HAMILTON AND HAMILTON, LLP
ATTORNEYS AT LAW
1775 PENNSYLVANIA AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20006-4605

(202) 463-8282
FACSIMILE (202) 463-7282
EMAIL: MAILBOX@HAMILTONLAW.COM
WWW.HAMILTONLAW.COM

SUITE 204
401 EAST JEFFERSON STREET
ROCKVILLE, MARYLAND 20850

SUITE 201
400 NORTH COLUMBUS STREET
ALEXANDRIA, VIRGINIA 22314

MICHAEL A. CAIN
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MEMBER D.C. AND MARYLAND BARS

WRITER'S DIRECT EMAIL: MAC@HAMILTONLAW.COM

June 15, 2001

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**VIA HAND DELIVERY**

Ms. Sheila Cross Reid
Chairperson
District of Columbia Board of
Zoning Adjustment
Room 210
441-4th Street, N.W.
Washington, D.C. 20001

**Re: Application of The Phillips Collection, *et al.***
**BZA Case No. 16618**

Dear Ms. Reid:

On May 22, 2001 Stephen N. Gell, Esq. and I reported to the Board that The Phillips, certain of its neighbors and ANC 2B had reached an agreement in principle concerning the proposed expansion of The Phillips which is the subject of the application in Case No. 16618. I am pleased to report that the agreement in principle has become an agreement in fact. The parties also agreed to submit copies of the agreement in advance of the hearing so that Board members may have a chance to review it prior to June 26th. We will be asking the Board to adopt certain provisions of the agreement as conditions of its order if the Board sees fit to approve The Phillips' application.

We have not yet been able to produce enough copies of the plans which constitute Exhibit A to the agreement in a size appropriate for filing for the record. Accordingly, we will submit those copies early next week under separate cover.

BZA
Case No. 16618
Exhibit No. 165

Board of Zoning Adjustment
District of Columbia
CASE NO.16618
EXHIBIT NO.165

Thank you for your consideration. Please do not hesitate to call me on 202-463-8282 if you have any questions in this regard.

Sincerely,

HAMILTON AND HAMILTON, LLP

Michael A. Cain

MAC:rhs
Enclosures

cc: David S. Julyan, Esq.
Stephen Cochran, Office of Planning
Vince Micone, ANC 2B
Steven N. Gell, Esq.
Peter R. Kolker, Esq.
Christopher H. Collins, Esq.
Steven R. Johnson, Esq.
Jay Gates

# NEIGHBORHOOD COOPERATION AGREEMENT

This AGREEMENT, made as of this 13th day of June, 2001, by and among The Phillips Collection, a District of Columbia Nonprofit Corporation, (hereinafter referred to as "the Phillips" or "Phillips"), Advisory Neighborhood Commission 2B (hereinafter referred to as "ANC 2B"), and the undersigned neighbors of the Phillips Collection: Richard and Ingrid J. Suisman, Carol Ridker, Morton and Hannah Schussheim, The Society of Missionaries of Africa, Inc., and Solange MacArthur-Muller (hereinafter collectively referred to as the "Neighbors").

WITNESSETH:

WHEREAS, The Phillips is the owner of the Phillips Collection, a museum at 1600 21st Street, N.W., in the District of Columbia, which is formally known as Lots 74 and 819 in Square 66; and

WHEREAS, the Phillips has purchased an apartment building at 1618 21st Street, N.W., in the District of Columbia, which is a contributing building to the Dupont Circle Historic District, and which is formally known as Lot 827 in Square 66, (hereinafter referred to as "the Education Center"); and

WHEREAS, the Phillips seeks to expand the Phillips Collection by subdividing the lots and reconstructing and incorporating the Education Center into the Museum pursuant to BZA Application #16618; and

WHEREAS, Phillips is the applicant for approval of certain variances and special exceptions from strict application of the District of Columbia Zoning Regulations which are desirable for Phillips to carry out a plan for improvements to its existing museum buildings at 1600 - 21st Street, N.W., and its expansion into the adjacent property at 1618-21st Street, N.W. to establish an Education Center, pursuant to the application filed with the District of Columbia Board of Zoning Adjustment ("BZA") as BZA Application No. 16618, as hereinafter modified, (the "Project"); and

WHEREAS, the District of Columbia Historic Preservation Review Board and the Mayor's Agent for D.C. Law 2-144 have approved the Project; and

WHEREAS, the Neighbors are owners of real property within 200' of the Project and have been admitted by the BZA as parties in opposition to BZA Application No.16618; and

WHEREAS, many owners of property in the immediate vicinity of the Phillips and its expansion site have expressed concerns about the Project and its short and long-term affects on the existing residential portion of the neighborhood and, to that end, have created, or will create a representative committee (hereinafter known as the "Neighbors' Committee") for monitoring and enforcing the agreements herein; and

WHEREAS, ANC 2B has expressed concern about the proposed Project and its effect on the residential portion of the neighborhood; and

WHEREAS, the Phillips desires to address the various concerns raised by Neighbors and ANC 2B and recognizes the importance of living in harmony with its neighbors, and seeks to contribute toward the improvement of its surroundings; and

WHEREAS, the Phillips intends to minimize the quantity and impact of traffic on the community arising from its expanded operations; to operate with consideration for the neighborhood with respect to noise and other factors; and to maintain communication with Neighbors and ANC 2B to the fullest extent possible; and

WHEREAS, the Phillips desires to obtain the support of Neighbors and ANC 2B as necessary to fully implement the Project as modified under this Agreement; and

WHEREAS, the Phillips, Neighbors, and ANC 2B recognize the importance and necessity of working together closely to ensure, on a continuing basis, the compatibility of the proposed development with the qualities of the adjoining neighborhood.

NOW, THEREFORE, in consideration of the foregoing and of the agreements herein contained, and for other good and valuable consideration, as further described herein, the mutual receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**Design**

1. The Phillips agrees to build the Project substantially in accordance with the plans attached hereto as Exhibit A and incorporated herein (subject to minor adjustments), as they may be modified by the BZA and/or as may be necessary to complete the permit review process, provided that such modifications shall not increase the height or projection to the west compared to the plans shown on Exhibit A.

2. The Auditorium shall be rated to and have a capacity of not in excess of 180 persons. The use of the auditorium shall be restricted to Phillips-hosted art related events, authorized membership events, or use by Phillips staff. No outside party may make any use of the auditorium, except that the Phillips may allow neighborhood organizations to use the auditorium or other museum facilities for meetings.

**Operations**

3. The number of parties, dinners, receptions or other events occurring after 6:00 p.m. shall be limited as follows:

    a) There shall be no more than 65 events per year.

    b) Of the 65, no more than 36 may be over 100 guests.

c) Of the number over 100 guests, no more than 6 may be over 300 guests.

d) None may be over 500 guests.

e) The Annual Duncan Phillips Dinner is not included in the above limitations.

f) In addition to the above, the Phillips may allow neighborhood organizations to hold meetings of any size at any time.

g) The Sunday afternoon concerts and the Thursday night museum program are not included in these limitations.

4. The number of parties, dinners, receptions or other events ending prior to 6:00 p.m. shall be limited as follows:

a) There shall be no limitation on events up to 50 guests.

b) There shall be no more than 24 events for more than 50 guests.

c) Of the number over 50 guests, no more than 4 may be over 100 guests.

5. Administration:

a) The Phillips will store sufficient tables and chairs so that deliveries of such equipment will be minimized.

b) Evening events will be over by 10:00 p.m. and guests cleared by 10:30 p.m. (except the Duncan Phillips Annual Dinner) and there will be no pickup of equipment or supplies after 11:00 p.m.

c) The Thursday evening viewing hours will not be extended from their current termination of 8:30 p.m.

d) The Sunday afternoon concerts will not be extended from their current termination of 7:00 p.m.

e) There will be no simultaneous events.

f) The Phillips will share schedules with the Cosmos Club, will make good faith efforts to avoid holding large events at the same time as the Cosmos Club, and will encourage the Cosmos Club to reciprocate.

6. Deliveries to the Phillips

a) Trucks accessing the Phillips will not make deliveries from 21st Street.

b) Entry to the rear of the Phillips by catering or other delivery trucks accessing the designated loading berths shall be from Florida Avenue. Trucks shall exit the rear of the Phillips at Florida Avenue. Trucks will enter or exit onto 21st Street only in cases of safety or to relieve congestion in the alley (defined as the former public alley from 21st Street to Florida Ave) as determined by Phillips personnel within the spirit of this agreement. The Phillips will erect and maintain appropriate signs at the entrance to the 21st Street portion of the alley, the Florida Avenue entrance to the alley, and the rear of the Phillips.

c) The Phillips shall use best efforts to assure that delivery trucks and catering trucks accessing the Phillips will not be parked on or queued up in the alley at any time. At no time will ingress or egress to the garages serving 1622-4 and 1628 21st Street be blocked by reason of any actions within the control of the Phillips.

d) Recognizing that on rare occasions the Phillips may have no alternative to hindering the free flow of cars in or out of the Missionaries of Africa's garages, the parties agree that the Phillips may make arrangements acceptable to the Missionaries for the Missionaries to relocate temporarily-as many as 5 cars for the period beginning no later than 8 hours before and ending no earlier than 8 hours after such blockage. In calculating the eight hour segments, the hours of 10:00 p.m. to 7:00 a.m. will not be counted.

e) All loading and unloading of artworks, equipment, and supplies shall be at the rear of the museum except for delivery of art works by trucks larger than 24'. The Phillips will use its best efforts to (a) unload trucks larger than 24' at the rear and (b) unload those deliveries which must be made on 21st Street no earlier than 7:30 a.m.

f) One loading dock shall be maintained at all times for truck loading and unloading. Additionally, three loading spaces shall be maintained for three hours before a catered event and for the morning following a catered event. At no time shall vehicles other than catering and delivery vehicles use spaces that will be needed at the time for delivery vehicles.

g) Deliveries at the rear may not begin prior to 7:00 a.m. and shall be completed prior to 8:30 p.m.

h) Trucks parked in the loading berths shall not extend into the alley.

i) Vehicles servicing the Phillips shall not park or idle on 21st Street, Hillyer Place or Q Street or adjoining alleys, except for armored car service to the museum.

j) The portion of the alley from 21st Street to and including the rear of the Phillips shall be monitored by closed circuit camera.

k) The Phillips staff shall monitor and resolve illegal parking or vehicle blockage of the alley by vehicles accessing the Phillips.

l) Through contract or otherwise, the Phillips will advise its vendors and other delivery personnel of the agreed-to restrictions on alley and street usage, and will take all necessary and appropriate action to enforce compliance.

