SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") dated December ___, 1992, is made by and among Chatham Lake Associates, L.P., a District of Columbia limited partnership ("Chatham"), the Foggy Bottom Association ("FBA"), Chris Lamb, Elayne DeVito, Richard Price, Barbara Kahlow and Robert Niemic. FBA, Lamb, DeVito, Price, Kahlow and Niemic are hereinafter collectively referred to as the "Community Group".

WHEREAS, Chatham is the owner of fee simple title to a parcel of land in the District of Columbia identified as Square 14, Lots 800 and 812, also known as 2501 Pennsylvania Avenue, N.W. (the "Site"); and

WHEREAS, Chatham has obtained Board of Zoning Adjustment ("BZA") approval, and conceptual design approval from the Historic Preservation Review Board ("HPRB"), for a 7-story mixed-use building on the Site, which building includes the retention of the existing building on the southeast portion of the Site known as the Luzon building, with a compatible addition to the north and west of the Luzon building (the "Project"); and

WHEREAS, Chatham commenced preconstruction activities on the site in 1991, including demolition of a building on the Site (the "Demolition") and other activities; and

WHEREAS, the Community Group, both individually and collectively, have opposed both substantive and procedural aspects of the Project and the Demolition at various public forums, including, but not limited to, the BZA, the HPRB, the

BZA
Case No. 17322
Exhibit No. 52
Board of Zoning Adjustment
District of Columbia
CASE NO. 17322
EXHIBIT NO. 52

Council of the District of Columbia (the "Council"), and community forums, as well as at meetings with the legislative and executive branches of the District of Columbia; and

WHEREAS, FBA and Price have initiated litigation in the Superior Court of the District of Columbia, challenging various aspects of the Project, including administrative approvals and authorizations to proceed with the Demolition, preconstruction and construction activities; and

WHEREAS, FBA has initiated litigation in the D.C. Court of Appeals challenging the historic preservation approval of the subdivision of the Site; and

WHEREAS, various members of the Community Group have publicly stated on a number of occasions that the BZA and historic preservation approvals for the Project will be appealed to the courts at the appropriate times; and

WHEREAS, both Chatham and the Community Group now wish to resolve their differences and settle the pending litigation as well as preclude any future possible judicial, administrative or legislative challenges or proceedings arising from or related to the zoning, historic preservation or other approvals and issues related thereto.

NOW, THEREFORE, it is hereby mutually agreed that:

A. **Obligations of Chatham Lake Associates:**

1. In furtherance of this Settlement Agreement, Chatham has filed with the Board of Zoning Adjustment the necessary documents to begin the process for approval to remove the top story of the Project, and to reduce the approved Project on the site to a 6-story

commercial/residential building, with the entire 6th floor for residential use. Additionally, the modified plans indicate four residential units with access at the street level on 25th Street, at the northern end of the project. These will consist of 2 basement units and 2 duplex (2-story) units. These 4 residential units will be located in the lower level, first and second floors of the building, in the area where the one duplex and the loading dock were formerly located in the plans dated 5/22/92, which reflected the settlement discussions at that time. Units may be connected, subject to tenant demand. Except as set forth in paragraph 2, the remainder of the building may be devoted to any commercial use permitted in the C-2-A zone, including but not limited to chancery, medical, office or institutional use. The loading area currently shown on the 5/22/92 plans will be relocated to that portion of the northwest corner of the building south of the dead-end alley adjacent to the building. (Trucks will not be physically able to enter the building for loading). In order to accommodate this relocation of uses, the fire control room and/or the mailroom will be relocated south of the fire stair, into a portion of the retail area on the west side of the building. These modifications are shown on the sketch attached hereto as Exhibit A, (identified as "2501 Pennsylvania Avenue", 5/22/92, revised 10/21/92 and 12/7/92). The building as described in this

Paragraph 1 is hereinafter referred to as the "Modified Project".

2. Chatham intends to use best efforts to have the ground floor in the Modified Project occupied for retail/service uses as permitted in the C-2-A District, subject to tenant demand. However, Chatham shall have the right to occupy the ground floor with other commercial uses permitted in the C-2-A District. Notwithstanding the above, Chatham will guarantee a minimum of approximately 48 linear feet of ground floor street frontage (4 bays) in the Modified Project, to a minimum depth of approximately 16 feet, to be devoted to one or more of the retail/service uses permitted in the C-2-A District. This retail area of the building street frontage is located on Pennsylvania Avenue, extending to a distance of approximately 24 feet (2 bays) both to the east and to the west of the building lobby entrance, as shown on the attached sketch. (See "retail storefronts"). This guarantee will be evidenced by a covenant to be recorded on the land records of the District of Columbia, upon issuance of the building permit for the Modified Project.

3. Chatham will provide a standpipe for fire safety in the alley area adjacent to the Modified Project.

4. In conjunction with the Modified Project, Chatham will provide accommodation for trash disposal for the current residents of those units in the adjacent condominium building to the north of the Site known as

1112-1114-1116 25th Street, Square 14, Lots 19 and 72 (the "Condominium") whose access across the Site to the trash area at the rear of the Condominium will no longer be available as a result of construction of the Modified Project. Such accommodation for trash disposal will be for the residents of those 6 units located on the first through fourth floors of the portion of the Condominium at 1112-14 25th Street, N.W., and for the residents of those two units on the second, third and loft floor levels of the portion of the Condominium at 1116 25th Street, N.W., (the "Units") who do not now have direct access from their units to the public alley in Square 14 at the rear of the Condominium. Such accommodation will be negotiated directly by Chatham with the owners of record of the Units as of the date of execution of this Agreement (the "Owners"). If no other arrangements can be made that are acceptable to the Owners, then Chatham will provide accommodation for the Units for trash disposal in the Modified Project, preferably by the street entrance to the Condominium.

