Law Offices
HOLLAND & KNIGHT LLP

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006-6801

202-955-3000
FAX 202-955-5564
www.hklaw.com

Annapolis
Atlanta
Bethesda
Boston
Bradenton
Chicago
Fort Lauderdale
Jacksonville
Lakeland
Los Angeles
Melbourne
Miami
New York
Northern Virginia
Orlando
Providence
St. Petersburg
San Antonio
San Francisco
Seattle
Tallahassee
Tampa
Washington, D.C.
West Palm Beach

International Offices:
Caracas*
Mexico City
Rio de Janeiro
São Paulo
Tel Aviv*
Tokyo

*Representative Office

November 16, 2001

NORMAN M. GLASGOW, JR.
202-419-2460
Internet Address: nglasgow@hklaw.com

Hand Delivery

Sheri Pruitt
Secretary, Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: BZA Application No. 16788,
1108 K Street Limited Liability Company

Dear Sheri:

In response to the decision of the Board of November 13th, enclosed is a copy of the fully executed Agreement between Asbury United Methodist Church and 1108 K Street Limited Liability Company dated November 16, 2001, which is required to be submitted prior to the issuance of the Board's Order in the above-referenced application.

If you have any questions, please do not hesitate to call.

Very truly yours,

Norman M. Glasgow, Jr.

Enclosure
cc: Michael Cain
Ronald Walton

BZA
Case No. 16778
Exhibit No. 38

Board of Zoning Adjustment
District of Columbia
CASE NO.16778
EXHIBIT NO.38

AGREEMENT

THIS AGREEMENT is made and entered into this 16th day of November, 2001 by and between ASBURY UNITED METHODIST CHURCH ("Church") and 1108 K STREET LIMITED LIABILITY COMPANY ("1108").

WITNESSETH:

WHEREAS, the Church and 1108 are abutting property owners within Square 317 in the District of Columbia, with the Church owning Lot 22 in Square 317 (the "Church Property") and with 1108 owning Lot 25 in Square 317 (the "1108 Property"); with the Church owning Lot 22 in Square 317 improved with an historic landmark church structure and adjacent education center (the "Church Property");

WHEREAS, 1108 has submitted an application to the District of Columbia Board of Zoning Adjustment ("BZA") in Application No. 16778 (the "BZA Case") for the development and construction of a hotel (the "Hotel Project") with certain variance and special exception relief;

WHEREAS, the Church is concerned that the Church Property, particularly its historic structure, including the leaded stained glass windows, not be damaged by or an account of excavation and/or construction and related activities undertaken by 1108 in connection with the Hotel Project;

WHEREAS, as adjoining land owners, and in the context of proceeding forward with the BZA-approved Hotel Project with the Church's approval, 1108 and the Church have reached certain agreements and understandings, all as more particularly set forth herein.

NOW, THEREFORE, for and in consideration of the foregoing, the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. 1108 hereby agrees that there will be no exterior construction activities involving the Hotel Project on Sundays.

2. During funerals conducted by the Church and on the annual "Good Friday" observations, all noise generating construction activities relating to the Hotel Project will cease, provided that the Church has given at least 48 hours prior notice to 1108 of the funeral event either by telephone, fax and/or e-mail.

3. The parties agree that 1108 will perform a structural and photographic survey of the existing Church conditions as follows:

(a) 1108 shall perform a structural and photographic survey of the existing condition of the Church Property in manner and extent reasonably acceptable to the Church as

soon as practicable but in any event not less than 10 days prior to commencement of excavation for the Hotel Project. 1108 shall provide a copy of all survey materials to the Church within three (3) business days of receipt thereof from its engineers or consultants.

(b) Within 7 days after notice from the Church, 1108 shall install such monitoring equipment and devices in such locations upon the Church Property as reasonably directed by the Church to detect any vibration or change in the existing condition. 1108 shall cause the monitoring equipment to be checked by an independent testing firm reasonably acceptable to the Church (i) on a daily basis during installation of the foundation system when vibration activities are occurring (including excavation support system) and perimeter walls to grade level at K Street, and (ii) on a mutually agreeable schedule during the balance of the construction period.

4. 1108 agrees that there shall be no blasting activities undertaken on the 1108 Property.

5. 1108 shall provide to the Church, within three (3) business days after completion and receipt, any report prepared by 1108's structural engineer concerning the Church Property.

6. 1108 shall be responsible for any repairs to the Church brought about solely as a direct and proximate result of any of 1108's construction activities relating to the Hotel Project as follows:

(a) 1108 shall pay for the full cost to correct and/or repair any and all damage to the Church Property directly or proximately caused by, arising out of or in any way relating to excavation and/or construction activities undertaken by 1108, or by any person, firm or entity on its behalf, in connection with the Hotel Project.

(b) In the event that measurable change in the existing condition of the Church Property is detected, the party discovering such change shall immediately notify the other thereof. The parties shall meet as soon as possible (but in any event within 24 hours) to discuss the matter and to agree upon the means, methods and timing of further testing, repairs or other corrective action to be taken. The cost of any such tests and studies shall be borne by 1108.

(c) All work to be performed upon the Church Property by 1108 pursuant to this Agreement shall be performed in such manner as to restore the Church Property to the condition existing on the date of the pre-construction survey. All such work shall be performed by qualified persons or firms and in accordance with a schedule acceptable to the Church.

7. 1108 shall be responsible for any environmental remediation of the 1108 Property required by any governmental agency or department.

