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November 27, 2001

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VIA HAND DELIVERY

Zoning Commission for the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

Re: Z.C. Case No. 01-07C
1700 K Street PUD and Air Space Applications

Dear Members of the Commission:

Pursuant to the Commission's request at its November 19, 2001, public meeting, Commerce Building Associates, a Joint Venture, and Riddell Building Joint Venture, applicants in the above-referenced case, respectfully submit the following response. Appropriate references are made to information already part of the record, and additional discussion is provided to respond more fully to the points raised by the Commission. It is worth emphasizing at the outset what this project is really about: the replacement of two mediocre buildings with one building of outstanding design and *less square footage*. Although this response is lengthy, we would ask that the Commission give careful consideration to the information set forth herein, and approve this important PUD as expeditiously as possible.

I. Housing Linkage

A. Adequacy of Housing Production Must Be Judged on the Amount of Square Footage Produced, Not the Cost of Rehabilitation.

As discussed fully at the hearing, and in memoranda supplied by the applicants and the reports submitted by the Office of Planning ("OP"), pursuant

ZONING COMMISSION
District of Columbia

Case 01-07C

42

ZONING COMMISSION
District of Columbia
CASE NO. 01-07
EXHIBIT NO. 42

to 11 DCMR §§ 2404.3 and 2404.6(b), an applicant may fulfill its housing linkage requirements in one of three ways: (i) by constructing the required square footage of housing itself; (ii) by entering into a business arrangement with an affordable housing provider to assist in the production of the required square footage of housing; or (iii) by making a cash contribution based on the increased assessed value of the planned unit development ("PUD") to a housing trust fund.¹ Only the third option discusses and provides for an actual dollar amount.

Nevertheless, OP has suggested, and the Zoning Commission has discussed, that the first two methods must be converted to a dollar amount in order to assess the adequacy of the housing production.² If such were a requirement, it would not only be a new interpretation of the housing linkage provisions, but would be contrary to the express language of the regulations and agreements between developers and housing providers that formed the basis of the regulations. Rules of statutory construction dictate otherwise. In interpreting a statute or regulation, one "must look first to its language; if the words are clear and unambiguous, ... [one] must give effect to its plain meaning."³ Here, the plain language of section 2404.6(a)(2) states that the amount of housing required shall be "[n]ot less than one-third of the gross square feet of increased office space" that the PUD provides in excess of that allowed as a matter of right by the zoning included in the PUD application. Because the regulation speaks only of a minimum square footage requirement, it cannot be distorted to mean a minimum dollar contribution.

The Latin statutory construction *maxim expressio unius est exclusio alterius* – "the mention of one thing implies the exclusion of another" – also makes clear that the adequacy of the amount of housing produced under section

¹ See 11 DCMR § 2404.6; see also Letter from Holland & Knight LLP to the Zoning Commission, October 5, 2001, Z.C. Case No. 01-07C, Exhibit No. ("Z.C. Exh.") 25, and OP Reports dated October 3 and 11, 2001, Z.C.Exh. 26 and 32; see also discussion of legislative history of housing linkage program, Z.C. Case No. 01-07C Hearing Transcript, October 11, 2001, ("Tr.") at 53-56 and 92-99, and comments at the public hearing that history provided by applicants was "right on", Tr. at 101.

² See comments of Commissioner Mitten, Tr. at 92; see also OP Reports dated October 3 and 11, 2001, Exh. 26 and 32, and testimony of Ellen McCarthy, Deputy Director of Development Review, OP, Tr. at 107-108 ("it's unclear what the level of participation is and how much the money which the applicant is providing translates into in terms of affordable housing.").

³ *Parreco v. District of Columbia Rental Housing Commission*, 567 A.2d 43, 45-46 (D.C. 1989); citing *Office of People's Counsel v. Public Serv. Comm'n*, 477 A.2d 1079, 1083 (D.C. 1984) and *People's Drug Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983).

2404.6 can only be judged on the basis of square footage. When the Zoning Commission included in section 2404.7 a dollar contribution formula to evaluate compliance with the housing linkage provisions, and excluded a dollar contribution formula in section 2404.6, it did so intentionally. When a regulation mandates a thing to be done in a certain manner, it implies that it cannot be done in any other manner, "because there is an inference that all omissions should be understood as exclusions."⁴ Had the Zoning Commission intended the square footage formula to be evaluated in terms of a dollar amount, it could have explicitly done so; it did not.⁵ As the District of Columbia Court of Appeals noted, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."⁶ Thus, because the dollar amount formula is omitted from section 2404.6, it must be understood as an exclusion from that section. Absent a change in the regulations, the Zoning Commission is precluded from reading any other evaluation standard into that section.

While an agency is generally given deference in interpreting its own regulations, an agency may not ignore the plain language of the regulation.⁷ Here, the plain language of the housing linkage provisions in section 2404.6 states that an applicant must produce a minimum amount of housing based on square footage. The applicants, OP and the Department of Housing and Community Development ("DHCD") all agree that the minimum amount of housing that must be produced, based on the formula in section 2404.6(a)(2), is 12,369 square feet of space, and that the applicants are facilitating 16,673 square feet of affordable housing, a thirty-five percent increase. The Zoning

⁴ *McCray v. McGee*, 504 A.2d 1128,1130 (D.C. 1986), quoting 2A Sutherland, *Statutes and Statutory Construction* § 47.23 (4th ed. 1984); see also 73 Am. Jur. 2d *Statutes* §211 (1974) and *Botany Worsted Mills v. United States*, 278 U.S. 282, 289 (1929).

⁵ See, for example, *Parreco*, 567 A.2d at 47 (in determining whether mortgage interest deductions not reinvested in rental property could be deducted from net income for purposes of a hardship rent increase, "the Council could have said so, but did not.")

⁶ *School Street Associates Limited Partnership v. District of Columbia*, 764 A.2d 798, 808 (D.C. 2001), quoting *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991) and *Russello v. United States* 464 U.S. 16, 23 (1983).

⁷ *Parreco*, 567 A.2d at 48; see also *Totz v. District of Columbia Rental Housing Commission*, 412 A.2d 44, 46 (courts should not defer to agency interpretations where the agency decision is "inconsistent with the statute"); *DeLevey v. District of Columbia Rental Accommodations Commission*, 411 A.2d 354, 359-60 (D.C. 1980) (agency's interpretation of the Rental Housing Act was erroneous because it was inconsistent with the statutory language).

Commission may not ignore the plain language of section 2404.6 and impose a different standard on the applicants. No other test is necessary to determine whether the applicants are in compliance with the minimum amount of required housing.

B. Applicants Are Not Required to Fund Entire Amount of Rehabilitation Costs.

The Commission and OP have suggested that not only must the square footage requirement be converted to a dollar amount, but that the applicants must fund the entire dollar amount of the required housing, including hard and soft costs.⁸ This would represent a drastic change in the interpretation of the housing linkage provisions. The Zoning Commission itself, however, has ruled in a case that is only one year old that applicants do not need to fund the entire cost of housing.

In the first PUD case where the housing linkage provisions of section 2404 were applied, the Zoning Commission specifically found that an applicant is *not* responsible for the full cost of producing the housing when a business arrangement is made with a housing provider. In Zoning Commission Order No. 906 for the Solar Building PUD, the applicant achieved an additional 28,215 square feet of gross floor area devoted to office use as a result of the PUD.⁹ One-third of that amount, or 9,405 square feet of housing, was required to be produced under 11 DCMR § 2404.6(a)(2). Under an agreement with the Marshall Heights Community Development Organization ("MHCDO"), the applicant provided gap financing to produce seven single family dwellings consisting of a minimum of 1,500 square feet of space each, or 10,500 square feet of space. The "gap funding" arrangement, which did not finance the entire amount of required housing, was supported by both OP and the Commission, as set forth in the order approving the PUD:

19. By an additional report dated June 8, 2000, the OP expressed its support of the proposed housing linkage arrangement which will provide \$280,000 to MHCDO for the construction of seven 1,500 square foot houses. *The OP report supports the*

⁸ McCarthy Testimony, Tr. at 107 ("It [the regulation] didn't say the applicant wasn't responsible for providing the full square footage of the housing that is required to be provided under the regulations. It didn't say the applicant could provide a percentage of that cost.").

⁹ See Finding of Fact No. 63, Z.C. Order No. 906 (Case No. 98-14C), Oct. 16, 2000, at 21.

concept of and need for "gap funding" of affordable housing projects.

* * *

63. The Commission finds that the project fulfills the housing objectives of the PUD process under subsections 2403.9(f) and 2404.6 of the Zoning Regulations. The Commission finds that the applicant's proposed contract construction agreement with MHCDO, which will allow for the construction of seven single-family affordable dwellings, is commensurate with the increase of approximately 28,215 square feet of gross floor area devoted to office use as a result of the PUD....