**Valet Parking**

7. The Phillips will maintain a contract with an established valet parking service. The contract shall show evidence that the parking contractor has secured agreements guaranteeing adequate off-street parking for Phillips events. Whenever possible, the Phillips will utilize parking space available on Cosmos Club property. The Phillips will encourage, for all events, the use of public transportation and may operate shuttle service to and from a garage. In addition, the Phillips will observe the following rules:

a) There shall be no on-street valet parking (including valet employee cars) on 21st, R or Q Streets, Hillyer Place or other non-arterials.

b) Valet drop off and pickup shall be in Hillyer Court at the rear of the Phillips when Cosmos Club parking is available for use by the Phillips. Otherwise valet parking shall be done on Q Street. If neither location is available, valet parking may occur on 21st Street. If the valet parking causes traffic or parking problems, the Liaison Committee will consider solutions and, if agreement is not reached, the matter may be submitted to Arbitration.

c) Invitations will encourage guests not to come by private car.

d) The Phillips will endeavor to maintain an agreement with the Cosmos Club to use its parking spaces when not otherwise in use.

**Use of 21st Street**

8. The Phillips will seek, and the parties will support official authorization for standard-size buses, minibuses, and school buses to use the Metrobus stop at Florida Ave. for pick-ups and drop-offs. When WMATA grants permission for the use of the Florida Ave Metrobus stop, buses, minibuses, and school buses accessing the Phillips shall be eliminated from 21st Street and Phillips will ensure that such vehicle operators are so instructed and will monitor and enforce compliance. The Phillips will support signs restricting buses and trucks over 6GTW/24' on 21st Street between Florida Avenue and Massachusetts Avenue. The following are exceptions to the above:

a) There may be a mini-bus drop-off zone for elderly and disabled at the entrance to the Goh Annex on 21st Street. Such vehicles shall not be permitted to loiter on 21st Street.

b) Larger trucks (*i.e.*, delivery trucks for Phillips special exhibitions or neighborhood moving vans) would require special permits and posted signs to use the portion of 21st Street between Q and R Streets. Signs will be posted as required.

c) With the support of ANC2B and after authorization from the city the Phillips may relocate two parking meters from in front of the Goh Annex to the "no parking entrance" in front of the Phillip's mansion

**Exits**

9. Exit from the Education Center onto 21st Street shall be through the main entrances to the museum through the Goh Annex except for emergencies.

**Parking**

10. No on-street parking shall be eliminated.

**Gift Shop**

11. The gift shops shall be constructed and operated as follows:

a) There shall be no more than one gift shop although it may be on two levels of the Education Center. A secondary temporary gift shop may be set up from time to time in connection with, and oriented to, special exhibitions.

b) On 21st Street, access shall be only from the main entrances to the museum. There shall be no entry through the outside door adjacent to the gift shop(s) in the Education Center.

c) The gift shops shall not be advertised separately from the museum in any medium except the Phillips' web site or in communications to members.

d) There shall be no signage for the gift shops outside the building. Hours may be posted on the same sign that posts museum hours. The gift shop's regular hours shall not be outside the Museum's regular hours.

e) This agreement does not restrict access to the gift shops to persons who also seek admission to the collection. However, the Neighbors and the Phillips both desire that use of the gift shops by persons not entering the collection not unduly impact parking and the movement of traffic on or near 21st Street. The Parties shall monitor the use of the gift shops by such persons and their parking practices. If parking or traffic problems are attributable to such persons, the Phillips will

discuss the matter with the Liaison Committee, review alternatives and take appropriate action. If a member of the Liaison Committee disagrees as to compliance with this provision, he or she may submit the matter to Arbitration.

**Café**

12. The Café shall be constructed and operated as follows:

    a) The Café may seat no more than 55.

    b) The Café may operate as a for-pay facility only during current museum operating hours, which are 10:00 a.m. to 5:00 p.m., Tuesday, Wednesday, Friday, and Saturday; 10 a.m. to 8:30 p.m., Thursday; and noon to 7:00 p.m., Sunday.

    c) Entrance to the Café from 21st Street may only be through the main entrances to the museum.

    d) There shall be no signage for the Café outside the building. Hours may be posted on the same sign that posts museum hours.

**Exterior (Sculpture Garden, etc.)**

13. There shall be no outdoor music, whether amplified or not, nor any amplified speech in the Sculpture Garden.

**Trash Collection**

14. Trash shall be collected as follows:

    a) Trash shall not be collected before 7:00 a.m. or after 7:00 p.m. and shall be collected at the rear of the Phillips. In addition, the Phillips shall use best efforts to have the trash truck avoid using the portion of the alley that abuts 21st Street.

    b) The Phillips will use its best efforts to coordinate trash pickup with the Cosmos Club and the Indian Embassy to reduce the use of the alley by trash trucks. In addition, the Phillips will provide the Missionaries of Africa with the opportunity to join in a multiple contract with the Phillips, et al., to reduce the cost and disruption of trash pickup.

**Enforcement and Liaison Committee**

15. On a monthly basis, by e-mail or letter, The Phillips shall provide the Liaison Committee an updated list of events planned for the following six months. The information shall include the date, times for beginning and ending, and type of event, as well as the projected number of attendees.

16. No later than October 1, 2001 the parties will establish a Liaison Committee which will include a representative of the Phillips, a representative of the ANC 2B and up to three representatives of the Neighbors' Committee. By October 30, 2001, the Liaison Committee will adopt rules for its operation consistent with the provisions of this agreement. If agreement is not reached on a final set of rules by October 30, 2001, the matter will be submitted to Arbitration. Except for accepting its rules, the Liaison Committee will have no enforcement authority, including seeking arbitration, prior to December 31, 2001. After that date, enforcement authority will phase in consistent with construction activities and as specified in this agreement.

17. The Phillips' representative to the Liaison Committee will have the authority to commit the Phillips with respect to its past and future conduct (*i.e.*, to acknowledge a problem, to commit to corrective measures to prevent recurrence, and to accept the decision of the committee). The members of the Liaison Committee will be provided with phone numbers of the Phillips' liaison personnel including a backup liaison contact.

18. The ANC will designate a member with primary responsibility over this project. The ANC will provide such authority to the member as is permitted by statute and by its customary rules and procedures so as to facilitate speedy participation and resolution of problems.

19. The Neighbors' Committee, which will be composed initially of Richard Suisman, Solange MacArthur-Muller and Timothy Boggs, or its designated representative will receive and screen complaints from neighbors of the Phillips alleging a violation of this agreement and communicate meritorious complaints to the Phillips prior to, during and after construction. The Neighbors Committee will select up to three individuals to serve as members of the Liaison Committee.

20. Before initiating a proceeding, the Neighbors' Committee or the ANC, as appropriate, will attempt to adjust and resolve the matter with the Phillips. The Phillips shall use best efforts to resolve the issue as promptly as possible. As part of such effort, the Phillips will consider modifying its operations in such a way as to avoid repetitive violations. If the issue is not resolved, the person or party raising the issue, or the Phillips, shall notify the Liaison Committee. The Liaison Committee shall attempt to resolve the problem within 30 days to the satisfaction of all members of the Liaison Committee. During this process, the Phillips, ANC 2B, and Neighbors are committed to working in good faith toward resolution of the problem. If the Liaison Committee cannot resolve an issue brought before it, any member of the Liaison Committee, may initiate arbitration.

21. The Liaison Committee will appoint an Arbitrator from time to time by mutual consent who will interpret and enforce the Agreement. The appointment will be renewable annually by consent but the Arbitrator will continue to serve until his successor is selected and qualified. The Arbitrator will recommend a successor before resigning.

22. On as expeditious a schedule as possible, the Arbitrator shall conduct a proceeding where, with minimum formality, the Arbitrator will hear and determine the complaints,

decide whether relief shall be granted and issue an appropriate order. The ruling of the Arbitrator shall be made within 30 days after conclusion of the hearing and shall be binding and conclusive and shall not be subject to appeal. It may be entered by any party as a judgment under D.C. Code §§16-4310, 4311 or 4312 and be enforceable through the Superior Court of the District of Columbia as provided by D.C. Code § 16-4313, as amended from time to time.

23. If the Arbitrator finds against the Phillips, it may impose penalties deemed appropriate by the Arbitrator, with consideration for the following guidelines:

    a) for a substantial violation (that is, other than a minor non-compliance) a fine of up to $1,000 per infraction for the first three infractions in any one calendar year; up to $2,000 per infraction for each of the next three infractions per year; and up to $4,000 per infraction for each subsequent infraction;

    b) a direction similar to an injunction or cease and desist order to the Phillips to refrain from certain conduct or to undertake certain conduct, consistent with the Agreement in cases of substantial and repeated violation; and/or

    c) The referral of a matter to arbitration does not preclude a party's seeking actual damages in court.

24. Penalties will be donated to a § 501(c)(3) organization(s) selected by the Neighbors' Committee and ANC2B.

25. If the arbitrator rules against the Phillips, the arbitrator's fees and the legal fees of the Neighbors' Committee and ANC 2B shall be paid by the Phillips. If such a proceeding results in a ruling in favor of the Phillips, the arbitrator's fees shall be paid one-half by the party which initiated the proceeding, and one-half by the Phillips, with each party bearing its own legal fees. However, if the arbitrator determines that the position of the initiating party was frivolous, the arbitrator may impose the Arbitrator's and Phillips legal fees on the party who initiated but did not prevail.

26. It is further understood that ANC 2B may independently bring forward its own concerns under District laws and regulations.