8. All parking during the construction phase of the Hotel Project by 1108 and its contractors shall be either on the 1108 Property or available on or off-street parking as permitted by District of Columbia law; provided, however, that employees of 1108 shall not be permitted to park in front of the Church building along its 11th or K Street frontages. 1108 also hereby agrees to use reasonable efforts to ensure that the employees of its contractors do not park in front of the Church building along its 11th or K Street frontages. 1108 shall by contract direct its

contractors, subcontractors, suppliers and similar persons and firms that no construction or delivery vehicles shall be parked in front of the Church Property along its K Street or 11th Street frontages, nor shall any of their employees park in those locations.

9. All notices, demands or other communications to be given by any party hereunder shall be in writing and shall be sent by overnight or local courier (and evidenced by a signed receipt), or by registered or certified first-class mail, postage prepaid, addressed as follows:

If to the Church:

Rev. Eugene W. Matthews, Senior Pastor
Asbury United Methodist Church
926 – 11th Street, N.W.
Washington, DC 20001
Phone: (202) 628-0009

Michael A. Cain, Esq.
Hamilton & Hamilton, LLP
1775 Pennsylvania Ave., N.W., Suite 1100
Washington, DC 20006
Phone: (202) 463-8282

If to 1108:

Ron Walton
7401 Wisconsin Ave., Suite 300
Bethesda, MD 20814
Phone: (301) 907-4370

Lawrence Roscher
7401 Wisconsin Ave., Suite 300
Bethesda, MD 20814
Phone: (301) 907-4370

Norman M. Glasgow, Jr., Esq.
Holland & Knight LLP
2099 Pennsylvania Ave., N.W., Suite 100
Washington, DC 20006
Phone: (202) 419-2460

Any change in the above-referenced addresses shall be made by giving notice to the other party hereto in a writing delivered to the address of such other party. All notices shall be deemed given on the earlier to occur of (i) the date of actual receipt of such notice, or (ii) one (1) day after deposit of the same with a nationally recognized overnight delivery service, or (iii) three (3) days after deposit of the same with the U.S. Postal Service.

10. All reports or surveys given to the Church by 1108 relating to the 1108 Property, and/or the Hotel Project, shall be used solely by the Church, and shall be held in confidence by

the Church and its employees and representatives and shall not be distributed to the Church membership except on a need to know basis or to any third party.

11. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, executors, personal representatives, successors and assigns, and shall be binding upon all employees, partners, members, officers, directors, attorneys, affiliates, subsidiaries, parent, and any other person or entity acting or purporting to act on the behalf of any party hereto.

12. The south side of K Street between 11th and 12th Streets shall have a pedestrian passageway.

13. Access to the Church property from the alleys shall not be permanently blocked or impeded, and 1108 agrees to use commercially reasonable efforts to minimize any disruption to the Church's use of the alley.

14. Time shall be of the essence with regard to all matters contained within this agreement.

15. This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.

16. If any term, covenant or condition of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not effect any other provision hereof, and the remainder of this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein and shall be valid and enforceable to the fullest extent permitted by law.

17. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all other prior and/or contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein. Any waiver of or modification or amendment to this Agreement shall not be binding unless set forth in an instrument executed by all of the parties hereto, and no course of conduct by any party or among the parties shall be deemed to amend the terms and conditions hereof except if such is reduced to writing and executed by all parties hereto. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise specifically provided.

18. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. This Agreement shall not be binding against any party hereto, however, until the same has been executed by each and every party to this Agreement.

19. In the event that any party hereto commences litigation against any other party hereto in connection with or in any way related to this Agreement and the subject matter hereof, the party substantially prevailing in such action shall be entitled to recover from the non-

prevailing party all of such prevailing party's reasonable attorneys fees and costs incurred in connection therewith.

20. The parties hereby agree to execute and deliver any other documents or instruments reasonably requested by any other party hereto in order to implement, consummate or effectuate any of the terms and conditions hereof or any of the transactions contemplated hereunder, including, but not limited to, any reasonable underpinning and crane swing agreement presented by 1108 to Church.

21. This Agreement is made for the sole benefit of the parties hereto, and no other person or entity shall have any benefits, rights or remedies under or by reason of this Agreement. Neither the terms of this Agreement, nor any act or omission by any party hereto shall be deemed to create any third-party beneficiary status or recognition for any other person or entity not a party hereto.

22. The recitals set forth above are incorporated herein in full by this reference.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement under seal as of the date first hereinabove written.

ASBURY UNITED METHODIST CHURCH

By: Leona L. Hayes
Title: Chair, Trustees

1108 K STREET LIMITED LIABILITY COMPANY

By: _____
Title: _____

prevailing party all of such prevailing party's reasonable attorneys fees and costs incurred in connection therewith.

20. The parties hereby agree to execute and deliver any other documents or instruments reasonably requested by any other party hereto in order to implement, consummate or effectuate any of the terms and conditions hereof or any of the transactions contemplated hereunder, including, but not limited to, any reasonable underpinning and crane swing agreement presented by 1108 to Church.

21. This Agreement is made for the sole benefit of the parties hereto, and no other person or entity shall have any benefits, rights or remedies under or by reason of this Agreement. Neither the terms of this Agreement, nor any act or omission by any party hereto shall be deemed to create any third-party beneficiary status or recognition for any other person or entity not a party hereto.

22. The recitals set forth above are incorporated herein in full by this reference.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement under seal as of the date first hereinabove written.

ASBURY UNITED METHODIST CHURCH

By: _____
Title: _____

1108 K STREET LIMITED LIABILITY COMPANY

By: _____
Title: Pres