

RECEIVED - COMMUNITY  
Division of Community  
CASE NO. 00-35A  
EXHIBIT NO. \_\_\_\_\_

RICHARD B. NETTLER  
202-736-2720/2721

October 11, 2005

Ms. Carol J. Mitten  
Chairperson  
D.C. Zoning Commission  
441 4th Street N.W., Suite 210  
Washington, D.C. 20001

Re: Zoning Commission Case No. 89-31C/94-4M/00-35TE  
**Request for Extension of Time**  
Our File No.: 91952.0000

Dear Ms. Mitten:

On behalf of our client, the National Academy of Sciences ("NAS"), acting through NAS Title Holding, we hereby request approval of a five-year extension of time for Zoning Commission Order Nos. 668-D, 668-E, 668-F, 668-F-1, 668-G, and 668-H, pursuant to Section 2408.10 of the Zoning Regulations (11 D.C.M.R.) governing planned unit developments ("PUD") for "good cause shown" herein (hereinafter the "Modified PUD"). Copies of Zoning Commission Order Nos. 668-D, 668-E, 668-F, 668-F-1, 668-G, and 668-H are attached hereto as Exhibit A through F. NAS has been assigned the right to develop the site by 488 A.R. Associates Limited Partnership (hereinafter the "prior applicants"). We request that this motion be considered and placed on the agenda of the Commission's next available public meeting. Pursuant to Section 2408.10(a), this request for an extension has been served on all parties to this matter. Additionally, the RLA Revitalization Corporation, successor-in-interest to the District of Columbia Redevelopment Land Agency, has noted its support of the request for an Extension of Time. *See Exhibit N*, attached.

#### A. Background

##### 1. Prior PUD Orders Applicable to the Subject Property.

Zoning Commission Order No. 668-D (November 14, 1994) approved the Modified PUD at 500 5th Street N.W.<sup>1</sup> Order No. 668-D allowed for a modification of the originally approved

<sup>1</sup> Final approval of a PUD for Lot 26 (formerly Lots 15, 16, 17, 18, 19, 24, 25, 821, 822, and 823) in Square 488 (the "Original PUD Property") was granted by Zoning Commission Order No. 668, which provided for a mixed-

**ZONING COMMISSION**  
ZONING COMMISSION  
District of Columbia  
CASE No. 00-35A  
CASE NO. 00-35A  
EXHIBIT No. EXHIBIT NO. 1A1

PUD, as an alternative development, and the inclusion of the adjacent Lots 833 and 842 at the northern end of square 488. Lots 833 and 842 are developed with a District of Columbia fire station and were, at that time, unzoned public property. Specifically, Order No. 668-D provided for the development of an office/retail building with a gross floor area (including the fire station), and connecting to the Originally Approved PUD site, of 448,525 square feet in the air rights over Lots 833 and 842 (the "Air Rights Property"). The developed office/retail building would have an FAR of 7.64, a height of 120 feet, and a minimum of 212 off-street parking spaces, with a potential for approximately 313 parking spaces, through the use of a stacked parking scheme. The Order zoned Lots 833 and 842 C-3-C, consistent with the zoning of the remainder of Square 488.

Zoning Commission Order No. 668-D was valid for two years, requiring a building permit prior to December 9, 1996 and commencement of construction by December 9, 1997. The prior applicants' sought an extension of that order on September 21, 1995 to allow additional time to secure a lead tenant prior to commencement of construction. The Zoning Commission approved that request in Order No. 668-E and extended the PUD to require building permit applications be filed on or before December 9, 1998 and commencement of construction by December 9, 1999.<sup>2</sup>

The prior applicants filed a request for further extension of the validity of the PUD for a period of five years on September 17, 1997. While agreeing that an extension was warranted, the Office of Planning recommended that the Zoning Commission approve an extension request for no more than 2 years. Pursuant to Order No. 668-F, the Zoning Commission granted that request, extending the validity period of Order No. 668-D until (and requiring application for building permit prior to) December 9, 2000. Construction was to commence on or before December 9, 2001.<sup>3</sup>

On February 23, 1999, the Applicant submitted a request for a minor modification to the concourse level, or cellar, of the approved PUD to allow for parking and office space, or parking only. The proposed change resulted in an increase in the available off-street parking spaces from 313 vehicles to 425 vehicles. The Zoning Commission approved the minor modification effective October 12, 2001.

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use PUD project consisting of office and retail uses. In addition to approving the PUD, Order No. 668 rezoned the Original PUD Property from SP-2 to C-3-C. Zoning Commission Order No. 668-A amended Condition No. 6 of Order No. 668 relating to the ingress/egress of the parking garage. Extensions of Zoning Commission Order Nos. 668 and 668-A were granted by Commission Order Nos. 668-B and 668-C. Zoning Commission Order Nos. 668, 668-A, 668-B, and 668-C are attached hereto as Exhibits G through J. The Originally Approved PUD has been constructed.

<sup>2</sup> Pursuant to Order No. 668-E, the deadline for filing a building permit for the Originally Approved PUD (not including Lots 833 and 842 and the air rights above), as opposed to the Modified PUD (under Order No. 668-D) approval (both properties), was extended to July 27, 1998, with construction to begin no later than July 27, 1999.