* * *

64. The Commission finds that the proposed housing linkage arrangement satisfies the requirements of the Zoning Regulations and will result in the production of seven new single-family houses in a Housing Opportunity Area in Ward 7.... *The Commission is not persuaded by the opposition testimony and correspondence suggesting that gap funding to facilitate the production of affordable housing is not permitted under the regulations* and that the construction option must involve a monetary commitment equal to the amount that would be required under the contribution option. Through its agreement with MHCDO, the applicant will assume the risk that if the housing units are not constructed, the PUD will not receive a certificate of occupancy. The contribution option involves no such risk and accordingly, a greater financial commitment. *Further, the Commission finds it unreasonable to suggest that under the construction option, an applicant must pay the full cost of construction.* Under that interpretation, applicants would have strong incentive to choose rehabilitation over new construction. *Both should be encouraged.*¹⁰

Thus, the Zoning Commission itself has determined that under a business arrangement with a housing provider, an applicant need not provide the full funding for the production of the required square footage of housing. Such an interpretation just makes plain sense. If it were simply a matter paying for the full cost of rehabilitation or construction, there would be no need to engage in creative financial or business arrangements as permitted under section

¹⁰ Z.C. Order No. 906, October 16, 2000, at 10, 21, and 26 (emphasis added).

2404.6(b), such as gap financing, or equity contributions to tenant associations, which use the funds to pay for rehabilitation of certain discrete units. The regulation also allows for a joint venture, which specifically contemplates each party contributing something to the venture. Such a full-cost payment by one party would render section 2404.6(b) superfluous, which is impermissible under rules of statutory construction.¹¹

The alternative method for housing production had its genesis in Zoning Commission Case No. 85-3C (Z.C. Order No. 815) for the PUD at 1201 I Street, N.W. There, the applicant entered into an arrangement with Jubilee Housing and Manna, Inc., to provide \$10,000 for each unit of affordable housing to be rehabilitated to help finance the rehabilitation costs. Significantly, the \$10,000 was an average estimate of rehabilitation costs to be applied to various projects at the discretion of the affordable housing provider. The estimated rehabilitation cost was *not* associated with any *pro forma* for a particular project but was based on the testimony of Jubilee Housing and Manna, Inc.¹²

In his testimony at the October 11, 2001, hearing in the instant case, Robert O. Boulter, President of Jubilee Enterprises of Greater Washington, who participated in this first housing linkage program, emphasized that a business arrangement with a housing provider should not be tied to a specific dollar amount because of the inherent variables in costs and needs for each project. Rather, the critical requirement is that affordable housing units are substantially rehabilitated under any arrangement that meets the particular needs of the housing provider and the unique circumstances of each project.¹³

Mr. Boulter's views, which are based on extensive experience with and an unquestionable commitment to affordable housing, should not be dismissed lightly. Flexibility must be maintained in order for affordable housing providers to pursue creative financial arrangements and allocate funds in a manner that best suits each particular project. In the instant case, both Jubilee Enterprise and its partner, Banc of America Community Development Corporation

¹¹ *Thomas v. District of Columbia Department of Employment Servs.*, 547 A.2d 1034, 1037 (D.C. 1988) ("A basic principle is that each provision of the statute should be construed so as to give effect to all of the statute's provisions, not rendering any provision superfluous."); accord *McDaniels v. Dep't of Employment Servs.*, 512 A.2d 990 (D.C. 1986).

¹² See Finding of Fact No. 51(h), Z.C. Order No. 513, January 12, 1987, at 17.

¹³ Tr. at 53-56.

("BACDC"), stated that no additional funds are required for the Trenton Park Apartment Complex project.

It has been suggested that without the intervention of OP or DHCD, affordable housing providers would be unable to negotiate effectively with developers. Presumably, housing providers would be in such dire straits that any amount of money, no matter how small, would be acceptable. Such is not the case. Here, Jubilee Enterprise and the applicants engaged in several lengthy discussions over several months, after which time Jubilee rejected the initial offer of the applicants. Only after continued negotiations did the parties reach a mutually agreeable amount that would meet the needs of the rehabilitation project at Trenton Park Apartments and satisfy the housing linkage requirements.

C. DHCD Rehabilitation Cost Estimates Are Overstated.

Even if the applicants could be required to fund the full cost of rehabilitation, the calculation of rehabilitation costs prepared by the D.C. Department of Housing and Community Development ("DHCD") are overstated because they include hard and soft costs, such as builder profit, contingencies, and other miscellaneous categories, that are not legitimately attributable to rehabilitation. These soft costs are the same types of costs that are excluded from LBOC Agreements.¹⁴ Under the most current calculations provided by BACDC, a copy of which is included as Attachment 1 hereto, the total construction cost for the rehabilitation of 245,147 square feet of space is \$7,160,561, or \$29.21 per square foot. Based on the required minimum of 12,369 square feet of housing to be produced, and if the Zoning Commission determined to change its interpretation of the regulations requires that a specific dollar value should be contributed, the applicants would be required to provide \$361,298.49 to the project. Any contribution over this amount would be considered an amenity to the PUD.

D. Good Faith Negotiations of Housing Provider and Applicants Under Existing Interpretation of Zoning Regulations Should Be Granted Deference.

The applicants have negotiated in good faith under the express language of the regulations and the Commission's established precedents to reach an agreement with Jubilee Enterprise that results in the substantial rehabilitation of 16,673 square feet of affordable rental space, or thirty-five percent more than

¹⁴ See, for example, executed Memorandum of Understanding dated October 9, 2001 between the applicants and the Local Business Opportunity Commission, a copy of which is provided as Attachment 2 to this submission.

what is required. If there is to be a change in the interpretation, both legally and equitably, the Zoning Commission should only make such a change prospectively after public notice and hearings on a text amendment case. Such a change in interpretation constitutes a "rule" under the Administrative Procedures Act, which must be noticed prior to any prospective application.¹⁵

Fundamental notions of fairness entreat the Commission to forestall new interpretations of the housing linkage provisions in the instant case. In the event the Commission determines not to proceed as proposed by the applicants and housing provider, and requires the applicants to fund all hard costs associated with the rehabilitation, the applicants will contribute a total of \$361,298.40 to pay for 12,369 square feet of affordable housing. In the alternative, if the Zoning Commission imposes a requirement to finance all hard and soft costs associated with the project, the applicants will make the contribution of \$520,470 in order to proceed with approval of the PUD.¹⁶ Given, however, that both Jubilee Enterprise and BACDC have stated that no additional funds are necessary, it is unclear to whom or where this additional money should be paid. If it is paid to Trenton Park Neighborhood Corporation or BACDC, it may disturb the equity interest that was carefully negotiated between the two parties. Would the Commission require the applicants to pay the additional funds to a housing trust fund, where they could languish unused for an indefinite period of time? Such a requirement would run counter to the goal of actual housing production. The applicants will look to the Zoning Commission for guidance on where any additional funds should be paid or deposited.

II. Allowable Increase in Density Above PUD Guidelines

Section 2405.3 of the Zoning Regulations authorizes the increase in density of no more than five percent above the permitted floor area ratio ("FAR") under the PUD provisions, provided such increase is essential to the successful functioning of the project and is consistent with the purpose and evaluation standards of the PUD regulations. In the instant case, the applicants seek an

¹⁵ See D.C. Code § 2-502(6) ("The term 'rule' means the whole or any part of any Mayor's or agency's statement of general or particular applicability and future effect designed to implement, *interpret*, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Mayor or of any agency") and § 2-505 (notice requirements) (2001 Ed.).

¹⁶ In agreeing to make the payment, the applicants respectfully note an exception to this amount.

increase of *less than one percent* (.0072), or approximately 2,670 square feet of gross floor area, over the PUD guidelines. In the C-4 District, the PUD guidelines permit an FAR of 11.0, and an increase of not more than 11.55 FAR, if the applicant meets its burden of proof. The total density achieved on private property will be 11.08 FAR, which represents a 4.1% *decrease* in the existing 11.55 FAR on the site.

Because the applicants will lose square footage in restoring this important corner to a position of prominence, every square foot of space becomes essential to the successful functioning of the project and its financial viability. After addressing the public street frontages and providing special urban design features, the project results in a density of 11.08 FAR. This modest increase in square footage above the PUD guidelines will be located on a site that is perhaps the best-suited in the city for such high density: the heart of the Connecticut and K commercial corridor.

