ShawPittman LLP

A Limited Liability Partnership Including Professional Corporations

PAUL TUMMONDS
202-663-8873

June 13, 2003

D.C. OFFICE OF ZONING
03 JUN 23 AM 9:00

By Hand Delivery

Jack Everett
Glover Park Citizens Association
3902 W Street, N.W.
Washington, DC 20007

Nancy MacWood
Advisory Neighborhood Commission 3C
3417 Woodley Road, N.W.
Washington, D.C. 20016

Melissa Lane
Advisory Neighborhood Commission 3B
4114 Davis Place, N.W. #106
Washington, D.C. 20007

Re: Residential Development on the St. Luke's Church Property - PUD and Zoning Map Amendment Application – Z. C. Case No. 02-50 Development and Construction Agreement

Ladies and Gentlemen:

Pursuant to the request of Woody Bolton, I have attached the final version of the Development and Construction Agreement that each of you have reviewed and approved. Please sign the Agreement and return it to me at your earliest convenience. As soon as I receive everyone's signature, I will forward a fully executed copy of the Agreement to everyone.

Please call me if you have any additional questions or comments.

Sincerely,

Paul Tummonds

Enclosure
cc: Woody Bolton

Document #: 1331784 v.1

ZONING COMMISSION
District of Columbia
Case 02-50
Exhibit 33

ZONING COMMISSION
District of Columbia
CASE NO.02-50
EXHIBIT NO.33

DEVELOPMENT AND CONSTRUCTION AGREEMENT

THIS DEVELOPMENT AND CONSTRUCTION AGREEMENT ("**Construction Agreement**") is made this _____ day of _____, 2003, by and between St. Luke's Condominium, LLC ("**SLC**") a District of Columbia limited liability company, its successors and assigns and Advisory Neighborhood Commission 3B ("**ANC 3B**"), Advisory Neighborhood Commission 3C ("**ANC 3C**"), and the Glover Park Citizens Association ("**GPCA**") (collectively, the "Neighborhood Organizations").

RECITALS

WHEREAS, as a condition of the Zoning Commission's approval of the SLC application for a Planned Unit Development and Zoning Map Amendment application for the property located at the intersection of Wisconsin Avenue and Calvert Street, NW, Lot 815, Square 1935 (the "**Subject Site**"), SLC agrees to enter into the following Construction Agreement with the members of the Neighborhood Organizations, upon the terms below; and

WHEREAS, the members of the Neighborhood Organizations and SLC seek to mitigate any adverse impact on the surrounding neighborhood resulting from construction activity related to SLC's plans to construct a residential development (the "**Project**") on the Subject Site.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the receipt of which are hereby acknowledged, the parties hereto, hereby agree as follows:

1. **Communication**.

   a. **SLC Representative.** SLC shall designate a representative ("**Representative**") to be the key contact for interaction with the Neighborhood Organizations and members of the community. The Representative will have a local office and be accessible during all business hours. At any time construction activity is occurring on the Subject Site, the Representative or his/her designee shall be available on-site or by telephone to receive complaints or other communications from the Neighborhood Organizations or members of the community. The name and work telephone number of the Representative or his/her appointed designee shall be conspicuously posted on the Subject Site and shall be readily available to members of the community. In addition, a name and telephone number of a person designated by SLC to contact in case of emergency during hours in which no construction activity is occurring shall be readily available to members of the community.

b. **SLC Representative Duties.** The Representative and his/her designee will be able to answer questions and receive comments about the site activities, address any concerns the Neighborhood Organizations and members of the community might have throughout the construction process, and have authority to remedy promptly violations of this Construction Agreement and enforce its provisions. The Representative, designee and emergency contact shall:

(i) receive notice of violations of this Construction Agreement;

(ii) respond as soon as possible, to the person who has reported the violation, and to the Neighborhood Organization Contact Person (described below);

(iii) act to remedy the violation as soon as possible; and

(iv) contact ANC 3B and ANC 3C and relate complaint, remedy and time frame for resolution.

c. **Neighborhood Organization Contact Person.** In turn, all of the Neighborhood Organizations will designate a single contact person ("**Contact Person**"), who may change from time to time, to represent the Neighborhood Organizations. The initial Contact Person will be determined prior to the start of construction activity on the Subject Site. The Contact Person will receive and disseminate information from SLC to the community. SLC shall provide to the Contact Person, and keep updated, the names of and pertinent information about the Representative, the designee and emergency contact, including their home phone numbers and beeper numbers, as appropriate.