<sup>3</sup> The validity of the Originally Approved PUD was also extended until July 27, 2000 (building permit application) with construction to commence on or before July 27, 2001.

On December 6, 2000, The National Academy of Sciences, the assignee of the prior applicants, requested a five-year extension of the validity of Order Nos. 668-D, 668-E, and 668-F. In its first extension request for the Modified PUD, NAS requested an extension in order to resolve complicated development issues relating to the air-rights construction over the fire station. NAS did not anticipate that they would be able to obtain all the necessary plans and to undertake needed studies to evaluate development options for the air-rights portion of the site. At that time, construction of the first phase of the project under the Originally Approved PUD had already commenced. The Zoning Commission approved the requested extension in Order No. 668-G through December 9, 2005. Construction on the second phase of the PUD, including the air-rights parcels, must begin no later than December 9, 2006.

Most recently, the National Academy of Sciences filed an application for a minor modification to the Originally Approved PUD to allow for an interactive science museum as an alternative to all or a portion of the retail requirement of the Originally Approved PUD. The Zoning Commission granted the minor modification effective July 26, 2002 in Order No. 668-H. The validity period of the Modified PUD was not altered, thus a building permit application on the Modified PUD must be made prior to December 9, 2005 and construction must begin no later than December 9, 2006.

## 2. Status of Development.

NAS, through NAS Title Holding LLC, is the assignee of 488 A.R. Associates Limited Partnership, the purchaser pursuant to the March 4, 1998 Contract for Sale of Air Rights for Private Development (the "Contract") by and between the District of Columbia Redevelopment Land Agency ("RLA") and the prior applicants, for the air space known as Disposition Lot No. 7 of the Urban Renewal Plan for the Downtown Urban Renewal Area (i.e., the Air Rights Property). A copy of the Contract and RLA approval of the assignment of the Contract to NAS are attached hereto as Exhibits K and L. The RLA Revitalization Corporation ("RLARC") is the successor-in-interest to the now-defunct RLA. NAS continues to negotiate with RLARC and the District of Columbia Fire Department about the exact course of development over the fire station.

In addition to being the successor-in-interest to the Contract for the purchase of the Air Rights Property, NAS purchased the Originally Approved PUD Property. In July of 1999, following the purchase, NAS commenced construction on that project, which is now complete. The Original Approved PUD Property was designed and constructed in anticipation of the second phase of development using the Air Rights Property and the modified PUD. Parking and utility systems, including HVAC and other mechanical systems, were installed to serve both projects. NAS intends to move forward with the second phase of construction on this project as soon as the development issues surrounding construction above the fire station, whether the fire station will be entirely replaced, and how to relocate the fire station temporarily if necessary during construction, are resolved between DC Fire/EMS, RLARC, and NAS.

**B. Points in Support of Time Extension.**

1. Criteria for an Extension.

A PUD may be extended by the Zoning Commission “for good cause shown,” provided the following requirements are met:

- a. *The extension request is served on all parties to the application and all parties are allowed thirty (30) days to respond;*
- b. *There is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission’s justification for approving the original PUD; and*
- c. *The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in § 2408.11.*

11 D.C.M.R. § 2408.10. “Good cause” for purposes of this provision means:

- (1) an inability to obtain project financing despite good faith efforts to do so;
- (2) an inability to secure all required governmental agency approvals for a PUD prior to the expiration date, due to governmental delays beyond the applicant’s reasonable control, or
- (3) the existence of pending litigation *or other such condition, circumstance, or factor beyond the applicant’s reasonable control* that renders the applicant unable to comply with the time limits of the Order.

11 D.C.M.R. §2408.11 (emphasis added).

There have been no substantial changes in any of the material facts upon which the Commission based its original approval of the Modified PUD which would undermine the Commission’s justification for the original approval, except for the fact that NAS has fully constructed the first phase of the Modified PUD, as envisioned under the Originally Approved PUD orders and the modifications to those orders. Good cause for the extension request is supported by the following:

- a. The construction of the first phase of the project by NAS is complete. At the time NAS requested the last extension, it needed to perform further analysis to determine whether the existing fire station could support the proposed construction above it. The effort was initially hindered by the District of Columbia’s inability to locate building plans (including “as-built” plans) for the existing fire station. Additionally, the Fire Department expressed an interest in either selling the fire station to NAS, so that it can be included in the development, or in relocating the fire station. A copy of the November 6, 2000 letter is attached hereto as Exhibit M. NAS also investigated the feasibility of constructing a new fire station for the Fire

Department in the same location, which would be capable of supporting the proposed development above.