**Neighborhood and ANC2B Support**

27. The Neighbors and ANC 2B (consistent with its rules) will support in writing the Phillips' amended application before the BZA, and before the D.C. Historic Preservation Review Board, the Mayor's Agent for D.C. Law 2-144 and the Office of the Surveyor, if requested by the Phillips, provided it is consistent with Exhibit A and this agreement. Furthermore, they will advise Council members who communicated with the BZA of the neighbors' and ANC 2B's change in position. In addition, the Neighbors will support the alley closing before the Council of the District of Columbia and withdraw objections to financial assistance from the District through bond financing.

28. The Phillips will permit Solange MacArthur-Muller and the Missionaries of Africa and their transferees to be parties to the alley-closing covenant and require their approval for the covenant and for any subsequent changes in the covenant.

29. Neighbors' obligation to support the Phillips in any administrative proceeding after approval of any relief obtained from the BZA shall be contingent upon the Phillips' compliance with the terms and conditions of the Agreement, including any applicable District Rules and Regulations. Notwithstanding the foregoing, nothing contained herein provides any obligations or responsibilities on the part of Neighbors with regard to any development proposal or use of the site not described herein.

**Construction Period Matters**

30. The Phillips agrees to preserve as many trees along its 21st Street frontage as possible. Trees that are damaged and cannot be preserved will be replaced in accordance with District Regulations. Trees that are damaged need not be replaced until after conclusion or abandonment of construction.

31. The Phillips agrees to develop a rat control program in conjunction with the construction management plan.

32. The Phillips agrees to provide, as soon as completed, an engineer's report to the Liaison Committee and the Construction Consultant and ANC 2B on the effect of storm drainage both during and after construction on the properties in the area and to take remedial measures to assure that storm runoff due to the construction and the completed Project shall not damage Neighbors' homes or grounds.

33. The Neighbors' Committee may appoint a Construction Consultant, acceptable to the Phillips, and the General Contractor after August 1, 2001. If the Cosmos Club and the Embassy of India want to participate, with an appropriate contribution toward the cost, the Neighbors' Committee will enter into an agreement under which the Construction Consultant will represent them as well. Once selected, the Construction Consultant may not be discharged by the Phillips or the Contractor. The Phillips will contribute up to $50,000 to the cost of hiring the Construction Consultant and necessary experts reporting to him or her whose duties will be as follows:

    a) Monitor construction on a regular basis, as determined by the Neighbors and ANC 2B.

    b) Serve as an advisor to Neighbors' Committee, ANC 2B, the Cosmos Club, and the Embassy of India, (to the extent they want to participate) with respect to matters relating to construction at the Phillips.

    c) Advise the Phillips' Construction Contractor or other responsible parties of any violations of the agreement or of any construction activities that are likely to seriously and adversely affect the Neighbors and/or neighborhood.

d) Serve as a recipient of notices, information, warnings and other items of communication which affect or may affect the Neighbors or the neighborhood.

34. It is understood that, except where provided with final decision-making authority, the Construction Consultant will not replace, but will work in conjunction with, the Liaison Committee.

35. The Phillips agrees that during construction of the Project, the Phillips and its contractors shall be subject to the following rules and regulations:

a) Contractors shall work closely with the Neighbors and ANC 2B to minimize disturbances during construction to keep to a minimum noise, traffic, vibrations, air pollution, and other adverse effects from construction.

b) Trash shall not be collected before 7:00 a.m. or after 8:00 p.m.

c) No pile driving is expected but, should unforeseen circumstances warrant pile driving, the Phillips will notify the Neighbors at least two weeks in advance and provide them with the basis for the pile driving.

d) Construction workers shall avoid parking on 21st Street, Massachusetts to R, Hillyer Place, Florida Avenue and R Street. The Phillips will encourage use of Metro by such means as providing Metrocards to construction workers, facilitating use of carpools, or other centralized means of transporting workers to the site.

e) Contractors shall comply with the "Cooper Code", a plan governing truck traffic developed by Advisory Neighborhood Commission 2B and attached hereto as Exhibit B.

f) Vehicle and pedestrian access to the garages of 1628 and 1624 21st Street through the alley will at all times be open and unimpaired.

36. The Phillips shall provide the Neighbors' Committee and ANC 2B with a set of permit applications, plans, and other exhibits when filed and will provide the Neighbors' Committee and ANC 2B with copies of all building permits once issued.

37. The Phillips shall provide the Neighbors' Committee and ANC 2B with e-mail alerts or extra-net communications regarding any instances when construction is likely to produce considerably more noise than usual for construction or increased noise levels for an unusually long period.

38. The Phillips shall provide the Neighbors' Committee and ANC 2B with information regarding the AC and other air handling systems for the new and older parts of the Museum. Such systems shall not produce any greater noise than currently.

39. The Phillips shall provide bi-monthly progress reports or newsletters to the Neighbors' Committee and ANC 2B on the construction on the Property beginning on date of execution hereof.

40. The Phillips' contract(s) for demolition of 1618 21st Street N.W. and for the construction of the Education Center will provide that there will be no dynamite (or similar) blasting, and that excavation will be carried out in such a way as not to cause damage or settlement to any properties, but particularly the following properties: (a) the Missionaries of Africa, 1622-4 21st Street, N.W. and (b) the MacArthur-Muller residence, 1628 21st Street, N.W. (hereinafter referred to as "the Adjacent Properties").

41. The Phillips will provide letters from licensed geophysical and structural engineers addressed to the owners of the Adjacent Properties stating that these engineers have studied the plans and proposed construction techniques to be used for demolition and construction of the Phillips' project and they are of the opinion that the demolition and construction precautions to be taken by the contractors (which may include sheeting, shoring and underpinning or other approved methods, as necessary) will preserve the integrity of the Adjacent Properties and maintain them in the same condition they were in prior to the commencement of demolition and construction.

42. The Phillips will, prior to commencement of demolition, and after the Adjacent Properties have been fully examined and condition documented, execute an indemnification agreement in favor of the owners of the Adjacent Properties indemnifying and holding them harmless from and against any damages caused to either of these properties by the demolition and construction to be undertaken by the Phillips. The agreement will also indemnify for personal injury or property damage caused by the demolition/construction process in or about the Adjacent Properties. The Agreement will be substantially in the form attached as Exhibit C, but neither demolition nor construction will begin until that agreement has been executed. The Adjacent Property owners or either of them shall be entitled to enforce the provisions of the indemnification agreement in court rather through arbitration. The parties will review and respond to any such proposed agreement promptly. This paragraph shall also apply to properties designated on Exhibit D. The owners of the properties identified on Exhibit D hereto may participate in the program established by this paragraph by executing the form of agreement attached hereto as Exhibit C, provided that said agreement is executed and delivered to the Phillips within 30 days after presentation thereof to them for signature. If the space damaged by the Phillips' activities is unusable or uninhabitable, the Phillips will secure and pay for reasonable alternative space nearby until the damaged premises are satisfactorily repaired.

43. The Phillips agrees that during construction of the Project, contractors for the Phillips shall meet the goals set forth below. These goals may be modified if approved by the Phillips, the ANC, and the Construction Consultant representing the Neighbors' Committee (or the Neighbors' Committee's representative(s) to the Liaison Committee if there is no Construction Consultant at that time.) If agreement is not reached, the matter may be submitted to Arbitration as provided hereinafter.

a) Construction workers and equipment may not arrive prior to 7:00 a.m. Construction-related activities shall not start before 7:30 a.m. nor continue after 6:00 p.m.

b) Major machinery such as backhoes and front end loaders shall not start before 7:30 a.m. To the extent possible, the Phillips shall abate noise until 8:00 a.m.

c) Weekend exterior construction activity, if any, shall be confined to a period of 9:00 a.m. to 6:00 p.m. on Saturdays.

d) Contractors shall maintain a program of dust control as follows: periodic watering of soil, and daily cleaning of the open portions of Hillyer Court.

e) Contractors shall provide a "noise monitor" to ensure that diesel engines on trucks do not create an excessive level of noise while idling or during startup.

f) No construction staging shall occur on or adjacent to 21st Street. The sidewalk on the west side of 21st Street shall remain open for pedestrian traffic and the street, including the parking lanes shall remain open except during times when steel is being delivered to the construction site. It is the strong desire of the parties that concrete deliveries shall not be made on 21st Street.

g) The Phillips shall comply with the construction traffic plan to be developed between the contractor and the Construction Consultant. The Phillips shall carry out the plan so as to minimize any negative impact on Neighbors.

**Expansion**

44. The Phillips agrees that, for a period of 15 years following the completion of the proposed expansion, the Phillips will not expand by gift, purchase or lease into any property within the area bounded by Massachusetts Avenue, Florida Avenue, and Connecticut Avenue, N.W., currently zoned or used for residential purposes or diplomatic purposes, except solely for residential purposes.

**Consultant's Fees**

45. In addition to the Construction Consultant, the Phillips will pay up to $50,000 for neighbors' and ANC 2B's consultant expenses incurred between April 1, 2001, and the signing of the agreement by ANC 2B. These may include, without limitation, mediator, architects, traffic engineers, lawyers, and code consultants.

**BZA Order**

46. The parties hereto agree to request that the BZA incorporate paragraphs 1-7, 9, 10, 11 (a-d), 12-14, 30, 35 and 43 of this agreement as a condition of any Final Order affecting any and all administrative proceedings, application or actions referred to herein. The terms of

this Agreement shall continue in full force and effect as an Agreement among the parties, and shall be enforceable through the Liaison Committee procedures set up between the parties and as otherwise permitted by law, (unless the matter has been submitted to Arbitration, which is the preferred but not exclusive method of settling disputes).

**General Provisions**

47. It is understood that this Agreement does not limit the ability of any party at any time to enforce existing law or the Zoning Regulations or to seek or oppose any change in any existing law or the Zoning Regulations, provided that, no such change in law or the Zoning Regulations shall have the effect of restricting or precluding completion of the Project or the use and occupancy thereof intended by Phillips and this Agreement, nor render the completed structure and/or use thereof nonconforming.

