this pending proceeding which is already under the jurisdiction of this Office.

Conclusion

DCRA's illegal actions are either unsupported by any actual violation or in direct violation of this Office's statutory authority under which all decisional actions must cease while a case is pending within this Office's jurisdiction.

Further, DCRA's actions are in violation of properly issued orders of an ALJ staying all revocation actions in this matter until the D.C. Court of Appeals decides the case on the merits. For these reasons, Bannum respectfully appeals these decisions.

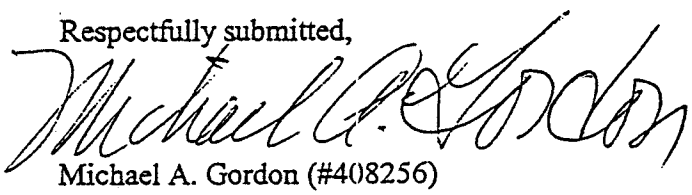
Bannum further requests as relief that:

1. This Office take expedited action to declare DCRA's rescission of Bannum's notice of intended revocation and its actual revocation void and of no effect under DC ST §2-1831.13(c) or alternatively to enforce the August 6, 2004 ALJ ruling enjoining DCRA from taking any action to revoke Bannum's CofO until the D.C. Court of Appeals Merits Panel has decided the case, an action that should take place in the near future; and

2. To dismiss the notice of violation based on alleged Construction Code violations when Bannum has never received notice of any such violation;

3. To hold a hearing to determine whether DCRA should be estopped from revoking Bannum's CofO under the equitable doctrine of estoppel.

Respectfully submitted,



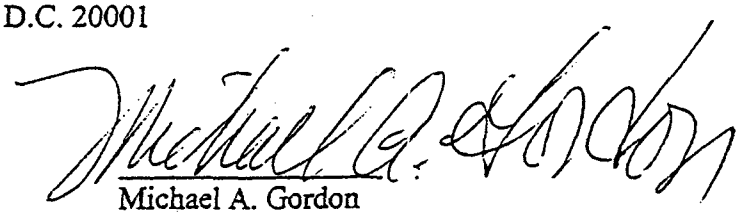
Michael A. Gordon (#408256)
Counsel for Bannum, Inc.

OF COUNSEL:
Shawn C. Whittaker, Esquire
Donald C. Holmes, Esquire
John D. Rich, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing "NOTICE OF APPEAL OF DCRA VIOLATION LETTER" was served this 2nd day of June, 2005, by facsimile and first-class mail, postage prepaid, to the following:

Lisa A. Bell, Esquire
Office of the General Counsel
D.C. Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20001



Michael A. Gordon

District of Columbia
Office of Administrative Hearings
Post Office Box 77718
Washington, D.C. 20013-8717

Department of Consumer and Regulatory Affairs,	)	
	)	
v.	)	No. 2004-OAD-013
	)	
Bannum, Inc.	)	

BANNUM'S OPPOSITION TO DCRA'S MOTION TO DISMISS AND EXPEDITED MOTION TO ENJOIN DCRA REVOCATION ACTION

Bannum, Inc., 8726 Old C.R. 54, Suite E, New Port Richey, Florida 34653, (727) 588-2594 (telephone), (757) 588-2689 (facsimile), opposes the motion of the Department of Consumer and Regulatory Affairs ("DCRA") to dismiss this case which was received by Bannum on May 23, 2005. Indeed, the basis for this action, DCRA's "rescission" of the April 27, 2004 notice of intended revocation was an illegal act under DC ST §2-1831.13(c) as a case was pending before and admittedly within the jurisdiction of this Office, No. 2004-OAD-013.

Moreover, the improper purpose of this "rescission" and DCRA's subsequent revocation of Bannum's Certificate of Occupancy ("CofO"), were to circumvent a legally binding oral order issued by DCRA's Administrative Law Judge ("ALJ") on August 6, 2004, at a public hearing. A transcript of that order exists. The ALJ granted Bannum's motion to enjoin any further action by DCRA on the revocation until the merits of the sole reason for the revocation, a March 31, 2004 decision by the D.C. Board of Zoning Adjustment ("BZA") is decided on the merits by the D.C. Court of Appeals. That appeal has proceeded in the usual course and oral argument is expected to be scheduled shortly.