Eighteen months ago, after actively working with the Fire Department, the District of Columbia Government and RLARC on the possible purchase of the underlying fire station on Lots 833 and 842, and the feasibility of including the existing fire station in the modified development, since construction of the first phase ended, and with no resolution in sight, NAS was asked by RLARC to proceed on two fronts: (1) continue exploring the feasibility of constructing a new firehouse within the Modified PUD (which would have required relief from the Zoning Commission); or (2) proceed with final studies on the easements needed to construct the Modified PUD.<sup>4</sup> NAS met with Public Space and other District officials and resolved issues related to the construction of the support system for the new building but easement issues remain unresolved until the Fire Department finalizes its plans.

b. NAS continues to negotiate in good faith with RLARC to expedite the purchase of the Air Rights Property and RLARC has suggested alternatives to development and financing that are being considered by both parties. NAS and RLARC are also working with DC Fire/EMS and other District officials to develop a common solution to the complex and somewhat unique development issues that have arisen while planning new construction over the existing fire station and integrating the new construction into the existing project, which was, as mentioned above, designed to support a second phase of development. Indeed, the electrical and HVAC systems incorporated into the building constructed under the Originally Approved PUD are not working at peak efficiently because they were constructed to support the addition planned under the Modified PUD. Thus, failure to extend the Modified PUD will have a detrimental economic effect on NAS

c. As already stated, financing for the first stage of the PUD (i.e., the Original PUD) was provided in part through bonds issued by the District of Columbia. NAS needs additional time to coordinate the financing of the PUD for the Air Rights Property in a similar fashion. The time and effort involved in obtaining construction financing through municipal bonds issued by the District is more extensive than the time required for traditional financing. Finally, such financing cannot be obtained until issues surrounding the feasibility of development on the fire station parcel or above the existing or a new fire station are resolved.

d. NAS has been diligent in seeking solutions to the development and financing of the Modified PUD. It has paid to RLARC, and its predecessor, the sum of \$84,000.00 for the right to purchase those rights and is uniquely able to utilize the rights. Denial of the extension requested will not leave open the opportunity for any other development of the site, given its relationship to NAS, but will result in substantial economic harm to NAS.

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<sup>4</sup> As a consequence of the fact that NAS owned the PUD site and its construction was financed, in part, through District of Columbia bonds, the air rights contract between RLARC and NAS needed to be modified. Amendments to the contract were proposed to RLARC but consideration of the amendments was tabled until the Fire Department issues could be resolved. The modifications surfaced again when RLARC asked NAS to proceed on two fronts. Resolution of those modifications has not been finalized.

In addition to the foregoing, RLARC is in support of the instant request for an extension of the timeframe for completing the PUD. *See* attached Exhibit N. Pursuant to Section 2408.12, the Applicant submits that no hearing is required on this request.

**C. Conclusion.**

The development of the Air Rights Property will make a worthwhile contribution to the overall project, as well as to the City in general and the Judiciary Square area in particular.

NAS, upon purchasing the Originally Approved PUD Property, has acted with due diligence and in good faith consistent with its responsibilities under its Contract and the PUD approval conditions in moving forward with construction on that portion of the PUD. However, despite NAS's best efforts to date, in order to proceed with the development of the Air Rights Property, additional time is needed to coordinate the development approvals, resolve Fire Department issues and, ultimately, obtain financing for construction on the site.

Given NAS's serious commitment to complete this project and the benefit the project will have on the surrounding neighborhood, NAS respectfully requests that the PUD approval be extended for five (5) additional years, allowing until December 9, 2010 for a building permit application to be filed, with construction commencing on or before December 9, 2011.

Thank you for your consideration.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

A handwritten signature in dark ink, appearing to read "Richard B. Nettler", is written over the printed name.

Richard B. Nettler

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Request for Extension of Time in Zoning Commission Case No. 89-31/C/94-4M/00-35TE was sent via first-class mail, postage pre-paid, this 11th day of October, 2005, to: ANC 6C<sup>5</sup>, P.O. Box 77876, Washington, D.C., 20013-7787; and Ellen McCarthy, Director, Office of Planning, 801 North Capitol Street, N.E., Washington DC 20001.

  
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Richard Nettler

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<sup>5</sup> ANC 6A was previously a party to this application, however, due to redistricting of Council Wards June, 2001, the appropriate ANC is now 6C.

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**Government of the District of Columbia**  
**ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 668-D**  
**Case No. 94-4M/89-31C**  
**(Consolidated PUD & Map Amendment @ 500 5th Street, N.W.)**  
**November 14, 1994**

Pursuant to notice, the Zoning Commission for the District of Columbia held a public hearing on July 25, 1994. At that hearing session, the Zoning Commission considered an application from 488 Associate Limited Partnership. The application requested a modification to a previously approved planned unit development (PUD) and related map amendment pursuant to Chapter 24 of the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

**FINDINGS OF FACT**

1. The application, which was filed on March 10, 1994, requested modification to a previously approved planned unit development (PUD) and related map amendment for property at premises 500 5th Street, N.W., Lot 26 (formerly Lots 15, 16, 17, 18, 19, 24, 25, 821, 822, and 823) in Square 488.
2. By Z.C. Order No. 668 dated July 9, 1990, the Zoning Commission approved a mixed-use PUD project consisting of office and retail uses. The entire PUD project had a height of 120 feet, a maximum floor area ratio (FAR) of 7.64 a maximum lot occupancy of 99 percent, a gross floor area of approximately 338,125 square feet for office/retail uses, and parking to accommodate 214 self-parked cars and 273 stacked-parked cars. The Commission also approved the rezoning of the site from SP-2 to C-3-C.
3. By Z.C. Order No. 668-A, dated November 19, 1990, the Zoning Commission amended Condition No. 6 of Order No. 668 to allow for the provision of two lanes "in" and either one or two lanes "out" for vehicular traffic in the interior of the parking garage.
4. By Z.C. Order No. 668-B, dated August 5, 1991, the Zoning Commission extended the validity of the PUD and Z.C. Order Nos. 668, and 668-A for two years.