The special features of urban planning and design that are achieved through this modest increase include the 5.5 setback at grade along the K Street facade that provides an expanded sidewalk area for pedestrians and a special retail experience for shoppers. It is important to note that the setback area is chargeable against gross floor area because it is under cover, even though it is not part of the actual interior building area and the applicants themselves will not derive any direct, personal benefit from it. Rather, the setback is a specific design feature of the PUD which is intended to benefit the public at large. If the applicants were not required to include this setback area in FAR calculations, which represents 1,458 square feet of gross floor area, an increase of only approximately 0.0035 (or one-third of one percent) above the PUD guidelines would be necessary. The modest increase in density of 0.0072 is essential to the successful functioning of this important component of the PUD design and is consistent with the purpose and evaluation standards of the PUD regulations.

III. Classification of Perpetual Light and Air Easement as Court Niche or Open Court.

The existing open area on the site measuring thirty feet by five feet is an existing legal requirement pursuant to a perpetual light and air easement granted by the applicants to the owners of the Barr Building in 1953.¹⁷ There is no requirement under the Zoning Regulations for this light and air easement. As the Commission is aware, buildings are normally constructed to the property

¹⁷ A copy of the light and air easement is provided in Attachment 3 to this letter.

lines and abut adjacent parcels in the commercial districts. The proposed PUD design simply accommodates the easement area. The applicants believe that the open area is a court niche as defined in the regulations, since it is an "indentation, [or] recess... of the exterior wall of a building, not a court, which opens onto a street, yard, alley or court."¹⁸ The description of court niche includes in the alternative a decorative architectural treatment of the wall of a building. While the easement area provided for in the new design is not a decorative architectural treatment, it most certainly is an indentation or recess.

If this area were treated as an open court, its required width would be approximately thirty feet, pursuant to calculations based on the height of the court. Such a width would substantially interfere with the circulation and floor plate area on the 17th Street side of the PUD and would reduce the density to well below the allowable 11.0 FAR.

Accordingly, the applicants request the Commission to conclude that the recess and/or indentation in the building which opens onto the alley meets the definition of a court niche. Alternatively, if the Zoning Commission does not so conclude, the applicants request the Commission to approve the court area as designed. Courts are designed to provide a minimum amount of light and air for the property on which the court is located, and not for adjacent property owners. Here, the applicants do not propose to use the easement area for light and air on its own property and, accordingly, no windows are provided in this area of the building design. Additionally, the owner of the adjacent Barr Building has agreed to the adequacy of this open area through the perpetual easement, which will continue to provide light and air to the Barr Building in accordance with the recorded covenant. Thus, approval of court as designed would not impair the intent or purpose of the Zoning Regulations, and would not have an adverse effect on adjacent properties.

IV. Projections into Public Airspace

As discussed at length in the applicants' November 9, 2001, submission to the record, the 5.5 foot projection of the PUD into public airspace at the north alley cul-de-sac has a modest *positive* impact on the reflected light into the alley elevation of the Barr Building and no impact whatsoever on its direct light. The Commission has nevertheless requested an analysis of what the applicants will gain relative to the Barr Building as a result of this projection, and whether the projection is essential to the successful functioning of the PUD project. While the applicants continue to believe that the only relevant evaluation standard is

¹⁸ See definition of "court niche" at 11 DCMR § 199.

the Public Space Utilization Act, the following analysis is nevertheless provided.¹⁹

The applicants will gain approximately 2,172.5 square feet of gross floor area by virtue of the projection into public space; the Barr Building will not lose any gross floor area as a result of the projection into public space. The distance between the two buildings at the alley cul-de-sac will be reduced from 27.0 feet to 21.5 feet, which will remain the greatest distance between the two buildings. The 21-foot separation between the two buildings is also greater than a required side yard would be for the Barr Building, if one were provided. At a height of 110 feet, the Barr Building would require a side yard of 18.3 feet, based on a width of two inches for each foot of building height. Consequently, the modest use of public airspace will not impinge upon the Barr Building in any way.

In fact, as a result of the reduced distance, the Barr Building will gain a modest amount of additional primary reflected sunlight on its secondary alley elevation during the summer months. A *de minimus* reduction in primary reflected sunlight will occur during the winter solstice, but only at the area adjacent to the PUD's fourth and fifth floor. Consequently, the projection will have a zero net impact on the Barr Building.

In exchange for the zero net impact on the Barr Building, the PUD will achieve significant design improvements that are critical to the successful functioning of the building, and which can be enjoyed by the public at large. First, the 5.5 projection into public space allows for significant setbacks at grade along the public frontage of K Street at the twelfth and ground floor level to complement the building's prominent location at Connecticut Avenue and K Street, and which can be enjoyed by the public at large.²⁰ Pedestrians will experience a wider sidewalk, retail shoppers will be protected from the elements, and the apparent height of the building will be reduced. The setback areas along K Street represent a "loss" of approximately 2,916 square feet of gross floor area to the applicants while, as noted above, the public space projection represents a "gain" of approximately 2,172.5 square feet of gross floor area. The setback area and projection into public space are achieved at no cost to the Barr Building whatsoever but with significant benefits to the public. Thus, in balancing the positive effect of the projection on the successful functioning of the

¹⁹ See discussion of the appropriate evaluation standard under the Public Space Utilization Act in the Applicants' Post-Hearing Submission dated November 9, 2001.

²⁰ See Applicants' Post-Hearing Submission, November 9, 2001, at 2.

PUD against the zero net impact to the Barr Building, it is clear that the projection can be approved as an appropriate design feature of the building that is consistent with the purpose and intent of the Zoning Regulations and the Public Space Utilization Act.

Finally, the "pinched" center portion of the irregular PUD site can be expanded by 5.5 feet to accommodate appropriate spatial configurations for floor plates, corridors and tenant layouts in conformance with current market demands. When the existing buildings on the site were constructed, it was highly unusual for one tenant to lease an entire floor. Today, however, tenants often rent entire floors or multiple floors in one building. Consequently, it is imperative to create a floor plate as rectangular as possible to meet these current market standards and the projection into public space is critical to meeting this demand. The public space projection also allows the core of the building to be set back two column bays from the front of the building to create a special lobby area and far greater efficiency in the configurations of spatial layouts for full-floor and multi-floor tenants. This feature is likewise essential to the successful functioning of the design and circulation concept of the PUD.

V. Public Benefits and Amenities

A. Balancing of Additional Density Achieved under the PUD Process Against Public Benefits and Amenities Produced.

As set forth at length in the applicants' submissions and testimony,²¹ and as recognized by the Commissioners at the public hearing, the applicants are not seeking a significant increase in building density through the PUD process. In fact, the proposed 11.08 FAR is well below the 11.55 FAR of the existing buildings. Accordingly, under the balancing test set forth in section 2403.8 of the PUD regulations, the degree of public benefits and project amenities required cannot be substantial. Nevertheless, as outlined below, the total benefits are significant both in terms of the design aesthetic, benefits to the community and economic value.

B. Architecture and Urban Design.

The design developed by Pei Cobb Freed Architects for this PUD is a superior rendition of the modern architectural idiom which makes an important contribution to the urban fabric of Washington. The superior nature of the building is not only evident in its design aesthetic, but also in its materials and

²¹ See Applicants' Letter dated October 5, 2001, Z.C. Exh. 25.

dollar value. For example, the architects have selected stainless steel for its finishes, which is far more attractive and costlier than the standard aluminum framing and trim that was used on a similar design at 2099 Pennsylvania Avenue, N.W., and which was constructed as a matter of right. As set forth in the applicants' pre-hearing submission, and as noted in the Office of Planning report of October 3, 2001, the exterior skin of the PUD will cost approximately \$2,080,000 more than the materials typically used on matter-of-right buildings. OP suggested that the PUD project should be compared to the matter-of-right building at 1900 K Street, N.W. In doing so, the PUD project demonstrates a far greater commitment to the quality of its exterior architectural finishes through expenditures of approximately \$4,000,000 more than the 1900 K Street design. This investment in the PUD design alone represents a significant increase over a standard building.

Superior design, however, is not necessarily a matter of cost, but rather of skill in design. Matter of right buildings can also be superior in the material and quality of their design, but such attributes should not detract from similar superior features of a PUD. The superior attributes of a PUD should be measured against a standard building, whether matter of right or not. The proposed Pei Cobb Freed design meets the standard for superior architecture and urban design, and thus constitutes a significant amenity of the PUD.

The significant streetscape improvements and storefront treatments created as a result of the PUD likewise should not be overlooked. The retail frontage is designed as boutique windows wrapped in broad "detached" frames of polished stainless steel. The recessed "arcade" along K Street expands the sidewalk width by forty percent to enhance the retail shopping experience and improve pedestrian traffic flow. Granite dimension pavers that far exceed city standards will define the newly configured public space area beyond the building line. The several existing sidewalk vaults, covered with metal grates, will be consolidated in one location at the parking garage entrance, thereby enhancing public safety and aesthetics. The number of trees will be increased from five to six at K Street, and from two to four at 17th Street. Sidewalk benches and decorative trash receptacles designed to match the new building will also be provided along both street frontages. Such improvements come at a significant expense to the applicants, representing an investment of approximately \$165,000 more than what would typically be expended on a standard, matter-of-right building at this site.²² The value of these amenities should not be underestimated.