Bannum respectfully requests that this Office enforce its statutory authority and stay any action on the intended revocation and enforce the predecessor ALJ's order.

FACTUAL BACKGROUND

A. Bannum Has Always Operated this Facility with DCRA's Concurrence

A summary of the relevant facts prior to August 6, 2004, is contained in Bannum's August 4, 2004 motion to the ALJ. See Bannum's August 4, 2004 Motion, pp. 2- 3. The key facts for purposes of this motion are that: (1) Bannum only entered into a contract with the Federal Bureau of Prisons ("BOP") to operate a federal Community Correctional Center ("CCC") at its current location at 2210 Adams Place N.E. after receiving written confirmation from the DCRA that it had proper zoning for a building permit; (2) DCRA issued Bannum the Certificate of Occupancy ("CofO") on May 1, 2003, over objections of the Councilman of Ward 5 and after an appeal had been filed at the BZA; and (3) DCRA defended its zoning decisions regarding the building permit before the BZA, including seeking reconsideration of the BZA order. See Bannum's August 4, 2004 Appendix, Attachments 3-10.

B. DCRA Reverses Positions

However, on April 27, 2004, based solely on the BZA order, DCRA abruptly reversed its support of Bannum's zoning and sent Bannum a notice of intention to revoke Bannum's CofO. Ex. 1 hereto. In this letter, DCRA gave Bannum the right to a hearing before a DCRA ALJ. This was in accordance with DC ST §2-502 and §2-509, providing for hearings in a "contested case" based on Bannum's vested rights in its CofO, and D.C. Municipal Regulations ("DCMR"). See 12A DCMR § 108.13.1 (2004).

Bannum first attempted to obtain a stay of this revocation proceeding from the D.C. Court of Appeals. Opposing counsel representing the District at the D.C. Court of Appeals opposed, in part, because the DCRA ALJ might itself stay the revocation.

C. Judge McCoy Stays DCRA Revocation Actions

On August 4, 2004, Bannum moved the DCRA ALJ to enjoin any revocation until the D.C. Court of Appeals decided Bannum's appeal on the merits.

On August 5, 2004, the D.C. Court of Appeals denied Bannum's motion for a stay. However, on August 6, 2004, at a public hearing, Judge Henry McCoy, with notice of the D.C. Court of Appeals motions panel's ruling, granted Bannum's motion and stayed any revocation action by DCRA until the D.C. Court of Appeals issued a decision on the merits. See Bannum's August 4, 2004 Motion, Attachment 2. Bannum had continued to legally operate the CCC facility under that ALJ order.

D. DCRA Illegally Takes Decisional Actions to Revoke Bannum's CofO

Bannum's appeal at the D.C. Court of Appeals proceeded in the usual course and oral arguments are expected to be scheduled shortly. Then, on April 21, 2005, without any reason, DCRA abruptly "rescinded" the April 27, 2004 notice of intended revocation which DCRA issued to Bannum. A new "notice of revocation" of Bannum's CofO was issued. Ex. 2.

This new notice of revocation of the CofO was not really new. It was again, based solely on the March 31, 2004 BZA order regarding zoning for Bannum's building permit. What differed was that Bannum was now given a right to appeal to the BZA. Bannum was advised that an appeal to the BZA would not stop DCRA from revoking the CofO. No mention was made by DCRA of the ALJ's binding stay order or the pending

case before this Office. DCRA informally said it was merely clarifying the prior notice and that ALJs no longer reviewed these cases under an agency reorganization. However, DCRA also admitted that there was "pressure from the community."

E. Bannum Seeks to Enjoin DCRA's Illegal Action

Bannum again sought a stay of this revocation action from the DCRA and the D.C. Court of Appeals. Bannum also brought an action for a TRO in federal district court. After a telephone conference with the federal court on April 29, 2005, DCRA agreed to withhold action on the revocation until May 5, 2005.