Z.C. ORDER NO. 668-D  
CASE NO. 94-4M/89-31C  
PAGE NO. 2

5. By Z.C. Order No. 668-C, dated March 14, 1994, the Zoning Commission extended the validity of the PUD and Z.C. Order Nos. 668, 668-A, and 668-B for a period of two years.
6. This application requests modification of the existing PUD to include as an alternative development, the adjacent Lots 833 and 842 at the northern end of Square 488. That property is the site of a District of Columbia Fire Station and is owned by the District of Columbia. Lots 833 and 842 are presently unzoned. The applicant is also requesting that the property be zoned C-3-C to be consistent with the zoning of the remainder of the Square as approved by the Commission in Z.C. Order No. 668.
7. The applicant proposes to improve Lots 833 and 842 with an addition to the PUD by building over the existing two-story fire station. The addition will be at levels 4 through 10. The operation of the fire station will be unaffected by the PUD modification.
8. As proposed, the office/retail building will have a total of 475,125 square feet of gross floor area, or 137,000 square feet greater than the building as originally approved. As integrated into the project, the fire station comprises approximately 23,400 square feet of gross floor area. Therefore, the total building (PUD and fire station) will contain 498,525 square feet of gross floor area. The FAR of the new office space above the fire station is 6.52, or .02 FAR above the matter of right for C-3-C. The FAR of the PUD, as approved, and the additional office construction is 7.28 FAR. The total on-site FAR, including the fire station, will remain at 7.64.
9. The building will contain a total of approximately 313 parking spaces in a stacked parking arrangement. There will be ten bicycle parking spaces.
10. The applicant, through the Exclusive Rights Agreement and Memorandum of Understanding with the District of Columbia requests the option to develop the site either consistent with Z.C. Order Nos. 668, 668-A, 668-B, and 668-C or under the modification approval.
11. The applicant indicated that the proposed modification would continue to provide the amenities of the previously approved PUD. These amenities include historic preservation, superior urban design, public space improvements, and a contribution of \$100,000 to ensure maintenance of the National Law Enforcement Officers Memorial in Judiciary Square. The applicant also agreed to provide jobs for District residents, and contracts

for minorities in the construction phases of the project through the First Source Employment and the Minority Business Opportunity Commission programs, respectively. Improvements to the public space surrounding the building, including improved landscaping for the entire square would also be provided. No additional amenities are proposed in this case, because the applicant has negotiated with the City to pay fair market value for the additional FAR.

12. The applicant's traffic expert stated that the location and configuration of the underground garage, as approved, would not be altered. However, the number of parking spaces would be increased from 273 stacked spaces to 313 stacked spaces (with a more efficient valet parking system). He further stated that, although 273 parking spaces exceed the requirements of the Zoning Regulations (i.e. 197 parking spaces), it is expected that the building would be leased to large government agencies that may not want limitations on parking. As such, the approval for 313 parking spaces would facilitate the leasing of the project.
13. To the north of the subject square, across F Street, Square 487 is zoned SP-2. To the south, immediately across E Street, the area is zoned C-3-C. Immediately west, across 6th Street, the area is zoned DD/C-4. Judiciary Square, as District and Federal property, is not zoned.
14. The C-3-C District permits matter of right major business and employment centers of medium/high density development, including office, retail, housing, and mixed uses to a maximum height of 90 feet, a maximum FAR of 6.5 for residential and other permitted uses, and a maximum lot occupancy of 100 percent.
15. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to impose development conditions, guidelines, and standards which may exceed or be less than the matter of right standards identified above. The Zoning Commission may also approve uses that are permitted as a special exception and would otherwise require approval by the Board of Zoning Adjustment.
16. The District of Columbia Generalized Land-Use Map Element of the Comprehensive Plan for the National Capital designates the PUD site within the "high density commercial" category.
17. The Office of Planning (OP), by report dated July 13, 1994, and by testimony at the public hearing, recommended approval of the application. The OP reported that the subject site is designated for high density commercial use on the Generalized

Land Use Map of the Comprehensive Plan. OP stated that the Commission determined in Order No. 668 that the approved PUD is in accord with the goals and policies of the Comprehensive Plan. Since the proposed modification continues the design and uses of the PUD, OP concluded that the modification would meet the goals and objectives of the Comprehensive Plan. The OP was of the opinion that the requested rezoning for Lots 833 and 842 would be consistent with the Commission's prior action. OP noted that a modification to the Downtown Urban Renewal Plan would be required.