5. Parking will be provided in the Modified Project at market rates, on a month-to-month basis, for residents of the Condominium as a second priority to 2501 Pennsylvania Avenue building tenants.

6. Chatham will retain retail windows, entrances, and awnings on the ground floor street frontage in the Modified Project as approved by HPRB.

7. The structural height of the ground floor retail area in the Modified Project will remain as currently designed to make the ground floor suitable for retail.

8. There will be limited access to retail space from the lobby in the Modified Project, thus requiring the public to use street entrances for access to the retail space.

9. In conjunction with development of the Modified Project, Chatham will provide sidewalk paving along the Pennsylvania Avenue street frontage from 25th Street west to the public alley between the Mullett building (Record Lot 29 in Square 14) and the Westbridge (Record Lot 70 in Square 14).

10. Chatham will commit to meet with designated representatives of FBA and/or ANC 2A during the development of the Modified Project on an as-needed basis, by mutual consent, but not less than every 6 months, to apprise them of sales or leasing progress and address other issues that may arise.

11. Upon issuance of the building permit for the Modified Project, Chatham will record a covenant among the land records to the effect that the Luzon building will be restored according to the plans as approved for issuance of a building permit and that the Modified Project design and development plan will remain essentially unchanged if the Luzon building is damaged before or during construction or prior to occupancy, including but not limited to the construction of the

underground garage. This covenant will terminate upon completion of construction of the Modified Project.

12. No change to the parking scheme on the public streets surrounding Square 14 shall be initiated by, or on behalf of, Chatham except as may be necessary for access to the parking garage in the Modified Project as shown on the plans approved for construction.

B. **Obligations of Community Representatives:**

1. Chatham recognizes that the Plaintiffs, FBA and Richard Price, have reached a settlement agreement with the District of Columbia in Price v. Dixon, No. 91-CA-011577, and Plaintiffs agree to dismiss the pending lawsuit in Superior Court with prejudice, within two weeks after execution of this Settlement Agreement, if they have not already done so.

2. FBA, as the Petitioners in Foggy Bottom Association v. DCRA, No. 92-AA-689, will dismiss that appeal with prejudice within two weeks after execution of this Settlement Agreement.

3. The Community Group will actively support the Modified Project through personal appearances by FBA representatives and written support by the members of the Community Group, and will actively solicit the support of the public for the Modified Project, before the BZA, HPRB and Mayor's Agent, including soliciting the written endorsement of Advisory Neighborhood Commission 2A ("ANC 2A") through attendance at the ANC meetings where the project is an agenda item by at

least two of the five individual members of the Community Group. The Community Group will also solicit the written endorsement of those persons, organizations and entities that appeared and testified in opposition to the Project at previous proceedings before those agencies, including those named in the three letters dated April 16, 1991, April 22, 1991 and May 16, 1991 from Barbara Kahlow containing lists of witnesses, plus attachments, (hereinafter "Witness Lists"), attached as Exhibit B. The Community Group will actively support the Modified Project through personal contact by FBA representatives, and written support by the members of the Community Group, with the Office of Planning and the HPRB staff, and will communicate their support of the Modified Project to the Council and to the Executive Branch of the District of Columbia, and will actively encourage ANC 2A and all persons, organizations and entities on the attached Witness Lists to do the same.

4. The Community Group will not appeal the final decisions of the BZA, the HPRB or the Mayor's Agent approving the Modified Project, and will actively encourage the persons, organizations and entities that participated in the prior administrative proceedings for the Project and others in the community not to appeal those approvals. If, despite the best efforts of the Community Group in this regard, an appeal is filed, the FBA will participate in the appeal in writing as

Intervenors aligned with Chatham. Chatham will provide legal counsel for the FBA to prepare such documents, and will pay legal expenses.

5. The Community Group will not initiate, continue, support or cause to happen, directly or indirectly, any administrative, legislative or judicial proceeding which would or could adversely affect the Modified Project, and will actively solicit the persons, organizations and entities that participated in the previous administrative, legislative and judicial proceedings challenging the Project, as well as others in the community, to similarly refrain from taking such action. If despite the best efforts of the Community Group in this regard, an administrative or legislative proceeding is initiated or continued which challenges the Modified Project, directly or indirectly, or affects the ability of Chatham to obtain the necessary approvals for construction of the Modified Project, the FBA will participate in such proceeding in writing, aligned with Chatham. Chatham will provide legal counsel for the FBA to prepare such documents, and will pay legal expenses.

6. If, despite the best efforts of the Community Group to support the project and to solicit the support of the community as described herein, the required administrative approval by the BZA, HPRB or Mayor's Agent for the Modified Project is denied or withheld, then Chatham, at its option, shall not be bound by this

Settlement Agreement, and may pursue either the Modified Project, or the plan as approved by the BZA in September 1991 and as approved in concept by the HPRB in May 1991, or some other plan. If Chatham exercises such option not to be bound by the Settlement Agreement, then the Community Group shall likewise not be bound by the Settlement Agreement.