Bannum then filed an appeal to and sought a stay from the BZA, and filed an action for injunctive relief in the D.C. Superior Court.

On May 4, 2005, the motions panel of the D.C. Court of Appeals denied Bannum's motion for a stay stating that the Court lacked jurisdiction over the CofO revocation because a petition for appeal had not been filed and the new revocation was properly before the BZA, where Bannum had filed an appeal on May 2, 2005. Ex. 3. The motions panel also noted that Bannum's stay included claims made in Bannum's earlier motion to stay filed prior to the August 6, 2004 ALJ hearing which been denied because Bannum had not shown a likelihood of success on the merits. However, no mention was made by the motions panel of the legality of the DCRA "rescission" and the ALJ Order that had previously stayed proceedings.

By letter dated that same day, May 4, 2005, DCRA rejected Bannum's request for a stay of the revocation of the CofO. Ex. 4. DCRA's reasoning was that Bannum did not address the fact that the revocation was "based on a finding of error by the BZA." In other words, unless Bannum could show that the BZA had not actually issued that

decision, DCRA had to revoke the CofO. DCRA avoided even mentioning, much less justifying, its "rescission" of the prior notice or why DCRA believed it could take "decisional action" and to completely ignore the ALJ's existing order staying revocation.

On May 5, 2005, the D.C. Superior Court denied Bannum's motion for injunctive relief based solely on dictum in the D.C. Court of Appeals motion's panel's regarding the fact that Bannum's claims regarding the BZA appeal had not met the injunction standard for "likelihood of success on the merits." Ex. 5. However, like the other tribunals, the D.C. Superior Court did not address the legality of DCRA's "rescission" or DCRA's refusal to comply with the existing ALJ stay order.

On May 6, 2005, the federal district court denied Bannum's motion for a TRO based on principles of abstention and potential issue preclusion.

On May 9, 2005, the BZA scheduled a decision on Bannum's motion to stay for June 7, 2005. However, the BZA had previously denied a stay of its order underlying the current revocation.

F. DCRA Attempts to Enforce its Illegal Revocation Based on Alleged Violations

DCRA did not suspend its attempts to end Bannum's operation of the BOP CCC facility. By letter dated May 13, 2005, DCRA notified Bannum that it intended to move forward with enforcement action and that it will seek fines and other relief provided by law. Ex. 6. DCRA cited as a basis for an enforcement action, two "zoning" regulations, DC ST §6-1406 and Title 11 of the DCMR. DC ST §6-1406 involves compliance with the D.C. Construction Codes. Bannum has never been charged with a violation of any Construction Codes. Yet, DCRA now intended to seek enforcement of penalties and other remedies against Bannum on this basis.

These DCRA actions led to a "cure notice" letter from the BOP to Bannum on May 20, 2005. Ex. 7. The BOP letter gave Bannum 10 days to cure the DCRA revocation, or the BOP might terminate Bannum's contract for default.

By a document dated May 20, 2005, DCRA filed a "motion to dismiss" to this Office, to which, since October 2004, all ALJ cases pending were transferred.

On May 31, 2005, the BOP extended the time for responding to the cure notice until June 8, 2005, the day after the BZA will rule on Bannum's motion to stay the revocation. Ex. 8. If the BOP elects to terminate the contract, it will shut the CCC down.

As discussed below, as a matter of law, DCRA's actions in revoking Bannum's CofO are illegal. Unless the BZA (which previously denied Bannum's motion for a stay of its Order), or this Office enjoins the DCRA and/or enforces the ALJ's August 6, 2004 stay order before June 8, 2005, Bannum will have no D.C. business to protect. Accordingly, DCRA's motion should be denied, the existing ALJ stay order given effect, and DCRA's revocation in violation of that order and DC ST §2-1831.13(c) should be declared a legal nullity and ordered rescinded.