18. OP stated that the applicant has entered into a Memorandum of Understanding with the District of Columbia Redevelopment Land Agency (RLA) to acquire the fee interest for the air space above the fire station. The applicant's agreement with the RLA to acquire the air space over the fire station is based on enhancing the flexibility and marketability of the project. The applicant is requesting the flexibility to construct the presently approved PUD, or in the alternative, the presently approved PUD coupled with the proposed modification. In either instance, the development would take place in accordance with the PUD approval by the Zoning Commission. In the opinion of the Office of Planning, this flexibility, if approved, would not generate adverse impacts on the development of this square.
19. Regarding the urban design aspects of the project, the OP reported that the site is subject to design review by the Commission of Fine Arts (CFA), which has given conceptual approval to the proposed modification. OP pointed out that the proposal for modification reflects the same scale, design vocabulary, and spirit that was deemed to be responsive to the Judiciary Square Plan and was previously approved by the Zoning Commission in the context of the original PUD.
20. The Department of Public Works, (DPW), by memorandum dated July 14, 1994, recommended that the number of parking spaces be limited to no more than 273 spaces, including stacked parking to control congestion and limit pollution. DPW recommended that at least ten bicycle parking spaces be provided in the building. DPW reiterated its April 27, 1990 recommendation regarding the original PUD that space be provided for front-in/front-out truck operations to access the loading facilities.
21. The Redevelopment Land Agency (RLA) and the applicant in a Memorandum of Understanding dated January 25, 1993, stated that the purchase price for the air rights shall be \$4,200,000 for 137,702 square feet of air rights development approved by the D.C. Zoning Commission.

22. By memorandum dated August 3, 1994, RLA stated that it acquired the property including the rights to develop the site, under the authority of the urban renewal program. The fire station was built in accordance with the Downtown Urban Renewal Plan. RLA routinely disposes of property for development which it has acquired and which is not needed for public purposes. The funds received from the sale of the air rights will be deposited to the RLA's account and will be used for the purposes specified by law. The RLA further noted that when it negotiated and agreed to the memorandum of understanding with the applicant, it understood that the maximum amount to be received for the purchase of the air rights was \$4,200,000 which was the appraised market value of those rights.
23. No report was received from Advisory Neighborhood Commission (ANC) 6A.
24. No letters were received from persons in opposition to the PUD modification nor were there any persons testifying in opposition to the requested modification.
25. The Zoning Commission concurs with the recommendations and position of the applicant and OP, and in part with those of DPW.
26. The Commission finds that the applicant has agreed to include ten bicycle spaces in the garage. Additionally, the Commission reiterates its Finding Nos. 25 and 27 of Z.C. Order No. 668 that front-in/front-out loading would lead to demolition of the historic structure at 513 6th Street, N.W. The Commission further finds that the additional parking provided over the 273 spaces will serve the needs of potential tenants and is desirable for the area.
27. The Zoning Commission believes that approval of this modification to the previously approved PUD is in the best interest of the District of Columbia, and is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act.
28. The proposed action of the Zoning Commission to approve this application for modification was referred to the National Capital Planning Commission (NCPC), pursuant to the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated November 3, 1994, indicated that the proposed action of the Zoning Commission would not adversely affect the Federal Establishment or other Federal interests in the National Capital nor be inconsistent with the Comprehensive Plan for the National Capital. The NCPC further stated that it looks

Z.C. ORDER NO. 668-D  
CASE NO. 94-4M/89-31C  
PAGE NO. 6

forward to giving its final report to the Zoning Commission as soon as possible effective upon approval of the necessary Urban Renewal Plan modifications and the completion of the review under the National Historic Preservation Act, and upon the review and approval of the necessary modifications to the existing fire station.

29. The Zoning Commission finds that the applicant has satisfied the intent and purpose of Chapter 24 of DCMR, Title 11, Zoning.

#### CONCLUSIONS OF LAW

1. The PUD process is an appropriate means of controlling development of the site in a manner consistent with the best interest of the District of Columbia.
2. The development of this PUD project, as modified, carries out the purpose of Chapter 24 of the Zoning Regulations to encourage the development of well planned commercial developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter of right development.
3. The development of the project, as modified, is compatible with District-wide and neighborhood goals, plans and programs, and is sensitive to environmental protection and energy conservation.
4. The approval of this application for modification is not inconsistent with the Comprehensive Plan for the National Capital and the purposes of the Zoning Act.
5. The approval of this application for modification will promote orderly development, in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map.
6. The Zoning Commission did not receive a written report from ANC-6A, nor did a representative appear at the public hearing. Therefore, the issues and concerns of the ANC cannot be accorded "great weight" in this proceeding.
7. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

#### DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby

Z.C. ORDER NO. 668-D  
CASE NO. 94-4M/89-31C  
PAGE NO. 7

orders APPROVAL of the application for modification of a PUD and map amendment from unzoned to C-3-C for Lots 833 and 842 in Square 488 at 500 5th Street, N.W. The approval of this PUD is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed in accordance with the plans prepared by the architectural firm of Florance, Eichbaum, Esocoff & King, and marked as Exhibit No. 30, as modified by the guidelines, conditions and standards of this order, and in accordance with the approval obtained in Z.C. Order Nos. 668, and 668-A through 668-C.
2. The gross floor area of the project (including the fire station) shall not exceed 498,525 square feet, for an FAR of 7.64.
3. The height of the building shall not exceed 120 feet, with setbacks as shown on the plans marked as Exhibit No. 30.
4. The PUD shall contain a minimum of 212 off-street parking spaces with the potential for approximately 313 parking spaces through a stacked parking scheme, and a minimum of ten bicycle parking spaces.
5. Exterior materials shall include architectural recast stone with colors of materials to be finally determined by the Commission of Fine Arts.
6. The applicant shall have flexibility to vary the design of the building subject to final approval by the Commission of Fine Arts and the National Capital Planning Commission.
7. The applicant shall have the flexibility that had been sought originally to develop the PUD as previously approved or to develop the PUD as modified.
8. The amenities specified as Condition No. 9 of Z.C. Order No. 668 shall remain valid.
9. The applicant shall comply with the Memorandum of Understanding that they have entered into with the Minority Business Opportunity Commission, marked as Exhibit P of Exhibit 21 of the record.
10. The applicant shall comply with their First Source Agreement with the Department of Employment Services, marked as Exhibit Q of Exhibit 21 of the record.
11. The change of zoning from unzoned to C-3-C shall be effective upon recordation of a covenant as required by 11 DCMR 2407.3.