48. It is expressly understood and agreed that the ability of the Phillips to build and occupy the Project pursuant to approval of the BZA is a material inducement for Phillips to enter into this Agreement. Accordingly the terms of this Agreement will become effective in phases, as follows:

a) (1) Except to the extent that full implementation of any such provision is not practicable prior to completion of construction, the provisions set forth in Paragraphs 1, 5 c-f), 6 c) and k), 7, 8, 10, 15-19, 26, 27, 29, 30, 32, 36, 39, 44, and 46-61 of this Agreement shall become effective upon execution of the Agreement and 3, 4, and 5b will become effective on January 1, 2002). The Phillips will use best efforts to comply with Pars. 5 a) and 14 following execution.

(2) The provisions set forth in Paragraphs 20-25 hereof shall become effective as provided in paragraph 16.

(3) The provisions set forth in Paragraphs 28, 32, and 40-42 hereof shall become effective upon issuance of the last of final decisions and orders by the D.C. Historic Preservation Review Board, the Mayor's Agent for D.C. Law 2-144, the Office of the Surveyor, the D.C. Department of Consumer and Regulatory Affairs ("DCRA") and/or the Council of the District of Columbia approving the Project on terms and conditions acceptable to Phillips;

(4) The provisions set forth in Paragraphs 37 and 38 hereof shall become effective upon issuance of a permit to demolish the existing improvements at 1618-21st Street, N.W., on terms and conditions acceptable to Phillips;

(5) The provisions set forth in Paragraphs 31, 33, 34, 35 and 43 hereof shall become effective upon issuance of a permit to build the Project as approved by the BZA and the time for taking an appeal therefrom has expired without any appeal having been taken; and

(6) The provisions set forth in Paragraphs 2, 5a), 6 a), b), d), e-j), and l), 9, 11-14, and 44 hereof shall become effective upon completion of construction of the Project as approved by the BZA and issuance of a certificate of occupancy for the use intended by Phillips and the time for taking an appeal therefrom has expired without any appeal having been taken.

(b) The foregoing schedule notwithstanding, the parties will work together in good faith within the spirit of this Agreement to minimize the impact of the Project on the neighborhood;

(c) If any administrative or judicial proceeding should be filed or initiated at any time questioning or contesting governmental approval of any aspect of the Project, implementation of paragraphs listed in Paragraph 48 (a) (3) to (6) of this Agreement may be deferred during the pendency thereof or the Project abandoned, at the option of Phillips;

(d) In the event that the Project is not approved by the BZA, or the Project approved by the BZA is not, or cannot be, built or occupied as intended by Phillips, or that Phillips, in the exercise of its sole discretion, determines at any time not to proceed pursuant to the decision and order of the BZA, this Agreement shall cease and determine on October 1, 2006, and shall have no further force or effect.

49. If at any time after fifteen (15) years from the date of this agreement, the Phillips believes that there have been substantial changes in circumstances, the neighborhood or the law such that any of the provisions of this agreement should be reconsidered or it should be permitted relief from this agreement, it shall first bring the matter up with the Liaison Committee. If the Liaison Committee cannot agree on such requested relief, the Phillips may petition the BZA or other appropriate District governmental agency for such changes to or relief from the conditions imposed by the BZA Order. The Phillips will provide the members of the Liaison Committee with copies of any such petition within 5 days after it is filed. The neighbors reserve their rights at that time.

50. If any provision of this Agreement or any application thereof shall be declared to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof and any other application thereof shall not in any way be affected or impaired, and such remaining provisions shall continue in full force and effect. Nothing herein will supersede the laws and regulations of the District of Columbia or prevent the parties hereto from seeking enforcement of said laws and regulations.

51. Wherever the words "Phillips", "Contractor", or "General Contractor" are used alone, it is understood that the provision applies to all.

52. This Agreement constitutes the entire agreement between the parties with respect to the subject matter described herein.

53. All parts of this Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.

54. During the period of this Agreement, except as otherwise provided, the parties shall not seek any order from the BZA or any other District or federal agency that is inconsistent with this Agreement.

55. The terms of this Agreement contained herein are binding on the Phillips, its subcontractors, agents, assigns and other successors in interest and on Neighbors, their heirs, devisees and assigns.

56. All exhibits attached to this Agreement are incorporated into and made a part of this Agreement, except as modified by this Agreement. The parties shall carry out the obligations set forth in the Exhibits as fully as though such obligations were set forth in the body of the Agreement.

57. No change or modification of this Agreement or any waiver of the provisions hereof shall be valid unless same is in writing and signed by the members of the Liaison Committee and the owners of at least 60% of the properties owned by Neighbors signatory hereto or their successors (counting co-owners of a property, for example a condo unit, as one owner). Waiver from time to time of any provision or of any default hereunder shall not be deemed to be a full waiver of such provision or waiver of any other provision hereunder or a waiver of any earlier or later default. All notices and communications hereunder shall be in writing and deemed duly given if personally delivered or delivered by facsimile or certified mail, return receipt requested, postage prepaid as follows:

a) If to Neighbors:

Mr. Richard Suisman
1611 21St Street, N.W.
Washington, D.C. 20009
Fax: 202-462-7575

Ms. Solange MacArthur-Muller
1628 21st Street, N.W.
Washington, DC 20009
Fax: 202-387-0870

With a copy to:

Stephen N. Gell, Esquire
1101 30th Street, N.W.
5th Floor
Washington, DC 20007
Fax: (703) 522-5503

Peter R. Kolker, Esquire
Zuckerman Spaeder LLP
1201 Connecticut Avenue, N.W.
Washington, D.C. 20036-2638
Fax: (202) 822-8106

Mr. Timothy A. Boggs
2023 Hillyer Place, N.W.
Washington, D.C. 20009
Fax:

b) If to PHILLIPS: Mr. Richard Rutledge
The Phillips Collection
1600 21St Street, N.W.
Washington, D.C. 20009
Fax: 202-387-2436

With a copy to: Michael Cain, Esquire
Hamilton and Hamilton, LLP
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Fax: 202-463-7282

c) If to ANC 2B: Mr. Vince Micone
2007 O Street, N.W. #105
Washington, D.C. 20036
Fax: 202-861-0519

With a copy to: ANC 2B
9 Dupont Circle, N.W.
Washington, D.C. 20036
Fax: 202-296-7333

58. The parties hereto shall be responsible for notifying each other of any change of address or change of parties to be notified.

59. Any date specified in this Agreement which is a Saturday, Sunday or legal holiday shall be extended to the first regular business day after such date which is not a Saturday, Sunday or legal holiday. Any reference herein to the singular shall include the plural and reference to the male, female or neuter gender shall include reference to all other genders.

60. Time shall be of the essence with regard to all matters contained within this Agreement.

61. The date on which this Agreement is accepted by the last party to accept and sign this Agreement shall be inserted as the effective date of this Agreement under the first

paragraph. This Agreement may be executed in counterparts, such that all counterparts when read together shall constitute one instrument.

IN WITNESS WHEREOF, on the day and year first above written, the Phillips Collection has caused these presents to be signed by Laughlin Phillips, Chairman of the Board, The Phillips Collection and in its name to acknowledge and deliver these presents as its act and deed.

WITNESS:

THE PHILLIPS COLLECTION

By: Laughlin Phillips
Laughlin Phillips,
Chairman of the Board

DISTRICT OF COLUMBIA ) ss:

I, Joanne M. Pierre, a Notary Public in and for the District of Columbia, do hereby certify that, LAUGHLIN PHILLIPS, Chairman of the Board, The Phillips Collection, who is personally well known to me (or satisfactorily proven to me) to be Chairman of the Board, The Phillips Collection, a party to the foregoing Agreement, bearing date on the 12th day of June, 2001, appeared before me in said District, and as such acknowledged the same to be the act and deed of The Phillips Collection.

Given under my hand and seal this 12th day of June, 2001.

My Commission Expires
May 31, 2002

Joanne M. Pierre
Notary Public

My Commission Expires:_____

IN WITNESS WHEREOF, the said ANC 2B has caused these presents to be signed by Vince Micone, its Chair, attested by Doug Damron, its Secretary, and does hereby constitute and appoint said Vince Micone its true and lawful attorney in fact, for it and in its name to acknowledge and deliver these presents as its act and deed.

ATTEST: ANC 2B

By: _____ By: _____
Secretary Vince Micone, Chair

DISTRICT OF COLUMBIA ) ss:

I, Joanne Price, a Notary Public in and for the District of Columbia, do hereby certify that VINCE MICONE, who is named as attorney-in-fact for ANC 2B, personally appeared before me in said District, the said Vince Micone being personally well known to me (or satisfactorily proved to me) as the person named as attorney-in-fact in the above instrument for the said, ANC 2B, and acknowledged the same to be the act and deed of the said ANC 2B and that he delivered the same as such, on this date, 6-14-01.

Given under my hand and seal this 14th day of June, 2001.

_____
Notary Public

My Commission Expires: My Commission Expires November 30, 2002

IN WITNESS WHEREOF, on the day and year first above written, Richard Suisman has executed these presents.

Witness: _____ _____
Richard Suisman

DISTRICT OF COLUMBIA ) ss:

I, Joanne M. Pierre, a Notary Public in and for the District of Columbia, do hereby certify that RICHARD SUISMAN personally known to me (or satisfactorily proven to me) a signatory of the above agreement bearing date of 6-12-, 2001, who being by me first duly sworn, did acknowledge that he executed the foregoing instrument as his free act and deed for the purposes set forth herein.

Given under my hand and seal this 12th day of June, 2001.

My Commission Expires
May 31, 2002

Joanne M. Pierre
Notary Public

My Commission Expires:_____

IN WITNESS WHEREOF, on the day and year first above written, Ingrid J. Suisman has executed these presents.

Shirley A. Littlejohn
Witness

Ingrid J. Suisman
Ingrid J. Suisman

DISTRICT OF COLUMBIA ) ss:

I, Joanne M. Pierre, a Notary Public in and for the District of Columbia, do hereby certify that INGRID J. SUISMAN, personally known to me (or satisfactorily proven to me) a signatory of the above agreement bearing date of June 13, 2001, who being by me first duly sworn, did acknowledge that she executed the foregoing instrument as her free act and deed for the purposes set forth herein.

Given under my hand and seal this 13th day of June, 2001.