²² See Applicants' Pre-Hearing Statement, August 7, 2001, Z.C. Exh. 19, at 13-14

It has been suggested that the applicants should not receive credit for these design amenities because they will result in increased rents. There is no factual support for this theory. Rather, an analysis from the commercial leasing division of Charles E. Smith Commercial Realty, included as Attachment 4 to this letter, demonstrates that rents for this prominent corner in the city will level off, once a building meets the minimum threshold for a Class A design. For example, at the request of a prospective major tenant for the building, the 17th Street façade was redesigned to enlarged the window area, at considerable expense to the applicants, without any commensurate adjustment to rents. Similarly, the granite piers on this elevation, which were incorporated into this façade design in deference to its formal setting across from Farragut Square, is viewed by the prospective tenant as an obstruction to the park views. While such "extras" may enhance the architectural character of the building and the city, they do not translate into increased rents for the building owners. Thus, a new matter-of-right Class A building at this corner will achieve the same rents as the PUD with its superior design features and materials. In the end, the only ones to benefit from the exceptional architecture are the tenants, the public at large, and the city as whole, all of whom can delight in a visually pleasing, attractive building designed by the prestigious award-winning architectural firm of Pei Cobb Freed.

C. Other Project Benefits and Amenities.

The investment in the superior design of the building alone warrants the minor increase in gross floor area of approximately 38,000 square feet requested under the PUD. In addition, however, the applicants are also contributing \$70,000 to the Golden Triangle Business Improvement District to assist in improvements to Farragut Square and Longfellow Park. Additionally, the applicants for the first time will participate in the Local, Small and Disadvantaged Business Enterprise Program and the First Source Employment Program, and will voluntarily retain a service to monitor compliance with these programs. Further, the applicants agree to report periodically to the Zoning Commission on their efforts to comply with the employment goals of these agreements.

Finally, the applicants have demonstrated that the PUD will increase tax revenues for the District by \$1.5 million per year. While the applicants believe this is a valid comparison based on existing conditions rather than theoretical ones, the new PUD will nevertheless increase revenues by approximately \$150,000 per year in comparison to a matter-of-right building constructed to a

density of 10.0 FAR, as indicated in the memorandum included at Attachment 5 hereto. This likewise is a important benefit of the PUD.

VI. Conclusion

The ownership groups that have requested approval of the PUD and Public Space Utilization Act applications are comprised of several quietly active and philanthropic native Washingtonians who have made substantial commitments to and have been instrumental in building Washington over the last seventy-five years. They have been responsible for supporting community activities (such as the City Museum), as well as creating new office and residential communities through the city, including the Central Business District, Georgetown, the East End, the 16th Street Corridor, Adams Morgan, and the Southeast Navy Yard area. Over the past three generations, these projects have been designed to foster leadership and help create vision through proper urban planning. The proposed PUD is yet another milestone in this continuum.

In light of this long association with the development history of the city, the applicants respectfully request the Zoning Commission to favorably consider the responses set forth above. Apart from the somewhat tedious points discussed above, the Zoning Commission has the responsibility to facilitate appropriate development in the District of Columbia through zoning, and the planned unit development process is one of those tools vested with the Commission to achieve appropriate development. Many of the standards by which the Commission must judge a PUD are difficult and subjective, and it is tempting to convert such tests to a dollar value to create a more objective standard. The incremental value of a PUD, however, cannot be measured in a dollar amount. Its value must be weighed in light of the relative increase in density and the proportionality of the benefits and amenities generated. Here, as acknowledged by the Commission, two mediocre buildings with an existing density of 11.55 FAR will be replaced with one building of outstanding design and *less square footage* that will provide a welcome, dramatic improvement to this important corner in this area of the City. The issues raised at the hearing and discussed above are relatively minor in comparison to the enormous contribution this new building will make to the Connecticut and K commercial

corridor. Accordingly, the applicants respectfully request the Zoning Commission to approve the PUD and Public Space Utilization Act applications.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: Wayne S. Quin / cb
Wayne S. Quin, Esq.
Carolyn Brown, Esq.
Steven E. Sher, Director of Land
Use and Zoning Services

Attachments

cc: K.V. Sun Holdings
ANC 2B



Bank of America
Community Development B
730 15th Street, NW
Washington, DC 20005-109

November 21, 2001

Mr. Wayne S. Quin, Esq.
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

RE: TRENTON PARK APARTMENTS

Dear Mr. Quin:

You had asked for additional clarification on construction costs for Trenton Park Apartments. As you know, Banc of America Community Development Corporation is acquiring and redeveloping Trenton Park Apartments in partnership with its current nonprofit owner, Trenton Park Neighborhood Corporation.

Attached please find the final construction budget for Trenton Park. Total construction costs per contract are \$7,160,561. The property improvements are 245,147 square feet; therefore, we will incur construction costs of \$29.21 per square foot.

Please let me know if you require additional information. We are very excited about transforming this property in partnership with its residents, and look forward to starting construction in a few weeks.

Sincerely,

Maryann Dillon
Vice President

enclosure



Exhibit D

9/28/01
10/12/01
10/22/01
10/26/01
11/05/01
11/07/01

WCS Construction
1565 Alabama Ave SE
Washington, DC

Trenton Park
Budget Estimate
8/24/01
8/30/01 Rev
9/21/01

Division	Description	Qty	Units	Unit Price	Budget Estimate 11/09/01	Notes
01000	General Requirements (see attached sheet)	259	Units	\$3,119	\$807,775	25 Month Const. Schd
	Subtotal Division 1				\$807,775	
Division	Description	Qty	Units	Unit Price	Totals	Notes
02000	Sitework					
02080	Demolition	1	Units	\$134,875	\$134,875	General demolition
	General Labor, Debris removal - Clean up utility rooms	2	Labor	\$28,000	\$56,000	
	Safety Labor & Supplies	23	Months	\$500	\$11,500	
	Construction Clean	259	Apartments	\$250	\$64,750	
	Final Clean	259	Apartments	\$150	\$38,850	
	Temporary Labor	23	months	\$500	\$11,500	
02225	Demolition chain link fence	1		\$7,800	\$7,800	
02530	Sanitary sewage	1	Lump Sum		\$0	Included in plumbing
	Allowance for Storm Water	1			\$58,622	Prince Construction - quote 11/07/01
	Concrete slabs at plumbing repair areas	1	allow		\$50,000	Allowance
	Demolition & Replace Curb, Gutter, Sidewalk	0	Square feet		\$28,702	NVM quote 11/01/01 x 2
	Misc. regrading, fill, earth retaining systems	1	Allowance		\$20,000	Allowance Changed per July 13 meeting
	Asphalt repair, Seal Coat, & Striping	1	lump Sum		\$50,703	NVM quote 11/01/01
	Regrade & Asphalt - Drainage @ 624				\$18,966	NVM Quote 11/01/01
02825	Fencing & Security Grills	1	Feet	\$105,871	\$105,871	Per Chesapeake Quote
02825	Tot Lot Fencing 72"	380	Feet	\$32	\$12,160	
	Pool area rehabilitation	1	Each		\$15,000	Added per July 13 meeting as allowance
	Allowance, playground	1	Lump Sum		\$10,000	Allowance
02880	Dumpsters	200	Each	\$300	\$60,000	
02900	Landscaping	1		\$63,710	\$63,710	GMI quote 7/31/01
	Subtotal Division 2				\$819,009	
Division	Description	Qty	Units	Unit Price	Totals	Notes
03000	Concrete				\$0	
	Subtotal Division 3				\$0	
Division	Description	Qty	Units	Unit Price	Totals	Notes
04000	Masonry					
04270	Glass block	11	Addresses	\$350	\$3,850	Mogoo Masonry quote 10/09/01
	Masonry point up	20	allow	\$550	\$11,000	Mogoo Masonry quote 10/09/01
02320	Repair dumpster enclosures	3	Lump Sum	\$10,675	\$10,675	Mogoo Masonry quote 10/09/01
	Subtotal Division 4				\$25,525	