C. **General Provisions**

1. The provisions of this Settlement Agreement, and any covenants to be executed pursuant to this Settlement Agreement, are subject to applicable Code and regulatory requirements. This Settlement Agreement is entered into knowingly, willingly and voluntarily by Chatham and the Community Group and each of them hereby represent that this Settlement Agreement represents the entire agreement among the parties, and that no representations of fact or opinion have been made by any individual or entity to induce this Settlement Agreement or to in any way modify or nullify its effect. Furthermore, each party to this Settlement Agreement represents that they have been represented in negotiation and execution of this Settlement Agreement and in the making of each of the agreements contained herein by independent legal counsel, selected of their own free will, and they have had the opportunity to discuss the terms of this Settlement Agreement and their effect with counsel.

2. If Chatham, or the Community Group or any one of them violates the terms of the Settlement Agreement, then the other party shall notify the offending party of that fact within two weeks of discovery of the violation, and Chatham and the Community Group shall then meet, either personally or through counsel, to attempt to resolve any differences. If such differences cannot be resolved within 30 days of such meeting, then the parties hereto may pursue all available legal remedies. Such notifications under this paragraph shall be given in writing as follows:

For Chatham:

Christopher H. Collins
Wilkes, Artis, Hedrick & Lane
1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

For the Community Group:

President
Foggy Bottom Association
c/o West End Library
24th & L Streets, N.W.
Washington, D.C. 20037

3. This Settlement Agreement may be executed in counterparts, all of which shall be taken together as a single instrument.

IN WITNESS WHEREOF, this Settlement Agreement has been executed as of the day first above written.

CHATHAM LAKE ASSOCIATES, L.P.

By: Lovell Pennsylvania Avenue, Inc., General Partner

12/23/92
Date

By _____
Crispin Etherington
Vice President

FOGGY BOTTOM ASSOCIATION

12/19/92
Date

By _____
Chris Lamb, President

_____
Date

_____
CHRIS LAMB

_____
Date

_____
ELAYNE DEVITO

_____
Date

_____
RICHARD PRICE

_____
Date

_____
BARBARA KAHLOW

_____
Date

_____
ROBERT NIEMIC

IN WITNESS WHEREOF, this Settlement Agreement has been executed as of the day first above written.

CHATHAM LAKE ASSOCIATES, L.P.

By: Lovell Pennsylvania Avenue, Inc., General Partner

_____ By _____
Date Crispin Etherington
Vice President

FOGGY BOTTOM ASSOCIATION

_____ By _____
Date Chris Lamb, President

11/7/93 
Date CHRIS LAMB

_____ _____
Date ELAYNE DEVITO

_____ _____
Date RICHARD PRICE

_____ _____
Date BARBARA KAHLOW

_____ _____
Date ROBERT NIEMIC

IN WITNESS WHEREOF, this Settlement Agreement has been executed as of the day first above written.

CHATHAM LAKE ASSOCIATES, L.P.

By: Lovell Pennsylvania Avenue, Inc., General Partner

Date

By _____
Crispin Etherington
Vice President

FOGGY BOTTOM ASSOCIATION

Date

By _____
Chris Lamb, President

Date

CHRIS LAMB

12/21/92
Date

ELAYNE DEVITO

Date

RICHARD PRICE

Date

BARBARA KAHLOW

Date

ROBERT NIEMIC

IN WITNESS WHEREOF, this Settlement Agreement has been executed as of the day first above written.

CHATHAM LAKE ASSOCIATES, L.P.

By: Lovell Pennsylvania Avenue, Inc., General Partner

Date

By _____
Crispin Etherington
Vice President

FOGGY BOTTOM ASSOCIATION

Date

By _____
Chris Lamb, President

Date

CHRIS LAMB

Date

ELAYNE DEVITO

12-19-92
Date

Richard James Price
RICHARD PRICE

Date

BARBARA KAHLOW

Date

ROBERT NIEMIC

IN WITNESS WHEREOF, this Settlement Agreement has been executed as of the day first above written.

CHATHAM LAKE ASSOCIATES, L.P.

By: Lovell Pennsylvania Avenue, Inc., General Partner

Date

By _____
Crispin Etherington
Vice President

FOGGY BOTTOM ASSOCIATION

Date

By _____
Chris Lamb, President

Date

CHRIS LAMB

Date

ELAYNE DEVITO

Date

RICHARD PRICE

12/19/92
Date

Barbara P. Kahlow
BARBARA KAHLOW

Date

ROBERT NIEMIC

IN WITNESS WHEREOF, this Settlement Agreement has been executed as of the day first above written.

CHATHAM LAKE ASSOCIATES, L.P.