LEGAL ARGUMENT

Effective October 2004, the OAH was established under the "Office of Administrative Hearings Establishment Act of 2001" ("Act"). DC ST §2-1831 et seq. All Office of Adjudication ("OAD") cases, the predecessor entity that adjudicated contested cases that were pending in October 2004, including No. 2004-OAD-013 were transferred to the OAH's jurisdiction. Nothing in the Act addressed any substantive areas of an agency's decision-making that were not within the OAH's jurisdiction. The Act, in DC ST §2-1831.3(b), specifically covers decisions by DCRA.

Further, nothing in the Act purported to have a retroactive effect. Finally, no decisional action could be taken in any case for so long as the OAH, as here, has jurisdiction over the proceeding. DC ST §2-1831.13(c).

Prior to the April 21, 2005 "rescission" and May 4, 2005 revocation issued to Bannum, there was a case pending before this Office in which there was an outstanding order, issued by the predecessor entity that prohibited these DCRA actions. Yet, DCRA's motion fails to even mention the ALJ's August 6, 2004 oral order granting Bannum's motion to enjoin further proceedings.

That pre-existing ALJ order is entitled to be given effect as it was legally issued, reasonable and was not appealed.

Further, after the transfer of that case to this Office, because that case was and remains under this Office's jurisdiction, each of the DCRA decisional actions above violated this Office's authority. This Office must take action to enforce its jurisdiction, rules and independence from DCRA.

DCRA's allegation that its rescission and notice that the BZA is the proper forum for an appeal of this new revocation notice is a transparent attempt to avoid its statutory obligations and to usurp the authority of this Office granted in the Act. An illegal act by a government agency cannot form the basis for a dismissal.

No law changed the definition of a "contested case" under DC ST §2-502(8) to contest vested rights in a CofO or a right to a hearing under DC ST §2-509. A vested property right in a CofO that one is being deprived of by revocation is exactly the type of case within the definition of a "contested case" in DC ST §2-502(8):

> "The term "contested case" means a proceeding before the Mayor or any agency in which the legal rights, duties, or privileges of specific parties are required by any law (other than this subchapter), or by constitutional right, to be determined after a hearing before the Mayor or before an agency, but shall not include: .... (exceptions not applicable)."

Indeed, DCRA admitted in its April 27, 2004 notice of revocation that this case was a "contested case." Ex. A. Under this statutory scheme, the person whose right is being revoked is granted a hearing before the Mayor's delegate, here an ALJ under DC ST §2-509. This is what transpired with Bannum before DCRA was somehow motivated to take its April 21, 2005 actions.

DCRA decisions continue to be subject to the OAH. DC ST §2-1831.3(b)(2). While a new regulation, 12A DCMR §110.6, effective December 2004, states that appeals of CofO revocations can be appealed to the BZA, that regulation is not retroactive. Moreover, there is no statutory basis for this regulation, much less making the BZA exclusive forum for appeals of DCRA decisions. Indeed, the types of appeals to the BZA in DC ST §6-641.07(f) do not cover a revocation of a CofO:

> (f) Appeals to the Board of Adjustment may be taken by any person aggrieved, or organization authorized to represent such person, or by any officer or department of the government of the District of Columbia or the federal government affected, by any decision of the Inspector of Buildings granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part upon any zoning regulation or map adopted under this subchapter. (emphasis added).

The difference in a statute governing appeals of agency decisions "granting or refusing" building permits or "granting or withholding" a CofO and the statutes governing appeals to the OAD, now the OAH, is apparent. In hearings of "contested cases" before the OAH, a hearing is provided for disputes over vested rights which a person directly possesses under law.

In this case, Bannum's vested right is the right to operate Bannum's facility which DCRA granted to Bannum in the CofO, and constitutional law protects the loss of such rights without a hearing.

In contrast, the BZA statute provides hearings only to "aggrieved persons" or "affected" D.C. agencies relating to either (a) the "granting" of a CofO, i.e. appeals by persons who object to the granting of a vested legal right to another person, i.e. "nuisance" actions, or (b) the "withholding" of a CofO by a person who does not possess this legal vested right.