Z.C. ORDER NO. 668-D  
CASE NO. 94-4M/89-31C  
PAGE NO. 8

12. No building permit shall be issued for the site until the applicant has recorded a covenant in the Land Records of the District of Columbia between the owner and the District of Columbia that is satisfactory to the Office of the Corporation Counsel and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs ("DCRA"). The covenant shall bind the owner and all successors in title to construct on and use the property in accordance with this order and amendments thereto of the Zoning Commission.
13. No building permit shall be issued for the PUD modification until the applicant has recorded a "Notice of Modification" of Z.C. Order No. 668-D with the land records of the District of Columbia. That Notice of Modification shall include a true copy of Z.C. Order No. 668-D that the Director of the Office of Zoning has so certified.
14. After recordation of said Notice of Modification, the applicant shall immediately file a certified copy of the Notice of Modification with the Office of Zoning for the records of the Zoning Commission.
15. The PUD approval by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, applicant must file for a building permit as specified in 11 DCMR 2401.1. Construction shall start within three years of the effective date of this order.
16. Pursuant to D.C. Code Section 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1987), and this order is conditioned upon full compliance with those provisions. Nothing in this order shall be understood to require the Zoning Regulations Division of DCRA to approve permits if the applicant fails to comply with any provision of D.C. Law 2-38 as amended.

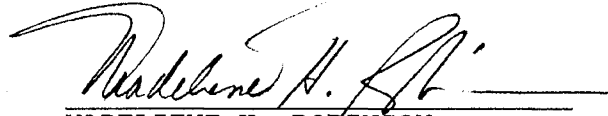
Vote of the Zoning Commission taken at its public meeting on September 12, 1994: 5-0: (Jerrily R. Kress, William B. Johnson, William L. Ensign and Maybelle Taylor Bennett, to approve, John G. Parsons, to approve by absentee vote).

This order was adopted by the Zoning Commission at its public meeting on November 14, 1994, by a vote of 5-0: (William B. Johnson, William L. Ensign and Maybelle Taylor Bennett, to adopt, John G. Parsons and Jerrily R. Kress, to adopt by absentee vote).

Z.C. ORDER NO. 668-D  
CASE NO. 94-4M/89-31C  
PAGE NO. 9

In accordance with 11 DCMR 3028.8, this order is final and effective upon publication in the D.C. Register; that, is, on  
DEC 9 1994.

  
MAYBELLE TAYLOR BENNETT  
Chairperson  
Zoning Commission

  
MADELIENE H. ROBINSON  
Director  
Office of Zoning

zco668-d/SDB/LJP

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**Government of the District of Columbia**

**ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 668-E**

**Case No. 94-4M/89-31C**

**(Consolidated PUD & Map Amendment @ 500 5th Street, N.W.)**

**February 12, 1996**

By Zoning Commission Order No. 668, dated July 9, 1990, the Zoning Commission for the District of Columbia approved the application of 488 Associate Limited Partnership, the Salvation Army, the Fraternal Order of Police and John W. and Vinard Parris for a consolidated review and approval of a planned unit development (PUD) and related amendment to the Zoning Map from SP-2 to C-3-C for lots 15-19, 24, 25, 821-823, and a closed public alley in Square 488, located at 500 5th Street, N.W.

Order No. 668 provided for the construction of a mixed-use commercial building with a height of 120 feet, a maximum floor area ratio (FAR) of 7.64, and a lot occupancy 99 percent. The approved PUD was subject to certain guidelines, conditions and standards.

By letter dated October 3, 1990, counsel for the applicant requested the Zoning Commission to modify the second sentence in condition No. 6 of Z.C. Order No. 668, relating to ingress and egress. The letter also requested the Commission to extend the validity of the PUD for two years.

By Z.C. Order No. 668-A, dated November 19, 1990, the Commission approved and modified Condition No. 6 to read as follows:

"The applicant shall provide two lanes "in" and either one or two lanes "out" for vehicular traffic in the interior of the parking garage."

By Z.C. Order No. 668-B, dated August 5, 1991, the Commission granted the applicant's second request and extended the validity of Z.C. Order Nos. 668 and 668-A for a period of two years, that is until July 27, 1994 and construction to start not later than July 27, 1995.

Counsel for the applicant, in a letter dated November 24, 1993, requested a two-year extension of the validity of Z.C. Order Nos. 668 and 668-A, to enable the applicant to secure a lead tenant and financing.