By: Lovell Pennsylvania Avenue, Inc., General Partner

Date

By _____
Crispin Etherington
Vice President

FOGGY BOTTOM ASSOCIATION

Date

By _____
Chris Lamb, President

Date

CHRIS LAMB

Date

ELAYNE DEVITO

Date

RICHARD PRICE

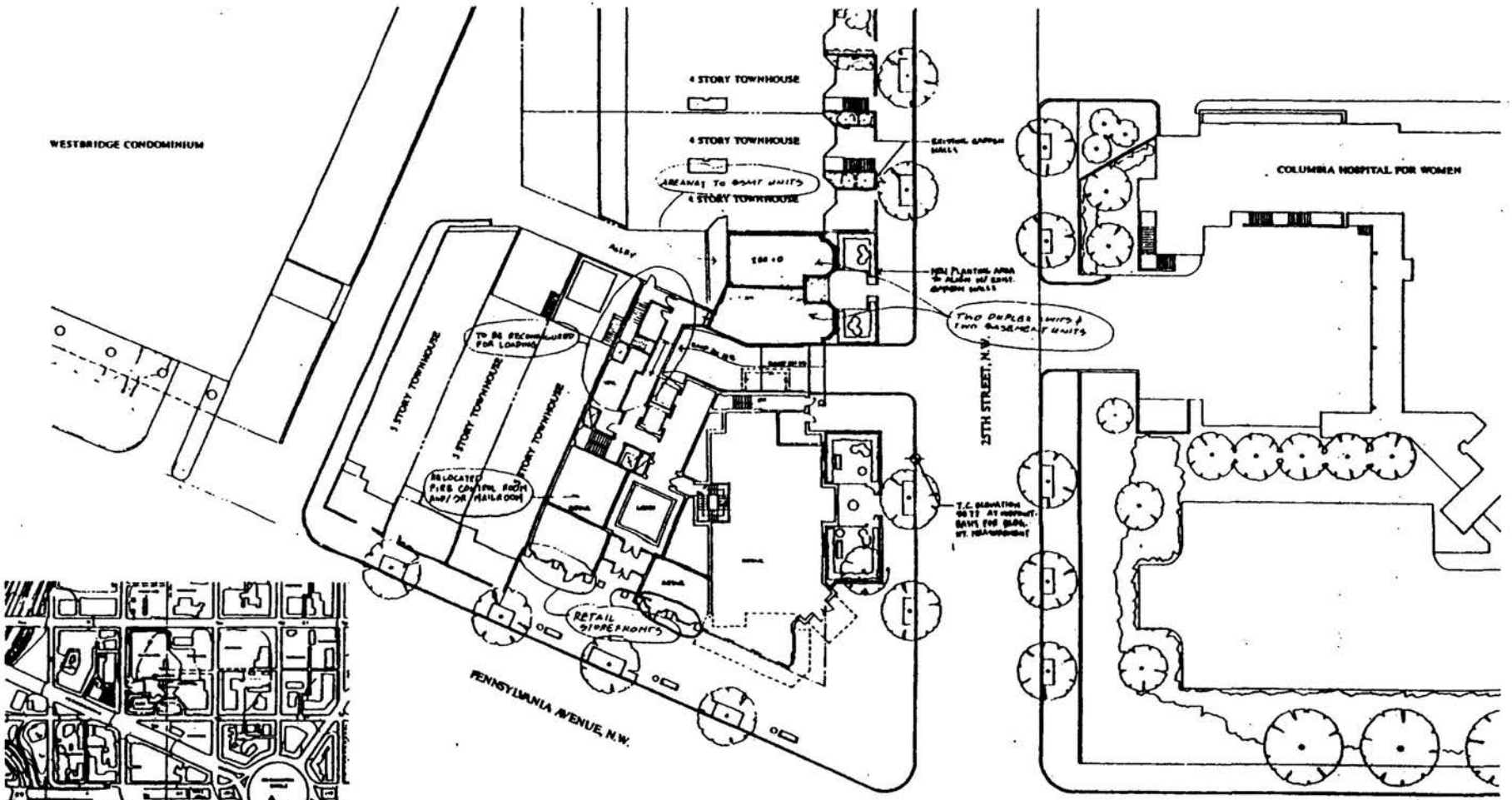
Date

BARBARA KAHLOW

12/19/92
Date

ROBERT NIEMIC

Exhibit A



KEY

SITE PLAN

LOVELL, INC./IBG DEVELOPMENT, INC.

2501 PENNSYLVANIA AVENUE

KCF 89037

5/22/92 REVISED 10 11-92 12 7 92

KEYES CONDON FLORANCE ARCHITECTS

1/16" = 1'-0"

A101

Mrs. Barbara T. Kahlow
The Westbridge #404
2555 Pennsylvania Ave., NW
Washington, DC 20037
April 16, 1991

Mr. James T. Speights
Chairman
DC Historic Preservation Review Board
614 H Street, NW - Room 202
Washington, DC 20001

Dear Chairman Speights:

This letter indicates our preferred order of witness testimony, for the Historic Preservation Review Board's April 17, 1991, hearing, in opposition to HPA #91-298, the Luzon Apartments at 2501 Pennsylvania Avenue, NW. If any additional information is needed, please have your staff telephone me during the day on 395-3053.