My Commission Expires
May 31, 2002

Joanne M. Pierre
Notary Public

My Commission Expires:_____

IN WITNESS WHEREOF, on the day and year first above written, Morton Schussheim has executed these presents.

Margaret C. Clark
Witness

Morton Schussheim
Morton Schussheim

DISTRICT OF COLUMBIA ) ss:

I, Joanne M. Pierce a Notary Public in and for the District of Columbia, do hereby certify that MORTON SCHUSSHEIM, personally known to me (or satisfactorily proven to me) a signatory of the above agreement bearing date of 6-12-, 2001, who being by me first duly sworn, did acknowledge that he executed the foregoing instrument as his free act and deed for the purposes set forth herein.

Given under my hand and seal this 12th day of June, 2001.

My Commission Expires
May 31, 2002

Joanne M. Pierce
Notary Public

My Commission Expires:_____

IN WITNESS WHEREOF, on the day and year first above written, Hanna Schussheim has executed these presents.

Margaret C. Clark
Witness

Hanna Schussheim
Hanna Schussheim

DISTRICT OF COLUMBIA ) ss:

I, Joanne M. Pierre a Notary Public in and for the District of Columbia, do hereby certify that HANNA SCHUSSHEIM, personally known to me (or was satisfactorily proven to me) as a signatory of the above agreement bearing date of 6-12-, 2001, who being by me first duly sworn, did acknowledge that she executed the foregoing instrument as her free act and deed for the purposes set forth herein.

Given under my hand and seal this 12th day of June, 2001.

My Commission Expires
May 31, 2002

Joanne M. Pierre
Notary Public

My Commission Expires:_____

IN WITNESS WHEREOF, on the day and year first above written, Carol Ridker has executed these presents.

Shirley A. Littlejohn
Witness

Carol Ridker
Carol Ridker

DISTRICT OF COLUMBIA ) ss:

I, Joanne M. Pierre a Notary Public in and for the District of Columbia, do hereby certify that CAROL RIDKER personally known to me (or was satisfactorily proven to me) as a signatory of the above agreement bearing date of June 13, 2001, who, being by me first duly sworn, did acknowledge that she executed the foregoing instrument as her free act and deed for the purposes set forth herein.

Given under my hand and seal this 13th day of June, 2001.

My Commission Expires
May 31, 2002

Joanne M. Pierre
Notary Public

My Commission Expires:_____

IN WITNESS WHEREOF, on the day and year first above written, Solange MacArthur-Muller has executed these presents.

Witness

Solange MacArthur-Muller

DISTRICT OF COLUMBIA ) ss:

I, Michelle Bogovich, a Notary Public in and for the District of Columbia, do hereby certify that SOLANGE MacARTHUR-MULLER, personally known to me (or was satisfactorily proven to me) as a signatory of the above agreement bearing date of June 11, 2001, who being by me first duly sworn, did acknowledge that she executed the foregoing instrument as her free act and deed for the purposes set forth herein.

Given under my hand and seal this 11th day of June, 2001.

Michelle Bogovich
Notary Public

MICHELLE BOGOVICH
Notary in Washington, D.C.
Commission Expires July 31, 2005

My Commission Expires:

IN WITNESS WHEREOF, on the day and year first above written, the said The Society of Missionaries of Africa, Inc., has caused these presents to be signed for and on its behalf by Father Richard P. Roy, and its seal to be hereunto affixed and attested by Father George Markwell, its Secretary and does hereby constitute and appoint, the said Father Richard P. Roy to be its true and lawful attorney in fact for it and in its name to acknowledge and deliver these presents as its act and deed.

ATTEST:

Margaret C. Clark

THE SOCIETY OF MISSIONARIES OF AFRICA, INC.

By: Richard P. Roy

DISTRICT OF COLUMBIA ) ss:

I, Joanne M. Pierre, a Notary Public in and for the District of Columbia, do hereby certify that, Richard P. Roy, who is personally well known to me (or satisfactorily proven to me) to be President of The Society of Missionaries of Africa, a District of Columbia Corporation, appeared before me as the person named as the attorney in fact for The Society of Missionaries of Africa, in the foregoing, bearing date on the 13th day of June, 2001, in said District of Columbia and acknowledged that he executed the same in such capacity for the purposes set forth herein.

Given under my hand and seal this 13th day of June 2001.

My Commission Expires
May 31, 2002

Joanne M. Pierre
Notary Public

My Commission Expires:_____

## LIST OF EXHIBITS

Exhibit A. Design

Exhibit B. Cooper Code

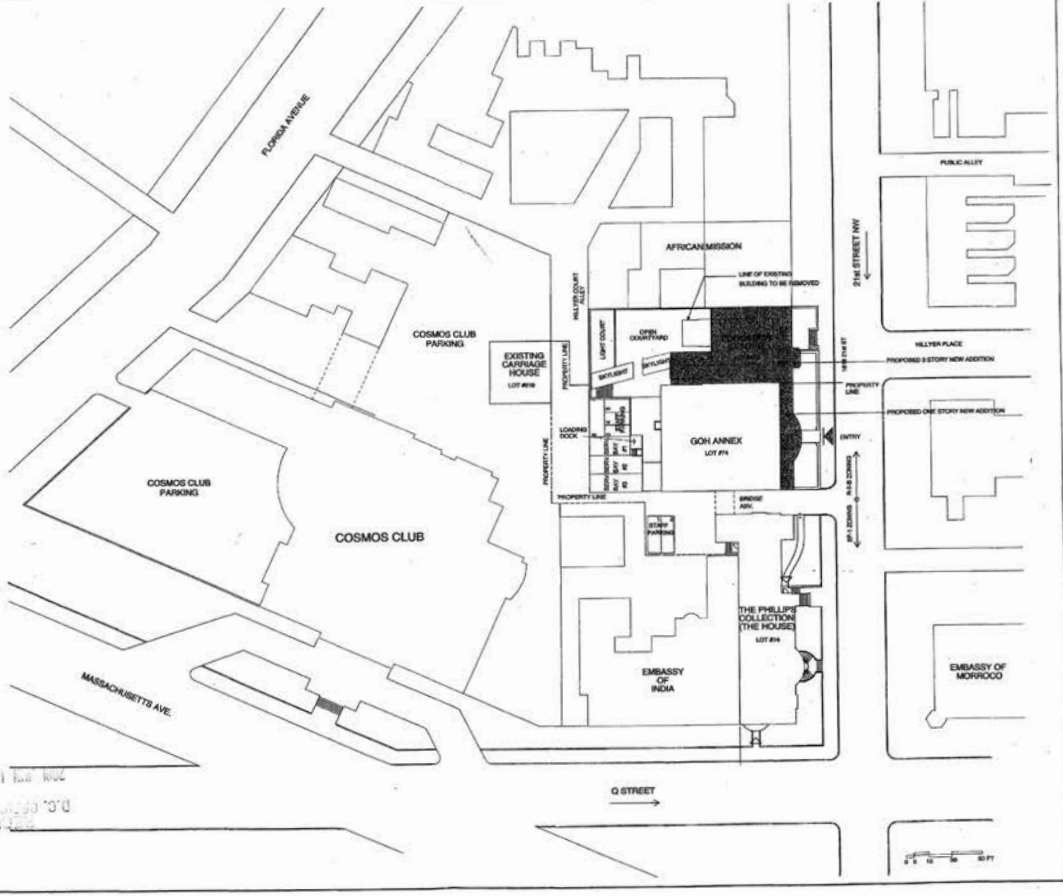
Exhibit C Indemnification Agreement

Exhibit D Schedule of Other Indemnified Property Owners



# THE PHILLIPS COLLECTION

1600 21ST STREET, NW WASHINGTON, DISTRICT OF COLUMBIA 20009




THE PHILLIPS COLLECTION


COX, GRAAE + SPACK ARCHITECTS
2909 M STREET, NW
WASHINGTON, DC 20007
202.965.7570
FAX 202.968.7144


revisions:

SITE PLAN

drawing title:

scale: 1INCH = 30 FEET

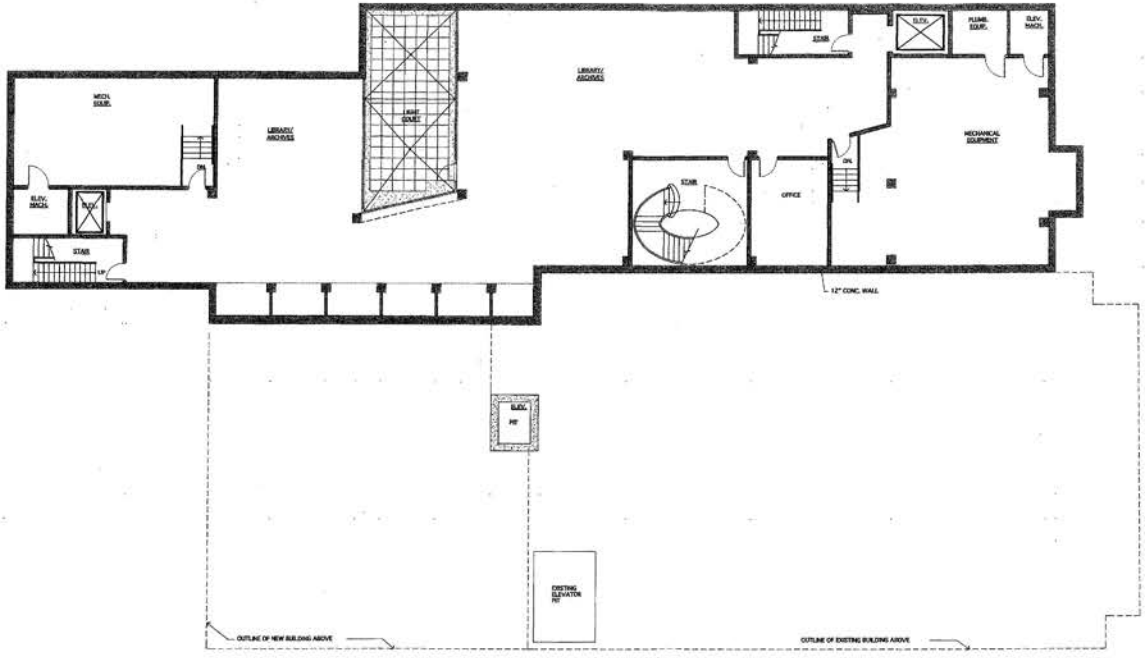
drawn by: EF/RM

checked by: DC

project no.: 9901

A0

date: JUNE 06, 2001




PLAN: LOWER LEVEL TWO
SCALE: 1/8" = 1'-0"

NOTE: DARKENED WALLS INDICATE NEW CONSTRUCTION.