Z.C. ORDER NO. 668-E  
CASE NO. 94-4M/89-31C  
PAGE NO. 2

By Order No. 668-C, the Commission extended the validity of Z.C. Order Nos. 668, 668-A and 668-B for a period of two years, that is until July 27, 1996 for filing an application for a building permit as specified in 11 DCMR 2406.8. Construction to start not later than July 27, 1997.

On March 10, 1994, the applicant filed an application requesting the Commission to modify the previously approved and modified PUD.

This application requested modification of the existing PUD to include as an alternative development, the adjacent Lots 833 and 842 at the northern end of Square 488. That property is the site of a District of Columbia Fire Station and is owned by the District of Columbia. Lots 833 and 842 are presently unzoned. The applicant also requested that the property be zoned C-3-C to be consistent with the zoning of the remainder of the square as approved by the Commission in Z.C. Order No. 668.

By Z.C. Order No. 668-D, dated November 14, 1994, the Zoning Commission approved modification to the PUD. Z.C. Order No. 668-D provided for an office/retail building with a gross floor area (including the fire station) of 448,525 square feet, an FAR of 7.64, height of 120 feet and 212 off-street parking spaces with a potential for approximately 313 parking spaces through a stacked parking scheme, and a minimum of ten bicycle parking spaces, or in the alternative to proceed under the original PUD approval contained in previous Z.C. Order Nos. 668, 668-A, 668-B and 668-C.

The validity of Z.C. Order No. 668-D was for two years, that is until December 9, 1996 to file for a building permit, and construction to commence not later than December 9, 1997.

By a letter dated September 21, 1995, counsel for the applicant filed a motion for the extension of Z.C. Order Nos. 668, 668-A, 668-B, 668-C and 668-D for two years. The motion requested that Z.C. Order Nos. 668, 668-A, 668-B and 668-C be extended to July 27, 1998 to file for a building permit, and construction to commence no later than July 27, 1998, and Z.C. Order No. 668-D to be extended to December 9, 1998 to file for a building permit, and construction to begin no later than December 9, 1999.

The applicant's motion for extension stated the following as the basis for the extension:

1. The original PUD approval, Order No. 668, became final on July 27, 1990, and the Applicant has vigorously sought potential tenants as noted below. The Commission's Order in Paragraph 11 of the decision allows the Applicant certain flexibility to

Z.C. ORDER NO. 668-E  
CASE NO. 94-4M/89-31C  
PAGE NO. 3

be reflected in the working drawings. This flexibility was requested by Applicant and is essential to permit the building to be designed to address the particular needs and requirements of a lead tenant. Therefore, it is necessary that the Applicant be given additional time to defer final design and submission of working drawings since the lead tenant will want and require input on these matters.

2. The applicant has not proceeded with construction since the PUD's approval solely because of unfavorable market conditions. These conditions have placed a halt on almost all new private construction projects in the past six years. The Applicant has been unable to secure financing to allow the project to proceed without a lead tenant in place and the project substantially pre-leased.
3. The unfavorable market conditions and the Applicant's continuous actions to market the project, including the PUD modification to utilize the air rights over the fire house, are both highly relevant to the demonstration of good cause. On the basis of these factors, an extension for good cause shown is merited without a hearing.

The counsel for the applicant also indicated that copies of the motion for extension were served to Advisory Neighborhood Commission (ANC) 6A within whose jurisdiction the property now situated because of redistricting, and to all parties in the case.

By memorandum dated, October 19, 1995, the District of Columbia Office of Zoning (OZ) referred the extension request to the District of Columbia Office of Planning (OP) for an analysis of whether any amendments to the Zoning Map or Regulations, or to the Comprehensive Plan, since the Zoning Commission initially decided the case would affect this request.

The Office of Planning (OP), by memorandum dated November 3, 1995, analyzed the motion for extension and found that neither the Zoning Regulations and Map nor the Comprehensive Plan, as they relate to the project, have changed since the Zoning Commission originally approved the PUD.

The OP added that no purpose will be served by denying the extension. Accordingly, the OP recommended that the Commission extend the validity of the PUD for two years.

The OZ received no additional comments on this matter from ANC-6A, nor any other party or persons.

Z.C. ORDER NO. 668-E  
CASE NO. 94-4M/89-31C  
PAGE NO. 4

On November 13, 1995, at its regular monthly meeting, the Zoning Commission reviewed and considered the motion for extension, the OP report and verbal comments from counsel for the applicant.

The Commission concurred with the applicant and the OP recommendation that a two-year extension of the validity of Z.C. Order Nos. 668, 668-A, 668-B, 668-C and 668-D is appropriate.

The Commission believes that an extension of time, as requested by the applicant, is not unreasonable, that the rationale for granting approval for the PUD has not changed, and that no adverse consequences will result from approving the request.

The Commission determined that an extension of time, as requested by the applicant, is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

Pursuant to 11 DCMR 2406.10 of the Zoning Regulations, the Zoning Commission believes that the applicant has shown good cause for the extension of time without further public hearing.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia **ORDERS** that the validity of Z.C. Order Nos. 668, 668-A, 668-B, 668-C be **EXTENDED** for a period of two years; that is until July 27, 1998, to file for a building permit, and construction to begin no later than July 27, 1999. The Zoning Commission further **ORDERS** that Z.C. Order No. 668-D be **EXTENDED** for a period of two years; that is, until December 9, 1998 prior to the expiration of that time, the applicant shall file for a building permit as specified in 11 DCMR 2406.8, construction will begin no later than December 9, 1999.