1. Edward Kelly, Chair, Foggy Bottom-West End ANC-2A
2. Jack Evans, Commissioner, Dupont Circle ANC--2B
3. Westy McDermid, Vice Chair, Georgetown ANC-2E
4. Barbara Kahlow, Co-Chair, Citizens for a Responsive ANC-2A, and owner 2555 Pennsylvania Avenue, NW
5. Richard Nettler, attorney for various owners at 2555 Pennsylvania Avenue, NW and on 25th Street
6. Richard Price, Immediate Past President and Board Member, Foggy Bottom Association, and owner 2555 Pennsylvania Avenue, NW - including slide presentation
7. Elayne DeVito, Chair, former ANC-2A/Foggy Bottom Association Joint Committee on Historic Preservation, and owner 2501 M Street, NW.
8. Geoffrey Tyler, Board Member, Foggy Bottom Historic District Conservancy
9. Walter Anderson, owner 2555 Pennsylvania Avenue, NW
10. Charles Clapp, President, Westbridge Condominium Association, and owner 2555 Pennsylvania Avenue, NW
11. Robert Niemic, owner 2555 Pennsylvania Avenue, NW
12. Michael Walden, Chair, Westbridge Condominium Association's Committee on 2501 Pennsylvania Avenue Development

13-16. miscellaneous other owners 2555 Pennsylvania Avenue, NW, including: David Bowes, Lillian Pilzer, Lohva Wakefield, and Aimee Zelter

17. miscellaneous others, including owner 25th Street condominium abutting the site. Howes

Thank you for providing this opportunity to logically and non-repetitively present our testimony to be most useful to the Board in its deliberations.

Sincerely,

Barbara T. Kahlow

Exhibit B

Mrs. Barbara F. Kahlow
The Westbridge #404
2555 Pennsylvania Ave., NW
Washington, DC 20037
April 22, 1991

Ms. Carrie L. Thornhill
Chairperson
Board of Zoning Adjustment
District Building - Room 11
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Chairperson Thornhill:

This letter indicates our preferred order of witness testimony, for the Board of Zoning Adjustment's April 24, 1991, hearing, in opposition to BZA #15461, Application of Chatham Lake Associates for 2501 Pennsylvania Avenue, NW. If any additional information is needed, please have your staff telephone me during the day on 395-3053.

1. Edward Kelly, Chair, Foggy Bottom-West End ANC-2A
2. Jack Evans, Commissioner, Dupont Circle ANC-2B
3. Westy McDermid, Vice Chair, Georgetown ANC-2E
4. Barbara Kahlow, Co-Chair, Citizens for a Responsive ANC-2A, and owner 2555 Pennsylvania Avenue, NW
5. Richard Nettler, attorney for various owners at 2555 Pennsylvania Avenue, NW and on 25th Street
6. Richard Price, Immediate Past President and Board Member, Foggy Bottom Association, and owner 2555 Pennsylvania Avenue, NW - including slide presentation
7. Elayne DeVito, Chair, former ANC-2A/Foggy Bottom Association Joint Committee on Historic Preservation, and owner 2501 M Street, NW
8. Walter Anderson, owner 2555 Pennsylvania Avenue, NW
9. Charles Clapp, President, Westbridge Condominium Association, and owner 2555 Pennsylvania Avenue, NW
10. Robert Niemic, owner 2555 Pennsylvania Avenue, NW
11. Michael Walden, Chair, Westbridge Condominium Association's Committee on 2501 Pennsylvania Avenue Development

12-5. miscellaneous other owners 2555 Pennsylvania Avenue, NW, including: David Bowes, Lillian Pilzer, Lohva Wakefield, and Aimee Zelter

16. miscellaneous others, including owner 25th Street condominium abutting the site

Thank you for providing this opportunity to logically and non-repetitively present our testimony to be most useful to the Board in its deliberations.

Sincerely,

Barbara F. Kahlow

BZA
CASE No. #15461
EXHIBIT No. 54

APR 24 1991

WITNESS CARD CASE NO. 15401

Proponent _____ OPPONENT ✓

Name Walter F. Anderson

Address 2555 Pennsylvania Ave. N.W.

City Washington, D.C. Zip 20037

z.c.4 DAYTIME PHONE No. 833-1327 9-0490 wd303

APR 24 1991

Proponent _____ OPPONENT _____

Name Aimee Zeltzer

Address 2355 Penn Ave, NW #607

City Washington, DC Zip 20037

z.c.4 DAYTIME PHONE No. 202 7754060 9-0490 wd303

APR 24 199

OPPONENT ✓

Name James L. Woodward

Columbia Hospital for Women

Address 2425 L St NW

City Washington DC Zip 20037

z.c.4 DAYTIME PHONE No. 293-6513 9-0490 wd303

APR 24 1991

Proponent _____ OPPONENT _____

Name Elaine Dubin for

Address Ellen Winston 2000 P St, NW, #710

City Washington DC Zip 20036

z.c.4 DAYTIME PHONE No. 785-1710 9-0490 wd303

APR 24 1991

Proponent _____ OPPONENT ✓

Name GEOFFREY TYLER

Address 949 - 25th St NW

City WASH. DC Zip 20037

z.c.4 DAYTIME PHONE No. 337 7896 9-0490 wd303

APR 24 199

Proponent _____ OPPONENT ✓

Name WILLIAM TAYLER

Address 2555 Pennsylvania Ave NW

City Wash. D.C. Zip 20037

z.c.4 DAYTIME PHONE No. 828 8220 9-0490 wd303

WITNESS CARD CASE NO. 15461

APR 24 1991

Proponent X OPPONENT

Name CHRISTOPHER COLLINS

Address 1666 K ST. NW

City DC Zip 20006

z.c.4 DAYTIME PHONE No. 202 457 7844

WITNESS CARD CASE NO. 15461

APR 24 1991

Proponent OPPONENT X

Name Richard Nettler

Address 1300 19th Street, NW

City Washington DC Zip 20036

z.c.4 DAYTIME PHONE No. 775-0725

WITNESS CARD CASE NO. 15461

APR 24 1991

Proponent ✓ OPPONENT

Name DAVID FITCH

Address 3222 N ST, NW

City WASHINGTON DC Zip 2000

z.c.4 DAYTIME PHONE No. 337-0300

WITNESS CARD CASE NO.