The phrase "administrative decision based in whole or in part upon any zoning regulation or law" cannot be read in a vacuum. To be in harmony with the specific language of the statute, it can only mean a decision not involving the revocation of a vested right. Hearings for such rights are legally and historically distinguishable from a right to appeal a "nuisance" case or to appeal the denial of such rights, appeals that are authorized at the BZA. Cf. Konstantopoulos v. Town of Whately, 424 N.E.2d 210, 216 (Mass. 1981) with Goto v. BZA, 423 A.2d 917, 922 (D.C. 1980). Only after the ALJ has ruled on a contested case, can it proceed to the BZA. See Rogers Brothers Custodial Services, Inc. v. Board of Zoning Adjustment, 846 A.2d 348 (D.C. 2004). That is why the Zoning Act established two separate forums to decide zoning matters and why prior to December 2004, all hearings based on the revocation of a CofO were before the DCRA ALJ, and not the BZA. See 12A DCMR §108.13 (2004).

Indeed, the new regulation purporting to change this statutory scheme is itself illegal since it was promulgated without any statutory authority and is in conflict with the existing statutory scheme.

In any event, as noted above, this new regulation placing these appeals before the BZA was not made retroactive and has no bearing on this pending case which is already under the jurisdiction of this Office.

Conclusion

DCRA's Motion to Dismiss seeks to have this Office sanction DCRA's illegal conduct in direct violation of this Office's statutory mandate and in violation of properly issued orders of an ALJ staying all revocation actions.

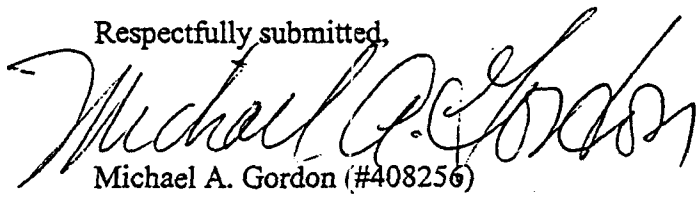
Bannum respectfully respects that this Office take expedited action to reject this attempt and enforce its statutory obligations by:

1. Declaring DCRA's rescission of Bannum's notice of intended revocation and its actual revocation void and of no effect,

2. Adopting and enforcing the August 6, 2004 ALJ ruling enjoining DCRA from taking any action to revoke Bannum's CofO until the D.C. Court of Appeals Merits Panel has decided the case, an action that should take place in the near future.

Given the circumstances, expedited action on this motion is necessary and it is respectfully requested.

Respectfully submitted,



Michael A. Gordon (#408256)
Counsel for Bannum, Inc.

Shawn C. Whittaker, Esquire
Donald C. Holmes, Esquire
John D. Rich, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing "BANNUM'S OPPOSITION TO DCRA'S MOTION TO DISMISS AND EXPEDITED MOTION TO ENJOIN DCRA REVOCATION ACTION" was served this 2nd day of June, 2005, by facsimile and first-class mail, postage prepaid, to the following:

Lisa A. Bell, Esquire
Office of the General Counsel
D.C. Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E.
Washington, D.C. 20001

Michael A. Gordon

X

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

OFFICE OF THE ZONING ADMINISTRATOR

June 30, 2005

BY PERSONAL SERVICE AND CERTIFIED MAIL
BANNUM, INC
c/o Shawn C. Whittaker, Esquire
2210 Adams Pl, N.E.
Washington, D.C. 20001

ORDER GOVERNING UNLAWFUL POSSESSION OF PREMISES

On May 2, 2003, the Department of Consumer and Regulatory Affairs (DCRA) issued Certificate of Occupancy, Number C53679 ("C of O"), to Bannum, Inc. The C of O authorized Bannum, Inc. to use the property located at 2210 Adams Street, N.E., Washington, D.C. for "temporary correctional institutional on leased property for a period not to exceed three (3) years." The C of O was based upon the issuance of a building permit to Bannum, Inc. that authorized the construction of a community corrections center. The Board of Zoning Adjustment (BZA) reviewed an appeal of the building permit by community residents and issued a decision on March 31, 2004, that invalidated the building permit. The BZA, in the matter of *Advisory Neighborhood Commission 5B*, (BZA Appeal Number 16998), found that the building permits were issued in error in that, *"a community corrections center was not a permit use in a C-M-2 District"* and *"the facility did not meet the requirements of Section 801.7(k)."*