Exhibit D

9/28/01
10/12/01
10/22/01
10/26/01
11/05/01
11/07/01

WCS Construction
1565 Alabama Ave SE
Washington, DC

Trenton Park
Budget Estimate
8/24/01
8/30/01 Rev
9/21/01

Division	Description	Qty	Units	Unit Price	Totals	Notes
05000	Miscellaneous Metals				\$0	
	Stairwell Repairs	25	Building	\$425	\$10,625	Chesapeake quote 10/19/01, Modify exist rail
	Subtotal Division 5				\$10,625	
Division	Description	Qty	Units	Unit Price	Totals	Notes
06000	Wood and Plastic					
	General Carpentry	23	Months	\$6,000	\$138,000	
06100	Punchout	259	Unit	\$150	\$38,850	
	Add wood base - includes demo	52332	LF	\$3	\$130,830	KA Group quote 10/09/01
	Reframe room door opening	626	Each	\$60	\$37,560	KA Group quote 10/09/01
	Reframe small bi-fold door opening	85	Each	\$50	\$4,250	KA Group quote 10/09/01
	Reframe Large bi-fold door opening	140	Each	\$60	\$8,400	KA Group quote 10/09/01
	Reframe walls 9 (includes down units)	1430	Each	\$20	\$28,600	KA Group quote 10/09/01
	Replace kitchen sub-floor	1716	SF	\$10	\$17,160	KA Group quote 10/09/01
	Replace bathroom sub-floor	883	SF	\$10	\$8,830	KA Group quote 10/09/01
	Replace sub-floor	1663	SF	\$10	\$16,630	KA Group quote 10/09/01
	Add blocking for bath accessories & medicine cabinets	261	Each	\$15	\$3,915	KA Group quote 10/09/01
	Add wood blocking	901	SF	\$5	\$4,505	KA Group quote 10/09/01
	Misc. wood framing	655	SF	\$20	\$13,100	KA Group quote 10/09/01
	Structural Sub Floor Allowance	1	Allow		\$0	Previous Allow \$45,000
	Subtotal Division 6				\$450,630	
Division	Description	Qty	Units	Unit Price	Totals	Notes
07000	Thermal & Moisture Protection					
07500	Asphalt roofing, roofing repairs, gutters	1	Lump Sum	\$325,000	\$321,800	Commercial Roofing quote 11/02/01
	Allowance for Facia	25			\$0	Incl in roofing
7210	Allowance Building Insulation				\$20,000	Allowance
	Subtotal Division 7				\$341,800	
Division	Description	Qty	Units	Unit Price	Totals	Notes
08000	Doors & Windows					
	Replace Door Hardware	732	Each	\$23	\$16,836	KA Group quote 10/09/01
	Repair Entry Unit Frame	189	Each	\$100	\$18,900	KA Group quote 10/09/01
	Replace Unit Entry Frame	33	Each	\$450	\$14,850	KA Group quote 10/09/01
	Repair Unit Entry Door	81	Each	\$115	\$9,315	KA Group quote 10/09/01
	Replace Unit Entry Door	122	Each	\$290	\$35,380	KA Group quote 10/09/01
	Replace H/C Flush Door	700	Each	\$125	\$87,500	KA Group quote 10/09/01
	Replace Bi-fold Large	494	Each	\$110	\$54,340	KA Group quote 10/09/01
	Replace Bi-fold Small	235	Each	\$70	\$16,450	KA Group quote 10/09/01
	Hdwe for Unit Entry Doors	259	Each	\$453	\$117,327	KA Group quote 10/09/01
08400	Hollow Metal door systems- Main Bldg. Entrances. with paddle device & electric strike, 9 lite. 18 ga.	27	Each	\$2,296	\$61,992	Del Ray Quote - 11/02/01
	Building Entry - Rear	16	Each	\$1,025	\$16,400	
	Apartment Rear Doors	30	Each	\$682	\$20,460	Del Ray quote 11/02/01
	Doors @ Boiler / Hot Water Heater Rooms w/ Louver	21	Each	\$600	\$12,600	Del Ray Doors 11/06/01
	Doors @ Laundry, hardware & Closer	6	Each	\$825	\$4,950	Del Ray Doors 11/06/01
	Doors @ Utility Rooms	13	Each	\$675	\$8,775	Del Ray Doors 11/06/01
	Repair aluminum windows, screens	1	allowance		\$50,000	Allowance for repairs
	Subtotal Division 8				\$546,075	

Exhibit D

9/28/01
10/12/01
10/22/01
10/26/01
11/05/01
11/07/01

WCS Construction
1565 Alabama Ave SE
Washington, DC

Trenton Park
Budget Estimate
8/24/01
8/30/01 Rev
9/21/01

Division	Description	Qty	Units	Unit Price	Totals	Notes
09000	Finishes					
09100	Drywall	1	lump sum	\$488,457	\$488,457	KA quote 10/09/01
	Bathroom Ceramic-floor tile	179	Each	\$379	\$67,841	Floor Systems 9/21/01
	Bathroom Ceramic Wall tile	179	Each	\$225	\$40,275	Floor Systems 9/21/01
	Tile repair wall tile	3,079	Each	\$8	\$24,632	Floor Systems 9/21/01
09250	Repair wall & paint stairs and common areas	25	Stairs, entries	\$1,000	\$25,000	Misc Caulk & Point Up
	Wood Floor Refinishing	159	Apartment	\$525	\$83,475	
	Wood Floor Repairs	1,635	sq ft	\$15	\$24,525	
09660	Resilient tile flooring (VCT)- Kitchens	189	Kitchens	\$495	\$93,555	Floor Systems 9/21/01
	Remove VCT at Stairways and Replace	25	Stairs, entries	\$1,275	\$31,875	Floor Systems 9/21/01 (do one half of stairways)
	Replace stair treads	100	ea	\$68	\$6,800	
	Carpet	100	Apartment	\$1,216	\$121,600	
09900	Paint - Apartments	260	Units	\$975	\$253,500	Per Manders quote 9/28/01
	Paint - Stairwells	25	Each	\$1,350	\$33,750	Per Manders quote 9/28/01
	Stairwells 2nd Coat	25		\$1,000	\$25,000	Per Manders quote 9/28/01
	Exterior Painting	25	Each	\$2,960	\$74,000	Per Manders quote 9/28/01
	Exteriors 2nd coat	25		\$1,280	\$32,000	Per Manders quote 9/28/01
1020	Allowance Laundry Room Renovation	7	Each	\$5,000	\$35,000	
01020	Allowance, rental office	1	Lump Sum		\$50,000	
	Allowance for temporary apartments	30	units		\$73,500	Carpet-1200, paint&prep-1000, cleaning-250, move & Appliances by others
	Subtotal Division 9				\$1,584,785	
Division	Description	Qty	Units	Unit Price	Totals	Notes
10000	Specialties					
10522	Fire extinguishers	259	Each	\$30	\$7,770	
10530	Awnings, vinyl	27	Addresses	\$943	\$25,461	Per Capitol Awnings quote 10/10/01
10800	Bath accessories	259	Units	\$170	\$44,030	KA quote 9/19/01
	Subtotal Division 10				\$77,261	
Division	Description	Qty	Units	Unit Price	Totals	Notes
11000	Equipment					
11400	Replace stove- Each	176	Each	\$233	\$41,008	Sears 10/16/01
11400	Replace refrigerator- Each	169	Each	\$373	\$63,037	Sears 10/16/01
11400	Ventless hood- Each	200	Each	\$31	\$6,200	Sears 10/16/01
	Subtotal Division 11				\$110,245	
Division	Description	Qty	Units	Unit Price	Totals	Notes
12000	Furnishings					
	Furnish Kitchen Cabinets	200	Ea Kitchen	\$750	\$150,000	IXL quote Flat Panel
	Install Kitchen Cabinets - includes demo	200	Ea Kitchen	\$375	\$75,000	KA Quote10/09/01
	Repair kitchen cabinets	59	Ea Kitchen	\$100	\$5,900	KA Quote10/09/01
	Install ventless hoods	200	Each	\$25	\$5,000	KA Quote10/09/01
	Blinds and shades	259	Apartment	\$100	\$25,900	
	Subtotal Division 12				\$261,800	

Exhibit D

9/28/01
10/12/01
10/22/01
10/26/01
11/05/01
11/07/01

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1565 Alabama Ave SE
Washington, DC