THE PHILLIPS COLLECTION

COX, GRAAE + SPACK ARCHITECTS
2926 M STREET, NW
WASHINGTON, DC 20007
202.965.7070
FAX 202.965.7144

revisions:

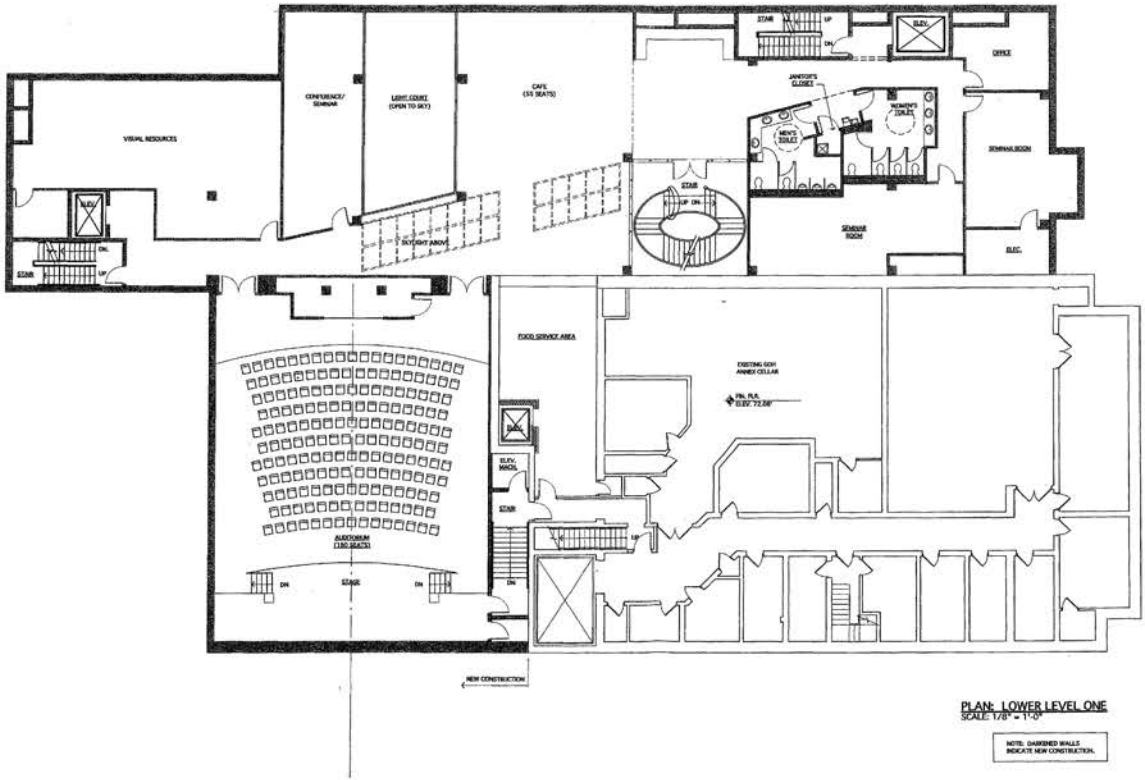
FLOOR PLAN
LOWER LEVEL TWO

drawing title:

| | |
|---|---|
| scale: | AS INDICATED |
| drawn by: | ER/RM |
| checked by: | DC |
| project no.: | 9901 |

A1

date: JUNE 06, 2001




PLAN: LOWER LEVEL ONE
SCALE: 1/8" = 1'-0"

NOTE: DARKENED WALLS INDICATE NEW CONSTRUCTION.

THE PHILLIPS COLLECTION

COX, GRAAE + SPACK ARCHITECTS
2909 M STREET, NW
WASHINGTON, DC 20007
202.965.7070
FAX 202.965.7144

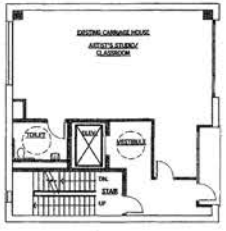
revisions:
FLOOR PLAN LOWER LEVEL ONE

drawing title:

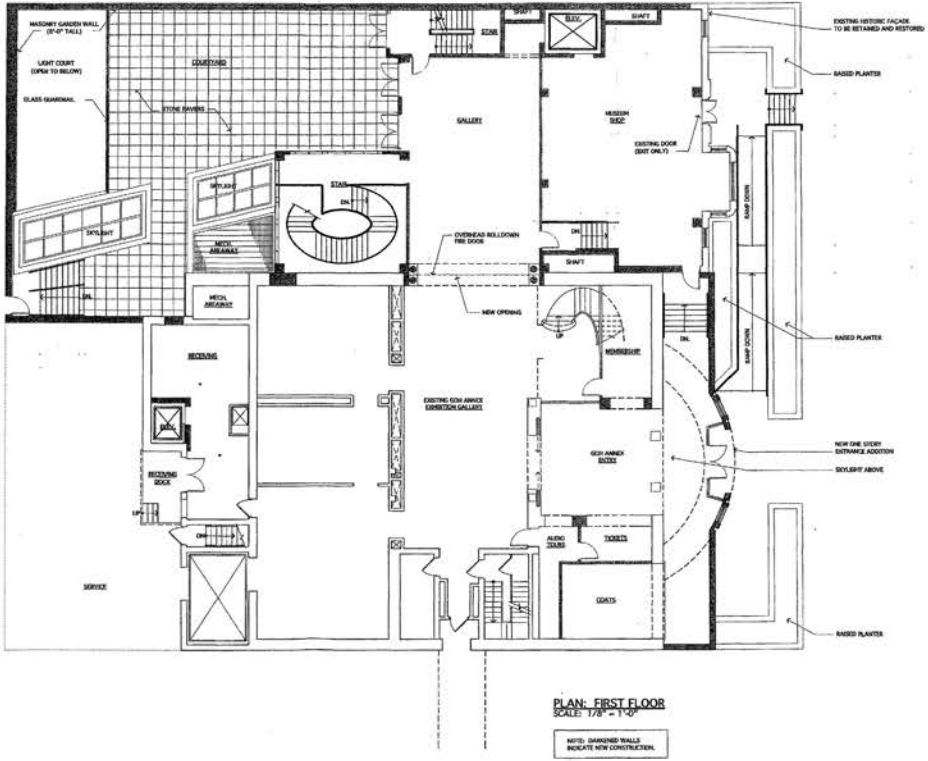
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| scale: | AS INDICATED |
| drawn by: | EF/RM |
| checked by: | DC |
| project no.: | 9901 |

A2

date: JUNE 06, 2001




HILLYER COURT ALLEY




PLAN: FIRST FLOOR
SCALE: 1/8" = 1'-0"

NOTE: DARKENED WALLS
INDICATE NEW CONSTRUCTION.

THE PHILLIPS COLLECTION

COX, GRAAE + SPACK ARCHITECTS
2909 M STREET, NW
WASHINGTON, DC 20007
202.965.7070
FAX 202.965.7144

revisions:

FLOOR PLAN
LEVEL ONE

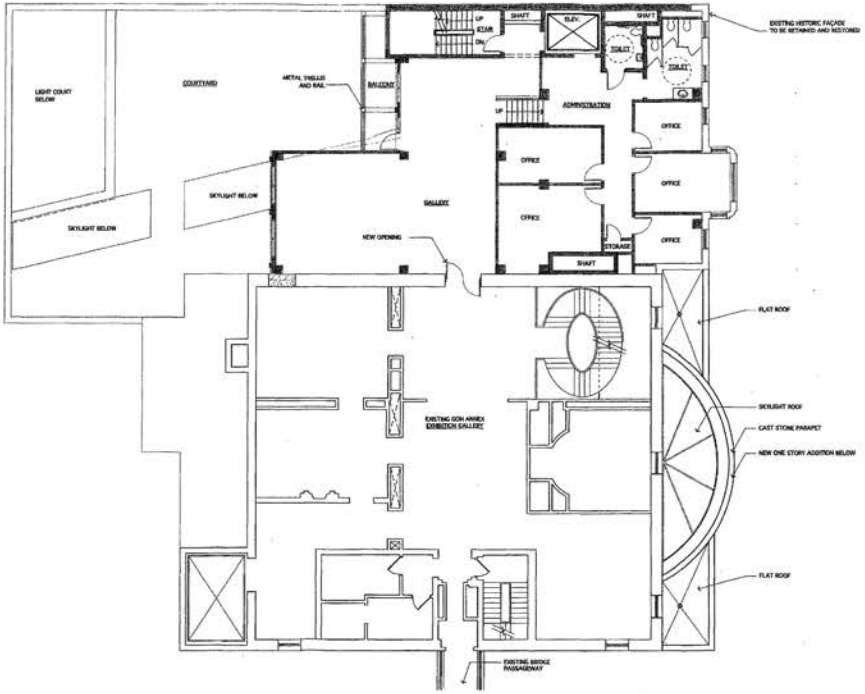
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| | |
|---|---|
| scale: | AS INDICATED |
| drawn by: | EF/RM |
| checked by: | DC |
| project no.: | 9901 |

A3

date: JUNE 06, 2001




PLAN: SECOND FLOOR
PLAN: 1/8" = 1'-0"

NOTE: DARKENED WALLS
INDICATE NEW CONSTRUCTION.