APR 24 1991

Proponent OPPONENT

Name

Address

City Zip

z.c.4 DAYTIME PHONE No.

WITNESS CARD CASE NO. 15461

APR 24 1991

Proponent ✓ OPPONENT

Name RUSSELL PERRY, AIA

Address 4917 41st ST., N.W.

City WASHINGTON, D.C. Zip 20016

z.c.4 DAYTIME PHONE No. 293-0800

WITNESS CARD CASE NO.

APR 24 1991

Proponent OPPONENT ✓

Name

Address

City Zip

z.c.4 DAYTIME PHONE No.

ANC-2A

WITNESS CARD CASE NO. BZA 15461

APR 24 1991

Proponent OPPONENT ✓ AS CHAIR, ANC 2A

Name EDWARD T. KISLY

Address 500-2300 STREETS, NW

City WASHINGTON, DC Zip 20037

z.c.4 DAYTIME PHONE No. 202 223-5899

WITNESS CARD CASE NO.

APR 24 1991

Proponent OPPONENT X

Name Robert J. Niemic

Address 2555 PA Ave., N.W. #10

City WDC Zip 20037

z.c.4 DAYTIME PHONE No. 202-466-6300

WITNESS CARD CASE NO.

APR 24 1991

Proponent OPPONENT ✓

Name RICHARD PRICE

Address 2555 PENN AVE NW

City WASHINGTON Zip 20037

z.c.4 DAYTIME PHONE No. 202 707 5863

WITNESS CARD CASE NO.

APR 24 1991

Proponent OPPONENT X

Name MARILYN JACKSON

Address 2500 Va. Ave, N.W. - #605S

City WASH. D.C. Zip 20037

z.c.4 DAYTIME PHONE No. 875-7249

WITNESS CARD CASE NO.

APR 24 1991

Proponent OPPONENT X

Name Christine E. Garnet

Address 1136 - 25th St. N.W.

City Wash., D.C. Zip 202

z.c.4 DAYTIME PHONE No. 331-8[illegible]

WITNESS CARD CASE NO.

APR 24 1991

Proponent OPPONENT ✓

Name Robert Wakefield

Address 2555 Penn

City Washington Zip 2003[illegible]

z.c.4 DAYTIME PHONE No. BZA

Mrs. Barbara F. Kahlow
The Westbridge #404
2555 Pennsylvania Ave., NW
Washington, DC 20037
May 16, 1991

Ms. Carrie L. Thornhill
Chairperson
Board of Zoning Adjustment
District Building - Room 11
1350 Pennsylvania Avenue, NW
Washington, DC 20004

DISTRICT OF COLUMBIA
ZONING COMMISSION
'91 MAY 16 AM 8:52

Dear Chairperson Thornhill:

This letter provides further information on our preferred order of witness testimony, for the Board of Zoning Adjustment's May 24, 1991, hearing, in opposition to BZA #15461, Application of Chatham Lake Associates for 2501 Pennsylvania Avenue, NW. Fourteen of the 17 witnesses were in attendance on May 2, 1991; all three absent parties were present at previously scheduled hearings on this project and I submitted the names of two of the absent three on May 2nd. A few of the 17 may be unable to attend on May 24, 1991. Also, due to scheduling conflicts, I may need to request some reordering on the day of the hearing. If any additional information is needed, please have your staff telephone me during the day on 395-3053.

Witnesses heard 5/2 in opposition

1. Jack Evans, Commissioner, Dupont Circle ANC-2B, and now Ward 2 City Council Member
2. Westy McDermid, Vice Chair, Georgetown ANC-2E
3. Edward Kelly, Chair, Foggy Bottom-West End ANC-2A
4. Charles Clapp, President, Westbridge Condominium Association, and owner 2555 Pennsylvania Avenue, NW
5. Ranee Lewison, owner 25th Street, NW
6. Ian Howes, owner 25th Street, NW
7. Keyvan Ahdut, owner 25th Street, NW
8. Lillian Pilzer, owner 2555 Pennsylvania Avenue, NW
9. David Bowes, owner 2555 Pennsylvania Avenue, NW

Witnesses to be heard 5/24 in opposition

1. Richard Nettler, attorney for various owners at 2555 Pennsylvania Avenue, NW and on 25th Street, NW
2. Barbara Kahlow, Co-Chair, Citizens for a Responsive ANC-2A, and owner 2555 Pennsylvania Avenue, NW
3. Richard Price, Immediate Past President and Board Member, Foggy Bottom Association, and owner 2555 Pennsylvania Avenue, NW - including slide presentation
4. Elayne DeVito, Chair, former ANC-2A/Foggy Bottom Association Joint Committee on Historic Preservation, and owner 2501 M Street, NW
5. Walter Anderson, owner 2555 Pennsylvania Avenue, NW
6. representative from an architectural/engineering firm