Trenton Park
Budget Estimate
8/24/01
8/30/01 Rev
9/21/01

Division	Description	Qty	Units	Unit Price	Totals	Notes
13000	Special Construction					
						Allowance based on Survey 4% doors and minor wall paint
13280	Remove lead from unit door frames & Walls	1	Lump Sum	\$25,000	\$25,000	
	Certify lead-free, supervise	1	Lump Sum	\$25,750	\$25,750	Jim Kawecky quote 8/13/01
13700	Make current system operable- Door Entry?	259	Addresses		\$0	See Electric
13850	Fire alarm system- Refurbish Existing System	25	Addresses	Included	\$0	Incl. In Electrical Pricing
	Subtotal Division 13				\$50,750	
Division	Description	Qty	Units	Unit Price	Totals	Notes
15000	Mechanical					
	CREDIT: don't replace thru-walls	1		\$0	\$0	
	Allowance: Hot water heaters	1	Lump Sum		\$0	Included in plumbing
15400	General plumbing as per quotation	1	Lump Sum	\$595,000	\$595,000	Per Lamden quote 9/20/01
	Plumbing laterals 3600 Side	10	Bldgs	\$6,000	\$60,000	Lamden - Verbal Quote 11/07/01
	Power assisted toilets	259			\$0	Included in plumbing
	Boiler and associated repairs	1	Lump Sum		\$45,000	Allowance, Clean & service boilers, modify venting, revise controls and pumps
	Plumbing allowance for hidden conditions	1			\$50,000	Allowance
	Janitors Sinks -	2	Each	\$3,500	\$7,000	
	Insulate Hot Water Laterals	25	Building	\$800	\$20,000	Allowance
15400	Tub liners	259	Each	\$350	\$90,650	Porcelite Quote - Verbal 11/01/01
	HVAC 3500 Side Item A- Refrigerant piping, registers and grills	30	Each	\$605	\$18,150	Per ASC quote 9/20/01
	HVAC 3500 Side Item B- Test units, replace furnace and coils	40	Each	\$1,240	\$49,600	Per ASC quote 9/20/01
	HVAC 3500 Side Item C- Replace furnaces, coils, and A.C. units	95	Units	\$1,810	\$171,950	Per ASC quote 9/20/01
	HVAC 3600 Side- Replace Thru-Wall Air Conditioning Units	122	Each	\$708	\$86,376	Per ASC quote 9/20/01
	Sevice Thru Wall Units to Remain	20	Each	\$100	\$2,000	ASC quote 11/01/01
	HVAC - Investigation & Study	1	Lump Sum	\$0	\$0	J&P
	Subtotal Division 15				\$1,195,726	
Division	Description	Qty	Units	Unit Price	Totals	Notes
16000	Electrical					
16000	Electrical work - 3600 Side - 8/29/01 DES quote	1	Lump Sum	\$301,980	\$301,980	DES Scope Added demo
	Electrical Work - 3500 Side - 8/29/01 DES quote	1	Lump Sum	\$381,900	\$381,900	DES quote 9/13/01
	Door Entry System	1	Lump Sum	\$36,800	\$36,800	DES est -Actual TBD- 9/20/01
16000	All exterior electrical work	1	Allowance	\$107,875	\$107,875	DES quote 10/01/01
	PEPCO charges by Owner	1	Lump Sum	\$0	\$30,000	Allowance, added per 10/26/01 mtg
	Subtotal Division 16				\$858,555	
Division	Description	Qty	Units	Unit Price	Totals	Notes
17000	Preconstruction	1		\$50,659	\$20,000	
	Sub Total Preconstruction			\$50,659	\$20,000	
Division	Description	Qty	Units	Unit Price	Totals	Notes

Exhibit D

9/28/01
10/12/01
10/22/01
10/26/01
11/05/01
11/07/01

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Trenton Park
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8/24/01
8/30/01 Rev
9/21/01

18000	Allowances				
02550	Structural contingency fund	1	Lump Sum		\$0 Contingency
	Convactor Repairs & Replacement - Allowance	1	Lump Sum		\$0 Contingency
	Allowance for sheathing repairs	1			\$0 Contingency
09300	Floor systems common areas	12	landings & entry		\$0 In Flooring Quote
01020	Allowance, model unit	1	Each		\$0 By Property Mngt
01020	Allowance, repairs to Maintenance shops etc.	1	Lump Sum		\$0 Contingency
	Sub Total Allowances				\$0
Totals					
	Total Hard Costs				\$7,160,561

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF LOCAL BUSINESS DEVELOPMENT



MEMORANDUM OF UNDERSTANDING

Commerce Building Associates, a Joint Venture, and Riddell Building Joint Venture (collectively, the "Joint Venture"), in accordance with D.C. Law 1-95 (as amended), D.C. Code Section 2-215.03 et seq. (2001 Ed.), and in consideration of the District of Columbia Government in granting approval of a Consolidated Planned Unit Development ("PUD") known as D.C. Zoning Commission (Case No. 01-07C), at 1700 and 1730 K Street, NW, Washington, D.C., in Square 126, Lots 56 and 851, (the "PUD"), commits to utilize Local, Small and Disadvantaged Business Enterprises certified by the D.C. Local Business Opportunity Commission ("LSDBEs") in order to make a bona fide effort to achieve, at a minimum, the goal of 35% LSDBEs participation in the Joint Venture's Adjusted Development Budget of \$66.8 million (the "35% Goal"). The 35% Goal estimated to be \$23.4 million is to be achieved in the Joint Venture construction of a new commercial building (including, but not limited to, pre-construction activities), maintenance and security, including janitorial, refuse collection, provision of supplies and other similar post-construction activities relating to the Project, in accordance with the following provisions.

- A. The Joint Venture shall utilize the resources of the Office of Local Business Development ("OLBD"), including the Local Business Opportunity Commission's Directory of Certified Local Small and Disadvantaged Business Enterprises, and periodic updates, as the primary referral sources for LSDBEs. The primary contact for such referrals shall be the Director of the Office of Local Business Development (the "Director").
- B. The appropriate representatives of the Joint venture who negotiate, sign and are responsible for the implementation of the Memorandum of Understanding with the OLBD agree to meet with the Joint Venture procurement and project officers to explore and develop

ways for achieving the 35% Goal.

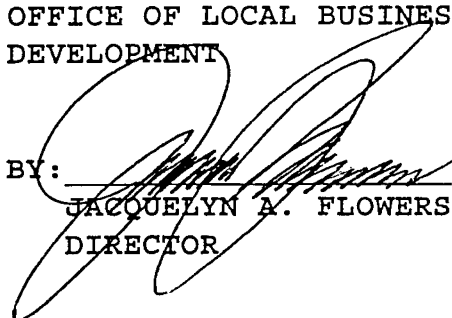
- C. The Joint Venture agrees to make a continuing bona fide effort to utilize LSDBEs for certain goods and services as may be required by the Joint Venture to conduct its daily operations and understands that such efforts will accrue toward the 35% Goal.
- D. Not later than (45) days following award of a contract for construction of the first phase and each subsequent phase of the project, the Joint Venture agrees to submit a Local Business plan (Attachment A) to OLBD for approval, which plan shall be incorporated in and made a part of this Agreement.
- E. Not later than thirty (30) days following the filing of an application for a building permit, the Joint Venture will submit to OLBD a more extensive plan listing all of the projected procurement items, quantities and estimated costs, bid opening and closing dates, and start-up and completion dates. This plan should indicate whether any items will be bid without restriction in the open market, or limited to LSDBEs certified by the Local Business Opportunity Commission.
- F. The parties hereto understand and agree that the means of achieving the 35% Goal may vary according to the types of goods and services contracted for and the current availability of Certified LSDBEs. However, the Joint Venture agrees to make a bona fide effort to achieve, at a minimum, the 35% Goal over the life of the project.
- G. The Joint Venture further agrees to submit quarterly LSDBE contracting and subcontracting reports to OLBD no later than fifteen (15) days after the end of each calendar quarter; the quarterly report periods shall begin on January 1, April 1, July 1, and October 1. The quarterly report shall be submitted on a form provided by OLBD (Attachment B). These reports should include detailed documentation of outreach efforts to LSDBEs in order to determine bona fide efforts.

2. The GC will publish public notices in a newspaper of general circulation in the District of Columbia and in one or more other newspapers serving the District of Columbia local business community, soliciting bids for products or services being sought, and will allow a reasonable time for all bidders to respond to invitations/requests for bids.
3. The GC will contact OLBD to obtain a current listing of all LSDBEs qualified to bid on major procurement as they arise.
4. The GC will negotiate with all bidders pre-qualified by the Joint Venture and the GC, including LSDBEs, to obtain each bidder's best and final price as understood in the marketplace.
5. The GC will not require that LSDBEs provide bonding on contracts with a dollar value less than \$100,000, provided that in lieu of bonding the GC may accept a job specific certificate of insurance.
6. The GC will design and include in all contracts and subcontracts a process for dispute settlement. This process shall incorporate an opportunity for the presentation of documentation involving the work performed and invoices regarding requests for payments. Included in the contract shall be a mutually agreed upon mediator or provisions for arbitration in accordance with the rules of the American Arbitration Association.
7. The GC and subcontractors shall strictly adhere to their contractual obligations to pay all subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the general contractor, he is to immediately notify the subcontractor and advise as to the date on which payment can be expected.