An inspection of the premises conducted May 12, 2005 by the DCRA revealed that Bannum, Inc. is still occupying and operating a facility as a correctional community center at 2210 Adams Street, N.E., Washington, D.C. Further, DCRA is aware that Bannum, Inc. is currently occupying the premises and using the facility as a correctional community center. Bannum is advised that the continued use of the subject premises is in violation of Titles 11 and 12A of the District of Columbia Municipal Regulations, and is contrary to the BZA decision.

DCRA directs Bannum to vacate the premises at 2210 Adams Street, N.W., Washington, D.C. within forty-five (45) calendar days of receipt of this Order. By that date, Bannum should close and secure the building by doing the following:

1) Removing staff and residents from the facility;

2) Removing trash, debris and personal property from the interior of the building and broom cleaning the interior;

3) Capping the main waste-line (sewer line) below all fixtures in the commonly accepted manner to comply with the District of Columbia Plumbing Code, 12F DCMR; and,

4) Barricading, as needed, all doors, all windows and other openings with ½" exterior grade plywood.

Bannum is required to notify the Zoning Administrator of its departure within forty-eight hours of closing and securing the building. DCRA will inspect the building within five days of Bannum's departure.

Bannum's failure to properly close and secure the building may result in fines, penalties or sanctions from the DCRA as provided by law under Title 16 DCMR.

Sincerely,

Corey Buffo
Acting Zoning Administrator

By Facsimile
Shawn Whittaker, Esquire
9055 Comprint Court
Gaithersburg, Maryland 20877-1310

PERSONALLY SERVED THIS 1st DAY OF July 2005
AT 2210 Adams Pl NE ON Asst. Director Nester
BY ME Yvonne Rockett
Zoning Inspector At 915 AM
CONSUMER & REGULATORY AFFAIRS
ZONING REGULATION DIVISION

Y

Temple Law Offices

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Warner Session ★

Admitted District of Columbia Bar ★
Admitted Maryland Bar ✧
Admitted Ohio Bar ◂
Admitted Pennsylvania Bar ▸

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July 21, 2003

Geoffrey H. Griffis, Chairperson
DC Office of Zoning
Board of Zoning Adjustment
441 4th Street, NW Suite 210-S
Washington, DC 20001

Re: BZA Appeal No. 16998

Dear Mr. Griffis:

Pursuant to this Board's request during the July 8, 2003 hearing in the above matter, enclosed herewith for filing please find twenty (20) copies of the announcement flyer for the Ward 5 community meeting held January 21, 2003, 6:30pm at the Washington Center for the Aging.

Respectfully submitted,

Donald M. Temple

Cc: Joseph A. Camardo, Jr. Esq., via fax & mail
Bennett Rushkoff, Esq., via fax & mail
Shaw Whittaker, Esq., via fax & mail

BZA
Case No. 16998
Exhibit No. 77

1743

DID YOU KNOW....

...that Bannum, Inc., a Florida Corporation, plans to bring ***criminals including sex offenders, arsonists and child molesters*** into our community under the new Federal Bureau of Prisons (BOP) RFP requirements?

...that a halfway house is being proposed for operation at 2210 Adams Street, NE?

...that Ward 5 is either home or borders three of the six currently run halfway houses?

...that the location where they want to put the halfway house would be in the building with a Day Treatment Program for the developmentally disabled?

...that there are currently several hundred beds that are not being used in established halfway houses? Do we really need another halfway house?

...that we oppose any plans to operate any halfway houses in Ward 5 and urge you to join us in this opposition.

Voice your concerns at the Community Meeting on
January 21, 2003 6:30 PM at
The Washington Center for the Aging

CITIZENS FOR A SAFE WARD 5
1704 17TH Street, NE Washington, DC 20018
Darryle A. Carter (202) 438-3751

1744

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