2. **Construction**. SLC shall require that all their personnel and vendors, including supply and service vendors, will comply with all applicable District of Columbia Municipal Regulations applicable to hours of work, noise, dirt, trash, and public health and safety. The following is a discussion of construction-related issues and shall be binding on SLC, its subcontractors and any successors and/or assigns of SLC.

a. **Permits**. SLC will secure all permits that are required to complete the Project.

b. **Site Management**.

(i) SLC will erect and maintain construction fencing and barricades in order to screen and secure the site during the construction process. SLC and its contractors will work with the members of the Neighborhood Organizations and the Department of Consumer and Regulatory Affairs to maintain temporary storm water management systems throughout the Project's construction until such time as the permanent facilities are constructed, approved and functioning such that there shall be no adverse water impacts on the adjacent neighborhood.

(ii) A minimum amount of lighting, directed away from residential properties, will be provided at the Subject Site at night. These lights will be sufficient to provide necessary security and to comply with federal and municipal safety standards.

c. **Cleanliness**. SLC will remove rubbish and construction debris continuously during the construction period during the normal construction workday and during periods of weekend construction work. In addition, SLC will monitor and police the construction site daily or more often as required to ensure cleanliness. SLC will also undertake a program of pest control to ensure that no increase in pest activity occurs during the construction period. All excavation or back fill trucks will be covered before proceeding from the Subject Site onto city streets. Dust and debris will be removed from Calvert Street on an as needed basis.

d. **Work Hours**.

(i) The normal construction work week will be Monday through Friday from 7:00 a.m. until 7:00 p.m., and Saturday from 8:00 a.m. until 4:00 p.m. All trucks for delivery of all materials, construction or otherwise, will arrive, depart and operate on the Subject Site only during the foregoing hours. There will be no queuing of construction related vehicles or arrival of workers prior to stated work hours.

(ii) SLC will make good faith efforts to limit work that is likely to disturb the residents of the adjacent neighborhoods to weekdays, except where limitations on work during the week require work on Saturdays to meet the requirements of construction teams for a 40 hour work week.

(iii) SLC will not permit any activity on the Subject Site that requires the movement of heavy vehicle traffic or other significant traffic, to or from, the Subject Site or which generates sound levels in excess of sixty decibels (60 db) or otherwise is likely to significantly disturb the residents of the adjacent neighborhoods prior to 7:00 AM or after 6:30 PM on weekdays and prior to 9:00 AM or after 4:00 PM on weekends.

e. **Contractors and Subcontractors.** SLC will require that all contractors and subcontractors be contractually required to follow the terms of, and comply with, the policies set forth in this Development and Construction Agreement. SLC will also require that all contractors and subcontractors use only licensed vehicles and drivers and that they comply with all DC traffic laws and regulations.

f. **Traffic, Loading, and Parking.**

(i) All construction related vehicular access to the Subject Site shall be from Wisconsin Avenue and Calvert Street west of 36th Street and such construction related traffic will not traverse Fulton Street, Edwards Street, Davis Street, Observatory Circle, 35th Place, 36th Street, or 36th Place. Construction related vehicles are prohibited from traveling east or west on neighborhood or connector streets between 42nd Street and Connecticut Avenue from Davis Street to Rodman Street. Massachusetts Avenue is excepted.