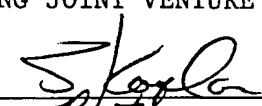

8. The GC commits to pay all subcontractors, including LSDBEs, within fifteen (15) days following the GC's receipt of a payment, which includes funds for such subcontractors, from the Joint Venture. The Joint Venture agrees to require the project manager to establish a procedure for giving notice to the subcontractors of the Joint Venture payments to the GC.
- M. In order to encourage the Joint Venture to develop creative, cost competitive ways in which to meet its 35% Goal, OLBD will give credit negotiated by the parties for the opening up of opportunities in areas not traditionally provided to LSDBEs and/or expansion of opportunities in existing areas.
- N. If at the end of the first calendar quarter following the issuance of a building permit, the Joint Venture is unable to comply with the proposed LSDBEs utilization plan for the Project, representatives of the Joint Venture and the Director of OLBD shall confer with a view toward adjusting goals and strategies to extend the time of performance based on facts and circumstances.

DATE THIS 9th DAY OF October, 2001

OFFICE OF LOCAL BUSINESS
DEVELOPMENT

BY: 
JACQUELYN A. FLOWERS
DIRECTOR

COMMERCE BUILDING ASSOCIATES,
A JOINT VENTURE AND RIDDELL
BUILDING JOINT VENTURE

By: 
Its: 

By: _____
Its: _____

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF LOCAL BUSINESS DEVELOPMENT



ATTACHMENT A

CONTRACTING AND SUB-CONTRACTING PLAN

IRB CLIENT/PRIVATE DEVELOPER: _____

ADDRESS: _____

TELEPHONE: _____ FAX: _____

TOTAL ESTIMATED COST OF CONTRACT(S): \$ _____

TOTAL ESTIMATED AMOUNT TO BE SUB-CONTRACTED \$ _____

TOTAL ESTIMATED LSDBE PARTICIPATION \$ _____

PERCENTAGE OF TOTAL LSDBE CONTRACTS(S) (%) _____

NAME OF LSDBE LIAISON: _____

ADDRESS: _____

TELEPHONE: _____ FAX: _____

NAME OF GENERAL/PRIME CONTRACTOR
AND/OR CONSTRUCTION MANAGER: _____

ADDRESS: _____

TELEPHONE: _____ FAX: _____

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF LOCAL BUSINESS DEVELOPMENT



ATTACHMENT C

PRIVATE SECTOR PROGRAM MANAGEMENT

INDUSTRIAL REVENUE BOND AND PRIVATE DEVELOPMENT
PROJECTS MONITORING PROGRAM

AREAS OF PROCUREMENT IN WHICH LSDBE UTILIZATION
GOAL CAN BE ACHIEVED

General Construction
Architectural and Engineering Services
Site Improvements/preparation
Pre-Construction and Post Construction Activities
Environmental Impact Studies
HVAC Service/Maintenance
Interior Design
Printing Services, Blueprints, Brochures, etc.
Building/Facility Management Services
Building Supplies
Roofing Repairs
Trash Removal
Sprinkler Systems
Energy Management
Water Treatment
Office Supplies
Moving Company
Janitorial Services and Supplies
Office Furniture Lease/Purchase
Office Equipment Lease/Purchase Maintenance
Vending Equipment and Supplies
Catering and Food Service Equipment
Cable Television Systems Technician
Antenna Systems
Temp Help Agency
Courier/Messenger Services
Telephone System Technician

con't 2 - Attachment C

**Sound Systems Technician
Window Washing
Security Services/Systems
Computer Equipment/Maintenance
Carpet Leasing
Carpet Cleaning
Recycling Programs
Fuel Oil Company
Floral Arrangements Decorator
Towing Company
Legal Services
Advertising and Graphic Design
Public Relations Services
Accounting Services
Insurance Agent
Bank/Financial Institutional Depository
Pest Control Firm
Plant Maintenance
Security Guard Company
Uniform Rental Firm
Snow Removal Firm
Grounds Maintenance
Fire Supply/Equipment
Electrical Supplies
Locksmith
Electrician
Plumber
Caterer
Paint Supplies
Boiler Maintenance & Supplies
Water Treatment
General Maintenance
Fencing
Sinage
Food Service Equipment Repair
Lighting
Water Removal
Parking Management
Tools/Purchases & Rentals
Carpentry
Generator Repairs & Supplies
Motor Parts & Repairs
Printing
Minority/Women-Owned Banks**

con't 3 – Attachment C

Paper Products (Janitorial)

Audio/Visual Equipment

Copiers

Bottled Water Service

Bond/Computer Paper

Computer Software Development

Telecommunications Support Service

Preventative Maintenance

Landscaping

Window Repairs & Supplies

Computer Supplies

Maa/Irb/psdp/0627'01****

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF LOCAL BUSINESS DEVELOPMENT



COMMERCE BUILDING ASSOCIATES, A JOINT VENTURE
AND
RIDDELL BUILDING JOINT VENTURE

1700 K STREET, NW, WASHINGTON, D.C. PROJECT
ZONING COMMISSION CASE No.: 01-07C
LOTS 851 AND 56, SQUARE 126 DEVELOPMENT (PUD)

PRELIMINARY BUDGET ESTIMATE OF SEVELOPMENT COSTS

I. Construction (Hard Costs) :

Environment	\$ 450,000	
Site Work	2,200,000	
Shell Building	32,800,000	
Tenant Improvement	19,250,000	
Parking Garages	<u>9,100,000</u>	
Total Construction Cost		\$63,800,000

II. Soft Cost Budget Estimate:

Design & Engineering	\$ 3,000,000	
Financing Costs	17,000,000	
(constr. interest, CM & Developer Costs & Fees)		
Legal, Accounting & Insurance	700,000	
Project Administration	500,000	
Operation and Promotions	350,000	
Real Estate Taxes	3,700,000	
Leasing Commissions	8,300,000	
Contingency	<u>5,200,000</u>	
Total Soft Costs:		<u>\$38,750,000</u>

Total Development Budget: \$102,550,000

III. ESTIMATE CERTIFIED LOCAL, SMALL AND DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION IN THE PROJECT

Total Development Budget: **\$102,550,000**

Less:

Financing Costs	\$17,000,000
Legal, Accounting & Insurance	700,000
Project Administration	500,000
Operations and Promotions	350,000
Real Estate Taxes	3,700,000
Leasing Commissions	8,300,000
Contingency	<u>5,200,000</u>

Total Adjustments: **\$ 35,750,000**

Adjusted Development Budget: **\$ 66,800,000**

Projected Development Budget Available for:
LSDBE's Participation in the Project **\$66,800,000**

Certified LSDBEs Percentage of the Adjusted
Development Budget: **35%**

Estimated 35% Certified LSDBEs Participation:
in the Development Budget **\$23,380,000**

WHEREAS, Alfred L. Bennett and Bertha I. Kaplan, as joint tenants, (hereinafter designated as parties of the first part), are the owners in fee simple of Original Lots 28 and 30 in Square 126, Lots 47 and 48 in Redfern's subdivision in said square, as per plat recorded in Liber W.B.N. folio 317 of the Records of the Office of the Surveyor of the District of Columbia, and part of Original Lot 27 in said Square, assessed as Lots 47, 48, 825, 826, 827 and 828 in said Square 126:

AND WHEREAS, Robert O. Scholz, Rose A. Koerber, Maury Young, Eugene Young, Jr., Robert Young, Richard D. Barr, Barbara B. Luchs, Carol B. Fischer, Bertha I. Kaufman, Ruth I. Baer, and National Savings and Trust Company, as Trustees under the Will of David A. Baer, deceased, (hereinafter designated as parties of the second part), are the owners in unequal shares, of all of Original Lot 31 in said Square 126:

AND WHEREAS there is presently existing in the rear of said properties a public alley a portion of which it is the desire of the said parties of the first part to have closed:

AND WHEREAS in consideration of the grant and covenant hereinafter contained, the said parties of the second part have agreed to consent to the closing and relocation of said alley:

NOW THEREFORE, in consideration of the premises and the sum of Ten Dollars to each in hand paid before the signing and sealing of these presents, the parties of the first part do hereby grant unto the parties of the second part, their heirs, successors and assigns, in fee simple, a perpetual easement for light and air over and across the following described property, namely:-

Part of Original Lot 30 in Square 126, described as follows:- Beginning for the same at a point in the South line of said Lot 30 distant 98.50 feet West from the West

*with the right reserved to build, if required by the District of Columbia Building Department, a roof over the steps leading to the basement without interference to present windows of the building owned by the parties of the second part.

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line of Seventeenth Street, thence North 5 feet, thence East 35.50 feet, thence South 5 feet to said South line of Lot 30, thence West 35.50 feet to the place of beginning;

and the said parties of the first part do hereby covenant and agree that when a building is erected upon said Lots 47, 48, 825, 826, 827 and 828, the South face of those portions of the South wall of said building as shall face windows now open in the building erected on said Original Lot 31, shall be constructed of a light colored brick.