5/16/91

7. Robert Niemic, owner 2555 Pennsylvania Avenue, NW
8. Christine Garner, owner 25th Street, NW
9. Geoffrey Tyler, Board member, Foggy Bottom Historic District Conservancy and owner 25th Street, NW
10. Michael Walden, Chair, Westbridge Condominium Association's Committee on 2501 Pennsylvania Avenue Development
11. William Taylor, owner 2555 Pennsylvania Avenue, NW
12. Marilyn Jackson, owner 2555 Pennsylvania Avenue, NW
13. Aimee Zelter, owner 2555 Pennsylvania Avenue, NW
14. Robert Kincaid, owner 25th Street, NW
15. Paul Giordano, owner 2555 Pennsylvania Avenue, NW
16. Lohva Wakefield, owner 2555 Pennsylvania Avenue, NW
17. Maria Tyler, owner 25th Street, NW

Thank you for providing this opportunity to logically and non-repetitively present our testimony to be most useful to the Board in its deliberations.

Sincerely,

Barbara J. Kahlow

MEMORANDUM OF UNDERSTANDING
REGARDING DEVELOPMENT OF
2501 PENNSYLVANIA AVENUE, N.W.

THIS MEMORANDUM OF UNDERSTANDING (the "Memorandum"), entered into on this 19th day of May, 1996, by and among the undersigned parties (the "Parties") amends that certain Settlement Agreement by and among Chatham Lake Associates, L.P. and the Foggy Bottom Association, et al. dated January 7, 1993 (the "Settlement Agreement"), attached hereto. The Parties shall be bound by the Settlement Agreement which shall remain in full force and effect, except to the extent specifically modified by the terms expressed herein:

1. Castleton Holdings, Inc. and assigns (collectively the "Developer") intends to build a mixed-use project (the "New Project") at 2501 Pennsylvania Avenue, N.W. (Square 14, formerly Lots 800 and 812, now Lot 73) (the "Property"). Except as modified herein, the exterior of the completed New Project shall be substantially in accordance with the exterior plans submitted for a building permit (6/15/94), a copy of which plans was delivered by Chatham Lake Associates to Mr. Niemic on May 16, 1996 (the "Plans"). The Parties understand that the New Project will be 6 stories in height, and that the elevation at the top of the penthouse of the New Project shall be no higher than el. 136.77 feet, as shown on the Plans.

2. Paragraph A(2) of the Settlement Agreement is hereby replaced by the following: The Developer will use best efforts to have the ground floor of the New Project occupied for retail and community-related services available to the public as

permitted in the C-2-C District, subject to tenant demand. Notwithstanding the above, the Developer guarantees a minimum of approximately 48 linear feet of ground floor street frontage (4 bays) in the New Project, to a minimum depth of approximately 16 feet, to be devoted to one or more of the retail and community related services available to the public permitted in the C-2-C District, including, in the event of a chancery or embassy, a travel office, visa permit office, or other similar office that will be open to the public. This retail area of building street frontage is located on Pennsylvania Avenue, extending to a distance of approximately 24 feet (2 bays) both to the east and to the west of the building lobby entrance. This guarantee will be evidenced by a covenant to be recorded on the land records of the District of Columbia, upon issuance of the building permit for the New Project. In addition, Mr. Niemic agrees to support and Mrs. Kahlow agrees to actively support applications for one or more ABC licenses in the New Project.

3. The Developer assumes and reaffirms the agreements and obligations contained in Paragraph A(1) of the Settlement Agreement with the following modifications:

a. The Developer agrees to include in the New Project no less than 4 stories (basement, first, second and third floors) of residential use in the portion of the New Project that is to the north of the garage entrance on 25th Street, rather than 3 stories as shown on the Plans.

b. Except as otherwise provided herein, the Developer will devote the remainder of the building, including the 6th Floor, to any use permitted in the C-2-C zone, including, but not limited to chancery, medical, office or institutional use.

4. The Developer agrees to restore as part of the New Project the Pennsylvania Avenue and 25th Street facades of the landmarked Luzon (Haller) building

(the "Two Facades"). The Parties recognize that the other facades and the interior of the landmark would not be restored under the terms of this Memorandum, and the Parties will actively support, and the Developer will actively pursue, all necessary and appropriate approvals to that end.

5. The Developer agrees to record a covenant among the land records to the effect that the Two Facades shall be rebuilt or restored according to the plans as approved for issuance of a building permit for the New Project, in the event that they are damaged before or during construction on the site or otherwise damaged prior to occupancy, pursuant to the terms of Paragraph A(11) of the Settlement Agreement.

6. The Developer commits to apply for and diligently pursue to completion within a reasonable amount of time, all zoning, preservation, permit, and final building permit approvals that are reasonably necessary for the New Project (the "Approvals"). The Developer commits to a timetable to begin construction within 6 months of obtaining the Approvals and to use all best efforts within its control to substantially complete the New Project within 2 years after construction begins.

7. Except as otherwise modified herein, the Developer hereby assumes and reaffirms the agreements and obligations contained in Paragraphs A(1) through A(12) of the Settlement Agreement.