THE PHILLIPS
COLLECTION

COX, GRAAE
+ SPACK
ARCHITECTS
2906 M STREET, NW
WASHINGTON, DC 20007
202.965.7070
FAX 202.965.7144

revisions:

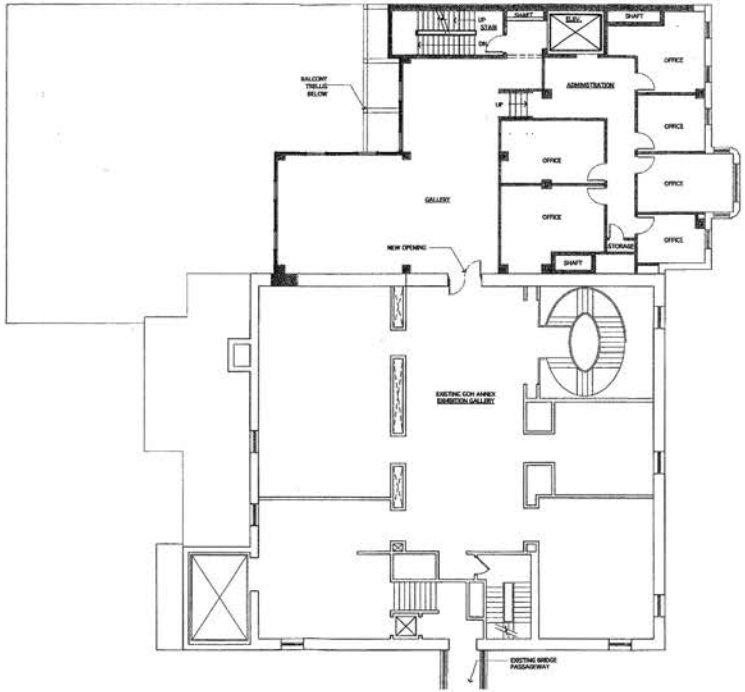
FLOOR PLAN
LEVEL TWO

drawing title:

| | |
|---|---|
| scale: | AS INDICATED |
| drawn by: | EF/RM |
| checked by: | DC |
| project no.: | 9901 |

A4

date: JUNE 06, 2001




PLAN: THIRD FLOOR
SCALE: 1/8" = 1'-0"

NOTE: DARKENED WALLS INDICATE NEW CONSTRUCTION.

THE PHILLIPS COLLECTION

COX, GRAAE + SPACK ARCHITECTS
2909 M STREET, NW
WASHINGTON, DC 20007
202.965.7070
FAX 202.965.7144

revisions:

FLOOR PLAN LEVEL THREE

drawing title:

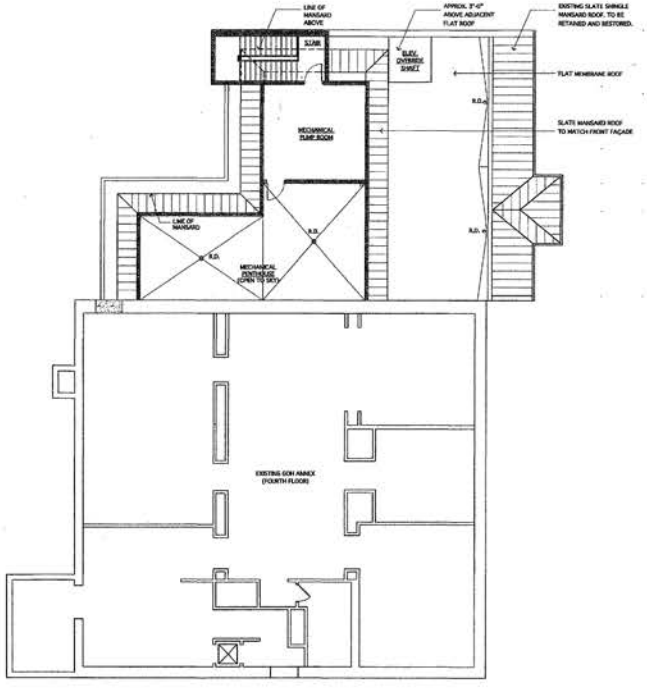
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drawn by: EF/RM
checked by: DC

project no.: 9901

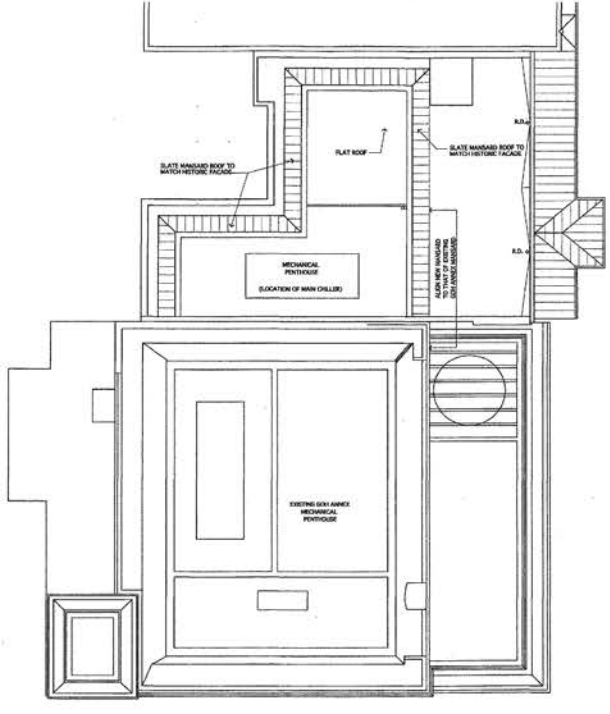
A5

date: JUNE 06, 2001




PLAN: PENTHOUSE
SCALE: 1/8" = 1'-0"

NOTE: DARKENED WALLS INDICATE NEW CONSTRUCTION.




PLAN: ROOF
SCALE: 1/8" = 1'-0"

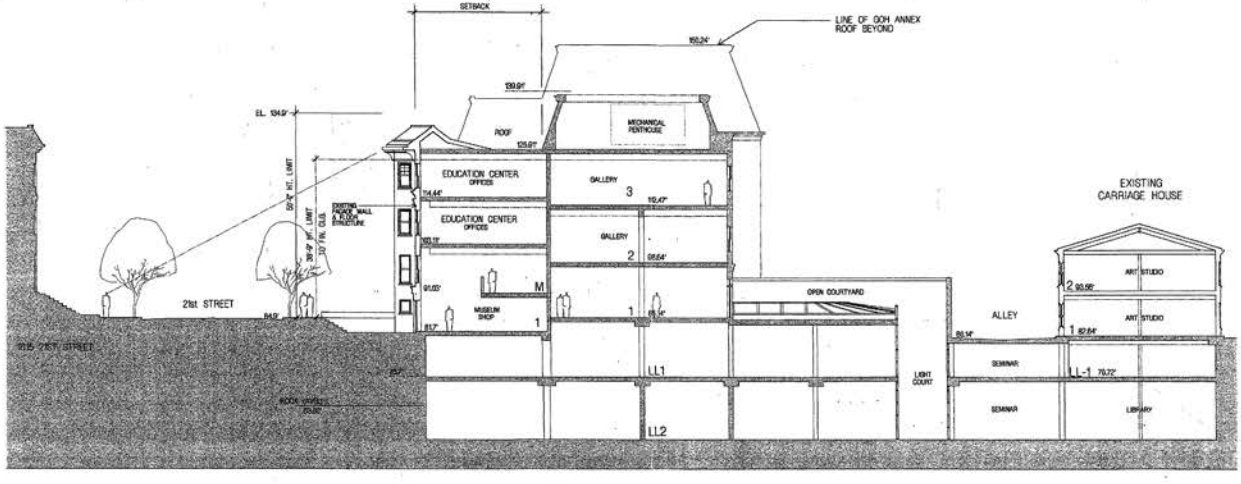
THE PHILLIPS COLLECTION

COX, GRAAE + SPACK ARCHITECTS
2000 M STREET, NW
WASHINGTON, DC 20007
202.955.7070
FAX 202.955.7144

revisions:
PLANS: PENTHOUSE/ROOF

drawing title:

| | |
|---|---|
| scale: | AS INDICATED |
| drawn by: | EF/RM |
| checked by: | DC |
| project no.: | 9901 |
| | A6 |
| date: | JUNE 06, 2001 |




**SECTION** - THRU NEW EDUCATION CENTER

0 5 10 20 35 FT.

THE PHILLIPS COLLECTION

COX, GRAAE + SPACK ARCHITECTS
2909 M STREET, NW
WASHINGTON, DC 20007
202.965.7070
FAX 202.965.7144

revisions:

drawing title:
SITE CROSS SECTION: EDUCATION CENTER

scale: AS INDICATED
drawn by: EF
checked by: DC
project no.: 9901

A7

date: JUNE 06, 2001




NEW ONE STORY ENTRANCE ADDITION
GOH ANNEX
(EXISTING)

EDUCATION CENTER
1618 BUILDING

# **ELEVATION** - FRONT / EAST SIDE

0 5 10 20 FT

THE PHILLIPS COLLECTION

COX, GRAAE + SPACK ARCHITECTS
2909 M STREET, NW
WASHINGTON, DC 20007
202.965.7272
FAX 202.965.7144

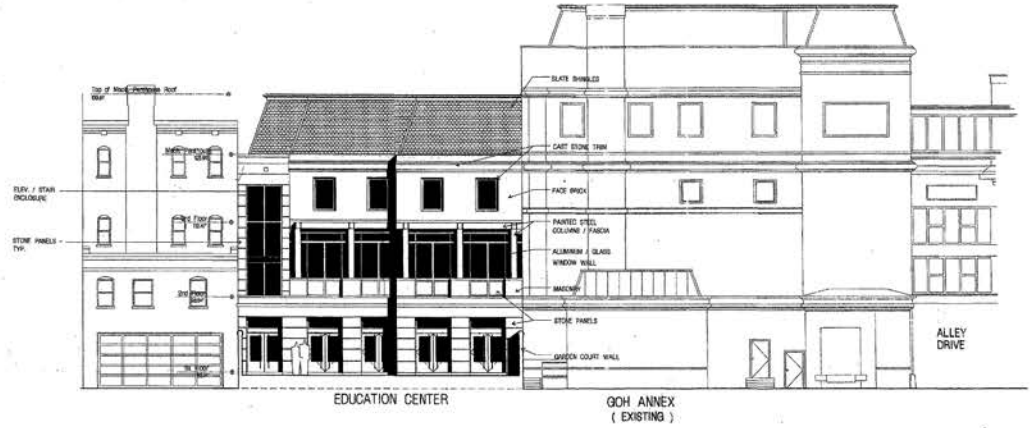
revisions:

drawing title: FRONT ELEVATIC (EAS

scale: AS INDICATE
drawn by: E
checked by: D
project no.: 99

A8

date: JUNE 06, 20




**ELEVATION** - REAR / WEST SIDE

THE PHILLIPS COLLECTION

COX, GRAAE + SPACK ARCHITECTS
2909 M STREET, NW
WASHINGTON, DC 20007
202.965.7070
FAX 202.965.7144

revisions:

drawing title:
REAR ELEVATIC
(EDUCATION CENTE

scale: AS INDICATE
drawn by:
checked by:
project no.:

A9

date: JUNE 06, 20



**EXHIBIT B**

**– The Cooper Rules –**
**Safety Standards for Construction Vehicles**

1. Before a trucking company starts a project, the excavation company must require documentation of:

   - All necessary licenses and permits;
   - Any accidents or citations involving trucks or on-duty drivers for the prior year;
   - The last required federal inspection;
   - Adequate liability insurance;
   - Current federal safety report;
   - A pledge not to pay speeding tickets for drivers.