IN TESTIMONY WHEREOF on this 17th day of December 1953, the said parties hereto of the first part have hereunto set their hands and seals; the said Robert O. Schols, Rose A. Koerber, Maury Young, Eugene Young, Jr., Robert Young, Richard D. Barr, Barbara B. Luchs, Carol B. Fischer, and Bertha I. Kaufman have hereunto set their hands and seals; the said Ruth I. Baer as Trustee under the Will of David A. Baer, has hereunto set her hand and seal, and the said National Savings and Trust Company, as Trustee as aforesaid, has caused these presents to be signed with its Corporate name by J. Fontaine Hall its Vice President and attested by Nelson J. Foster its Secretary and its Corporate Seal to be hereunto affixed, and does hereby constitute and appoint J. Fontaine Hall its true and lawful Attorney in fact for it and in its name to acknowledge and deliver these presents as its act and deed.

[Signature] Seal
[Signature] Seal
[Signature] Seal
 R.K. *[Signature]* Seal
 R.A.B. *[Signature]* Seal
 R.I. *[Signature]* Seal
[Signature] Seal
[Signature] Seal
 Barbara B. Luchs Seal
 Carol B. Fischer Seal
 Bertha I. Kaufman Seal
 Ruth I. Baer Seal
 Trustee



Attest:
[Signature]
Secretary

NATIONAL SAVINGS AND TRUST COMPANY, Trustee,
BY *[Signature]*
Vice President and Trust Officer

104

DISTRICT OF COLUMBIA:

To wit:

I Dorothy T. Rie
a Notary Public in and for the
said District

do hereby certify that

ALFRED L. BENNETT, CHARLES I. KAPLAN, ROBERT O. SCHOLZ, ROSE A. KOERBER, MAURY YOUNG, EUGENE YOUNG, JR., ROBERT YOUNG, RICHARD D. BARR, BARBARA B. LUCHS, CAROL B. FISCHER and BERTHA I. KAUFMAN and RUTH I. BAER as Trustee under Will of David A. Baer, deceased,

parties to a certain Deed bearing date on the 22nd day of December A.D. 1953, and hereto annexed, personally appeared

before me in said District ALFRED L. BENNETT, CHARLES I. KAPLAN, ROBERT O. SCHOLZ, ROSE A. KOERBER, MAURY YOUNG, EUGENE YOUNG, JR., ROBERT YOUNG, RICHARD D. BARR, BARBARA B. LUCHS, CAROL B. FISCHER, BERTHA I. KAUFMAN and RUTH I. BAER,

being personally well known to me as the persons who executed the said Deed and acknowledged the same to be their act and deed.

GIVEN under my hand and seal this 22nd day of December, A.D. 1953.



Dorothy T. Rie
Notary Public, D.C.

_____ }
DISTRICT OF COLUMBIA: _____ }

To wit:

I, Arthur E. Hack _____, Notary Public _____,
in and for the District _____ aforesaid, do hereby certify that
_____ J. Fontaine Hall _____ who is personally well
known to me to be the person named as Attorney in fact in the aforesaid and annexed
Deed dated the 22nd day of December _____, A.D. 1953, to
acknowledge the same, personally appeared before me in the District _____
_____ aforesaid, and as Attorney in fact as aforesaid, and by
virtue of the power and authority in him vested by the aforesaid Deed, acknowledged the
same to be the act and deed of NATIONAL SAVINGS AND TRUST COMPANY, Trustee
under Will of David A. Baer, deceased, _____
_____ the Corporation grantor _____ therein, and delivered the same as such.

Given under my hand and official seal, this 27 day of December _____



Arthur E. Hack
Notary Public, D.C.

**CHARLES E. SMITH COMMERCIAL REALTY****2345 CRYSTAL DRIVE ■ CRYSTAL CITY ■ ARLINGTON, VIRGINIA 22202 ■ 703-920-8500**

November 26, 2001

Via Facsimile (202) 419-2859

Carolyn Brown
Holland & Knight LLP
2099 Pennsylvania Ave., NW
Suite 100
Washington, DC 20006-1816

Re: 1700 K Street – Rental Rates

Dear Carolyn:

In an effort to better explain the rental rates for the proposed new 1700 K Street building, we offer the following information:

The rental rates in the project pro forma for the new building were generated based on current market rental rates along the K Street corridor for this type of building. These projected rents were (and are) estimated well before we had a specific building design approved. Given the prominence of the site, and the once in a lifetime opportunity for the Owner's to re-position the asset, they decided that any new building would have a Class "A" design along with the market demanded Class "A" systems, services and amenities. Accordingly, the market rental rates projected at the time for a Class "A" building at that location followed suit.

I think a little history of what has happened since the initial inception of the project to the architecture of the building as it relates to the projected rental rates is in order.

Originally, the Owner's had requested a prominent local architectural firm with whom they had worked with in the past to design a new building at the corner of 17th & K Streets. The design schemes provided were not what the Owner's had envisioned for this special site. It was decided to open up the architectural playing field for other design possibilities. Therefore, in early summer of 2000 we interviewed seven (7) highly respected architectural firms (3 local & 4 national) and ultimately chose the world-renowned firm of Pei Cobb Freed & Partners (PCF). This decision was largely based on PCF's proven track record of designing landmark buildings reflecting the importance of their location.

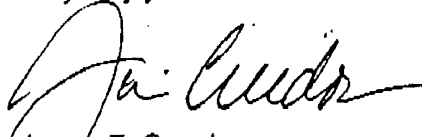
The projected rental rates for the building did not go up or down based upon the design as we went out into the tenant market. From the project's inception we have been marketing a Class "A" product to the tenant market. As the design drawings continue to develop, we have more information to provide the Tenant's to help them decide about a prospective lease. Obviously if we could increase the market rental rates based on the latest design we would, but the market will bear only what the market will bear for this type of product. This is still a location driven business and being located at this corner with the park views in a Class "A" building sets the projected rental rates.

PCF responsibly and correctly took into consideration the architecture and materials of the historic buildings that front Farragut Square as part of the exterior skin of the new building. Unfortunately, we do not get any increased rent based on the cost to design and construct our building to be sensitive of our surrounding neighbors. For example, in one of the first design presentations to a potential major tenant, they could not understand why we were obstructing the view outside to Farragut Square with granite piers on the 17th Street elevation and they requested the K Street glass curtainwall be continued to the 17th Street side of the building. This dialogue led to a more realistic design solution for both parties by widening the windows (added cost) to approximately fifteen feet from ten feet between the granite piers. The example being the reason the architect proposed granite piers and full height windows on the 17th Street elevation is to architecturally soften the elevation along the park from the exterior. These design considerations add greatly to the cost of construction, yet the prospective Tenant cares more about the view lines to the park from the inside the building than how the building interacts with surrounding properties. Even though we have an outstanding building design, it certainly does not translate into more rent for the building in this instance.

We hope this helps to clear up the questions regarding the rent versus architecture issue.

Please do not hesitate to call me if you have any further questions on this matter.

Very truly yours




James E. Creedon
Senior Vice President, Commercial Leasing
Charles E. Smith Commercial Realty

MEMORANDUM

November 27, 2001

TO: M. Carolyn Brown, Esq.

FROM: Tanja H. Castro, Esq. 

RE: 1700 K Street, NW Project
Real Property Tax Projection

You asked for an estimate of the real property tax revenue to the District of Columbia if the above project is developed as a matter of right. The project will be located in what is currently designated square 126, lots 56 and 851 with street addresses of 1700 K Street, NW and 1730 K Street, NW. These two properties are currently assessed for tax year 2002 at \$19,167,000 and \$38,407,000 respectively. At the current tax rate of \$1.85, the taxes generated by the two existing properties are \$354,589.50 and \$710,529.50 for a total of \$1,065,119.00.

Development of the site as a matter of right would permit an office building with 334,850 square feet at a 10 FAR. The matter of right development would include approximately 155 parking spaces. Real property assessments of large office buildings in the District are typically based upon both the capitalization of income approach and the comparable sales approach. Sales over the last two years of well located large new class A office buildings in the City have ranged from \$332 to \$416 per square foot. Based upon these sales and the current trends in the market, we estimate that this property, developed as a matter of right, would be assessed at approximately \$390 per square foot or \$130,591,500. The annual taxes payable on this assessment at \$1.85 would be \$2,415,942.75, or an increase over the existing revenue of \$1,350,823.75.

Please note that the applicable tax rate for tax year 2002 is set at \$1.85. However, this rate may change in subsequent tax years as a result of action by the Council of the District of Columbia. In addition, market conditions in the future may change having a positive or negative impact on the assessed value of the proposed development.