(ii) SLC will use its best efforts to ensure that construction related traffic will not impede rush hour traffic on Wisconsin Avenue and Calvert Streets, that no lanes on either Wisconsin Avenue or Calvert Streets will be closed or blocked before or during construction and that all queuing or staging of construction vehicles will occur on the Subject Site and not on adjacent streets. A flagman will be assigned to expedite movement of construction related traffic, if any consistent traffic backups occur on Wisconsin Avenue.

(iii) Parking for all construction workers will be provided for on the Subject Site. No construction related parking will be permitted on neighborhood streets.

3. **Pre-Construction Surveys.** SLC shall perform pre-construction surveys of all the homes on the south side of Davis Street, N.W. that are immediately adjacent to the Subject Site. Such surveys shall provide the parties a reference point from which to determine the effect of the construction work on the Subject Site on the surveyed properties and the improvements thereon. The surveys shall be performed at SLC's sole cost and expense. All reports generated as a result of the surveys shall be provided to both SLC and the surveyed property owner. If a surveyed property owner believes that damage has occurred as a result of construction activity on the Subject Site, such property owner shall notify SLC of the purported damage. SLC agrees to work with all surveyed property owner(s) to achieve a prompt resolution to any complaints regarding property damage.

4. **Condition of Zoning Commission Approval**. This Development and Construction Agreement shall be submitted as part of SLC's PUD and Zoning Map Amendment application to the Zoning Commission and shall be incorporated in and become a condition of any Zoning Commission approval for the Project.

5. **Remedies**. This Construction Agreement does not limit any common law or statutory rights or remedies available to any person relating to damages sustained to person or property attributable to construction activities on the Subject Site.

6. **Severability**. This Construction Agreement and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the District of Columbia. If any term, provision, covenant or agreement contained herein, or the application thereof to any person or circumstances, shall be held to be invalid, illegal or unenforceable, the validity of the remainder of this Construction Agreement or the application of such term, provision, covenant or agreement to the persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

7. **Authority to Execute**. Each of the parties executing this Construction Agreement represents and warrants to each of the other parties hereto that: (i) it has the full power and authority to enter into this Construction Agreement and to consummate the transaction described herein without obtaining any further approvals or consents, and (ii) the entering into of the Development and Construction Agreement will not constitute or result in a violation or breach by any such party of any judgment, order, writ, injunction or decree issued against or imposed upon it or any agreement to which it is a party or by which it is bound.

8. **Counterparts**. This Development and Construction Agreement may be executed in counterparts and via original or facsimile signature.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have signed and delivered these presents as their own free act and deed as of the date and year first herein above written.

ST. LUKE'S CONDOMINIUM LLC, a District of Columbia Limited Liability Company

By: _____
John Wood Bolton, Jr.
Member

ADVISORY NEIGHBORHOOD COMMISSION 3B

By: _____

Its:

ADVISORY NEIGHBORHOOD COMMISSION 3C

By: _____

Its:

THE GLOVER PARK CITIZENS ASSOCIATION

By: _____

Its:

Document #: 1317048 v.4

NOWCC | National Older Worker Career Center

3811 North Fairfax Drive, Suite 900
Arlington, VA 22203
www.nowcc.org

FAX COVER SHEET

Date: 6/23/03

Number of pages including cover sheet: 8

To: Mr Alberto Bustidy
B3A

Phone:

Fax: 202-727-6072

CC:

From: J. Everett
Payroll Department, Mid-Atlantic Field Office and DC Metro Field Office

Phone: 703-558-4200

Fax: 703-243-0706

REMARKS: ☐ Urgent ☐ For your review ☐ Reply ASAP ☐ Please comment

Glover Park Cit. Assn approval

☐ ORIGINAL WILL NOT FOLLOW
☐ ORIGINAL WILL FOLLOW VIA REGULAR M
☐ ORIGINAL WILL FOLLOW VIA MESSENGER
☐ ORIGINAL WILL FOLLOW VIA FEDERAL EXPRESS