2. If any of the above information changes or expires during the project, the trucking firm must update its records.

3. Before work starts, the excavation company shall certify that the trucking company has complied. The certification shall be placed on the truck's windshield, with a list of each driver authorized to drive the truck.

4. Before any driver starts work on a project, the excavation company must inspect the driver's commercial license to make sure it is current and appropriate for the job.

5. The excavation company must identify routes for drivers that minimize the use of streets through residential areas.

6. The excavation company must not require or recommend that drivers take any other routes.

7. If the excavation company uses how long a trip takes to measure a trucker's performance, the standard shall be the "reasonable" time it takes to drive the recommended route.

8. The excavation company must not load any truck with more weight than the maximum allowed in any jurisdiction in which the truck is driven.

Adopted by ANC 2E on October 5, 1999.



**EXHIBIT C**

**INDEMNIFICATION AGREEMENT**

This Indemnification Agreement ("Agreement") is made and entered into this ____ day of _____, 2001 by and between The Phillips Collection, a District of Columbia Nonprofit Corporation (hereafter, "the Phillips") and Solange MacArthur-Muller and Robert Muller, and their successors and assigns (hereafter, "Home Owners").

**WHEREAS,** Home Owners are the residents in and owners of a parcel of real property designated on the land records of the District of Columbia as Lot 68 in Square 66 and improved by a residence and garage with the street address of 1628 21st Street, N.W., Washington, D.C. (the "Indemnified Property"); and

**WHEREAS,** the Phillips is the owner of a parcel of real property designated on the land records of the District of Columbia as Lot 827 in Square 66, improved by an apartment house, bearing the street address of 1618 21st Street, N.W., Washington, D.C.; and

**WHEREAS,** the Phillips is also the owner of other real property in Square 66 which is owned and operated by the Phillips as a museum, known as the "Phillips Collection"; and

**WHEREAS,** the Phillips has filed Application No. 16618 with the District of Columbia Board of Zoning Adjustment ("BZA") to obtain certain variances and special exceptions to enable the Phillips to demolish a portion of the improvements on Lot 827 in Square 66 and to build an Education Center in its place on that parcel and on certain adjoining land, to be operated in conjunction with and as a part of the Phillips Collection; and

**WHEREAS,** the Home Owners have opposed the Phillips' requested variances and special exceptions and have been designated as parties by the BZA in the above-referenced proceeding; and

**WHEREAS,** the Home Owners, the Phillips and others have entered into a certain Neighborhood Cooperation Agreement pursuant to which the Phillips has modified its plans for the demolition and subsequent construction of improvements (the demolition and construction according to such modified plans are hereafter referred to as the "Project"); and

**WHEREAS,** the Owners are agreeable to withdrawing their opposition to the Phillips' requested variances and special exceptions and to support the BZA Application as modified pursuant to the Neighborhood Cooperation Agreement provided that the Phillips enters into: (1) the Neighborhood Cooperation Agreement with them and others; and (2) this Agreement

**NOW, THEREFORE,** in consideration of the promises hereafter set forth and in consideration of the execution of the Neighborhood Cooperation Agreement and of this Agreement, it is hereby agreed by and between the Owners and the Phillips as follows:

1. **Recitals**. The recitals set forth above are incorporated herein by this reference.

2. **Condition Documentation**. Prior to the commencement of any demolition or construction of the Project, an engineer or consultant for the Phillips shall, at the expense of the Phillips, document the condition of the Home Owners' property by taking photographs and other measurements of the condition of the Home Owners' property (the "Survey"). The Home Owners will allow reasonable access to all areas of their property for the purpose of enabling this documentation to take place. The Phillips shall, promptly following the inspection and documentation and prior to the commencement of any demolition or construction work for the Project, provide without cost to the Home Owners, the Survey prepared by any engineer or consultant engaged by the Phillips documenting the condition of the Home Owners' property. Home Owners will review the Survey and acknowledge the accuracy thereof in writing within ten business days of receipt of the survey. The Home Owners represent and warrant that to the

best of their knowledge, information and belief, there are no defective conditions known to them but not apparent.

3. **Indemnification**. The Phillips hereby indemnifies and holds harmless the Home Owners as follows:

(a) from and against any and all damages arising from personal injury to the Home Owners, their respective agents, tenants, contractors, guests, licensees, invitees, servants and employees on or about the property of the Home Owners ("Owner Indemnitees"); and

(b) from and against any and all property damage caused to any portion of the Indemnified Property in either case caused by the Phillips, its officers, employees, agents, contractors, consultants or workmen, including but not limited to any contractor, subcontractor, sub-subcontractor, supplier of equipment or supplies, laborer or other person or entity who or which in any way participates in or contributes to the demolition or construction of any part of the Project, whether by way of commission or omission (a "Phillips Party").

(c) Further, the Phillips hereby indemnifies and holds harmless the Home Owners from and against any all claims asserted against them by claimants who assert that they have suffered damage emanating from the Home Owners' property but caused by an act or omission of a Phillips Party occurring during and related to the demolition or construction of the Project.

(d) In any instance in which indemnification is provided to the Home Owners, as above described, the Phillips shall, promptly after notification and inspection of the personal injury and/or damage sustained, provide full and complete compensation for personal injuries suffered to the full extent of the law of the District of Columbia then in effect and for property damage for which indemnification is provided herein or Phillips may remediate such damage at

its expense. In the event that damages caused during the demolition or construction of the Project to the Indemnified Property renders the Indemnified Property actually uninhabitable by the Home Owners (taking into consideration any physical disability which affects them ), the Phillips shall also provide fairly comparable alternative housing in the vicinity of the Indemnified Property during the period it is uninhabitable.

4. **Notification and Legal Expenses**. In any instance in which the Home Owners have suffered personal injury or property damage for a loss covered by paragraph 3, and as a condition of indemnity hereunder , they shall provide written notice to the Phillips within 30 days of their awareness of such loss, damage or claim. In any instance in which a claim is asserted against the Home Owners pursuant to paragraph 3(c), the Home Owners , as a condition of indemnity hereunder, shall, within 15 days of notice thereof, notify the Phillips of such claim, providing a copy of all documents relating thereto. The Phillips shall, at its expense, then provide counsel mutually acceptable to the Home Owners and the Phillips for the defense of such claim. Further, in the event that the Home Owners incur legal expenses in the enforcement of the provisions of this Indemnification Agreement, whether by way of litigation or otherwise, and Home Owner prevails therein, the Phillips shall reimburse them for their reasonably incurred legal costs.

5. **Insurance**. The Phillips shall maintain personal injury and property damage insurance coverage for the Indemnified Property in the amount of One Million Dollars ($1,000,000) per person and Three Million Dollars ($3,000,000) per incident, respectively, until 180 days after a certificate of occupancy is issued for the Education Center. Each such insurance policy shall name the Home Owners as additional insureds and shall provide that such policy shall not be cancelled or terminated without thirty (30) days' prior written notice to the Home

Owner. A copy of each insurance policy required by this paragraph, or a certificate evidencing such policy shall be submitted to the Home Owner prior to commencement of construction. The Phillips will endeavor to require each such insurer to deliver copies of renewal certificates at least thirty (30) days prior to expiration of the policy issued by such insurer. In any event, promptly upon receipt of written request of the Home Owner, the Phillips will deliver to such home Owner copies of renewal certificates.

6. **Effective Period of this Agreement**. This Agreement shall take effect on the date of execution and shall continue in effect until 365 days following the date that the Phillips obtains a Certificate of Occupancy for the completed Project, provided, however, that any claim arising prior to the date thereof, even if subsequently asserted, shall continue to be covered by the provisions of this Agreement.

7. **Notices**. All notices required by this Agreement shall be deemed effectively given if provided in writing and delivered personally, by facsimile or by certified mail, return receipt requested, on the following:

| | |
|---|---|
| If to the Home Owners: | Solange MacArthur-Muller or<br>Robert Muller<br>1628 21st Street, N.W.<br>Washington, D.C. 20009<br>Fax: (202) 387-0870 |
| With a copy to: | Peter R. Kolker, Esquire<br>Zuckerman Spaeder LLP<br>1201 Connecticut Avenue, N.W.<br>Washington, D.C. 20036<br>Fax: (202) 822-8106 |
| If to the Phillips: | Mr. Richard Rutledge<br>The Phillips Collection<br>1600 21st Street, N.W.<br>Washington, D.C. 20009<br>Fax: (202) 387-2436 |



**EXHIBIT D**

**List of Properties**

1611 21st Street, N.W. – Ridker
1611 21st Street, N.W. – Suisman
1615 21st Street, N.W.
1617 21st Street, N.W.
1619 21st Street, N.W.
1621 21st Street, N.W.
1624-6 21st Street, N.W.
1628 21st Street, N.W.

2025 Hillyer Place, N.W.
2027 Hillyer Place, N.W.
2029 Hillyer Place, N.W.
2028 Hillyer Place, N.W.
2030 Hillyer Place, N.W.
2034 Hillyer Place, N.W.