8. The Developer is free to substitute construction materials and finish materials for those previously proposed for the development of the Property, if agreed to by the D.C. Historic Preservation Review Board.

9. In consideration of the Developer's agreements described herein, Barbara Kahlow and Robert Niemic, in their capacity as concerned citizens of Foggy Bottom/West End (but not in any community association capacity), agree to actively support the New

Project and to each appear in person or in writing before the following persons or governmental bodies, as reasonably necessary: the D.C. City Councilmember for Ward 2, the Foggy Bottom and West End Advisory Neighborhood Commission 2A, the D.C. Historic Preservation Review Board, the D.C. Board of Zoning Adjustment, and the Mayor's Agent, consistent with and in the full spirit of the agreements for support and appearances made in the Settlement Agreement. In addition,

(a) Mr. Niemic will assist and support the Developer in attempting to obtain the support or acquiescence of the other signatories to the Settlement Agreement for the provisions contained in this Memorandum of Understanding.

(b) Mr. Niemic and Mrs. Kahlow will encourage other interested persons to support the New Project, refrain from appealing the final decisions of any applicable review agencies and authorities, and encourage others to likewise refrain from doing so.

(c) Mr. Niemic and Mrs. Kahlow will not initiate, continue, support or cause to happen, directly or indirectly, any administrative, legislative, or judicial proceeding other than proceedings related to theu enforcement of the letter and spirit of this Memorandum, which would adversely affect the New Project, and actively encourage others to refrain from doing so. If such judicial or administrative proceeding or other challenge is instituted, then Mr. Niemic and Mrs. Kahlow will testify in such proceeding, aligned with such interests of the Developer as are consistent with the letter and spirit of this Memorandum.

10. The Parties incorporate the provisions of Paragraph C(1) of the Settlement Agreement except that the Parties recognize that Mrs. Kahlow and Mr. Niemic have not

been represented by counsel in the negotiation and execution of this Memorandum, and Castleton Holdings, Inc. is substituted for Chatham.

11. The Parties incorporate the provisions of Paragraphs C(2) and C(3) of the Settlement Agreement, except that Castleton Holdings, Inc. is substituted for Chatham, and that Mrs. Kahlow and Mr. Niemic are substituted for the Community Group, and that notice to Mrs. Kahlow and Mr. Niemic will be delivered instead to those individuals at their homes at 2555 Pennsylvania Avenue, N.W., Washington, D.C. 20037.

12. If the Developer does not purchase the Property, or if the New Project is not approved by all required administrative agencies, then the Settlement Agreement shall remain in full force and effect pursuant to the terms agreed to at the time of its execution, and this Memorandum shall not modify those terms in any way.

13. The Developer agrees that, if the Developer transfers, assigns, or conveys, in whole or in part, any of its right, title, or interest in, or related to, its agreement or intent to purchase the Property or if the Developer transfers, assigns, or conveys, in whole or in part, any of its right, title, or interest in, or related to, development of the Property, any such transfer, assignment, or conveyance shall include a simultaneous delegation by the Developer and assumption by the transferee or assignee (collectively, the Assignee) of Developer's obligations and duties under and with respect to this Memorandum, such that Assignee shall become liable for the obligations and duties of the Developer hereunder as if the Assignee had been a party to this Memorandum. Castleton Holdings, Inc. intends to be the General Partner of the assignee which will develop the New Project.

14. The Parties recognize that all discussion among the Parties leading to this Memorandum have been confidential at the request of Chatham Lake Associates, L.P. and that this

O. D. Memo. are

IN WITNESS WHEREOF, this Memorandum of Understanding has been executed as of the day first above written.

ATTEST:

5/19/96
Date

CASTLETON HOLDINGS, INC.

By: _____, Assistant
[Name & Title]

Date

(SEAL)

5/17/96
Date

Barbara F. Kahlow
Barbara F. Kahlow

5/17/96
Date

Robert J. Niemic
Robert J. Niemic

ADDENDUM NUMBER ONE
TO
MEMORANDUM OF UNDERSTANDING
REGARDING DEVELOPMENT OF
2501 PENNSYLVANIA AVENUE, N.W.

15. In the event that the Developer determines, in its sole and absolute discretion, that the New Project is not economically viable to develop under the current plans, then the Developer shall have the right and option to:

a. Modify the plans of the Project in a manner that incorporates a renovation of the Luzon (Haller) building with either a commercial or residential use on floors 2 through 5 and a retail and/or community-related service(s), as permitted in the C-2-C District on a portion of the 1st floor which is consistent with the obligations of the Developer under the current plans. The balance of the site shall consist of a new structure to be designed and built in a manner that is compatible and complementary to the adjoining townhouse structures, not to exceed five stories in height, and where the overall use includes at least as much residential use as referenced in paragraph 3(a); or

b. Modify the plans of the New Project in a manner that is mutually acceptable to the Parties.

All other terms and conditions of the Memorandum of Understanding, dated May 19, 1996, shall remain in full force and effect.

5/19/96
Date

President
Castleton Holdings, Inc.

5/19/96
Date

Barbara F. Kahlow
Barbara F. Kahlow

5/19/96
Date

Robert J. Niemic
Robert J. Niemic