Vote of the Zoning Commission taken at its public meeting on December 11, 1995: 4-0: (John G. Parsons, Maybelle Taylor Bennett, William L. Ensign to extend, Jerrily R. Kress, to extend by absentee vote).

This order was adopted by the Zoning Commission at its public meeting on February 12, 1996, by a vote of 4-0: (Maybelle Taylor Bennett, William L. Ensign and Jerrily R. Kress to adopt, and John G. Parsons, to adopt by absentee vote).

In accordance with the provisions of 11 DCMR 3028.8, this order is final and effective upon publication in the D.C. Register; that, is, on MAY 22 1996.

Z.C. ORDER NO. 668-E  
CASE NO. 94-4M/89-31C  
PAGE NO. 5



JERRILY R. KRESS  
Chairperson  
Zoning Commission



MADELIENE H. DOBBINS  
Director  
Office of Zoning

zco668-e/VCE/LJP

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**Government of the District of Columbia**  
**ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 668-F-1**  
**Case No. 94-4M/89-31C**  
**(Consolidated PUD & Map Amendment @ 500 5th Street, N.W.)**  
**APRIL 12, 1999**

By Zoning Commission Order No. 668, dated July 9, 1990, the Zoning Commission for the District of Columbia approved the application of 488 Associates Limited Partnership, the Salvation Army, the Fraternal Order of Police and John W. and Vinard Paris for a consolidated review and approval of a planned unit development (PUD) and related map amendment from SP-2 to C-3-C for lots 15-19, 24, 25 and 821-823, and a closed public alley in Square 488, located at 500 5th Street, N.W.

Order No. 668 provided for the construction of a mixed-use commercial building with a height of 120 feet, a maximum floor area ratio (FAR) of 7.64, and a lot occupancy of 99 percent. The approved PUD was subject to certain guidelines, conditions and standards.

By letter dated October 3, 1990, counsel for the applicant requested the Zoning Commission to modify the second sentence in condition No. 6 of Z.C. Order No. 668, relating to ingress and egress. The letter also requested the Commission to extend the validity of the PUD for two years.

By Z.C. Order No. 668-A, dated November 19, 1990, the Commission approved the applicant's request and modified Condition No. 6 to read as follows:

"The applicant shall provide two lanes 'in' and either one or two lanes 'out' for vehicular traffic in the interior of the parking garage."

By Z.C. Order No. 668-B, dated August 5, 1991, the Commission granted the applicant's second extension request and extended the validity of Z.C. Order Nos. 668 and 668-A for a period of two years, until July 27, 1994, with construction to start no later than July 27, 1995.

By Order No. 668-C, the Commission extended the validity of Z.C. Order Nos. 668, 668-A and 668-B for a period of two years, until July 27, 1996, with construction to start not later than July 27, 1997.

By letter dated March 10, 1994, the applicant requested a modification of the existing PUD to include, as alternative development, Lots 833 and 842 at the northern end of Square 488. Lots 833 and 842 were unzoned District of Columbia property developed with a fire station. The

applicant requested that the unzoned property be zoned C-3-C to be consistent with the zoning of the remainder of the square, as approved by the Commission in Z.C. Order No. 668.

By Z.C. Order No. 668-D, dated November 14, 1994, the Zoning Commission approved the modification to the PUD and the map amendment to C-3-C for Lots 833 and 842. Z.C. Order No. 668-D provided for an office/retail building with a gross floor area (including the fire station) of 448,525 square feet, an FAR of 7.64, height of 120 feet and 212 off-street parking spaces with a potential for approximately 313 parking spaces through a staked parking scheme, and a minimum of ten bicycle parking spaces, or in the alternative to proceed under the original PUD approval contained in previous Z.C. Order Nos. 668, 668-A, 668-B, and 668-C.

The validity of Z.C. Order No. 668-D was for two years, that is until December 9, 1996, to file for a building permit, with construction to commence not later than December 9, 1997.

By letter dated September 21, 1995, counsel for the applicant filed a motion for the extension of Z.C. Order Nos. 668, 668-A, 668-B, 668-C, and 668-D for two years. The motion requested that Z.C. Order Nos. 668, 668-A, 668-B, 668-C be extended to July 27, 1998, to file for a building permit, with construction to commence no later than July 27, 1999, and Z.C. Order No. 668-D to be extended to December 9, 1998, to file for a building permit, and construction to commence no later than December 9, 1999.

The applicant's motion for extension stated, in part the following as the basis for the extension.

1. The applicant has not proceeded with construction since the PUD's approval solely because of unfavorable market conditions. These conditions have placed a halt almost all new private construction projects in the past six years. The applicant has been unable to secure financing to allow the project to proceed without a lead tenant in place and the project substantially pre-leased.
2. The unfavorable market conditions and the applicant's continuous actions to market the project, including the PUD modification to utilize the air rights over the fire house, are both highly relevant to the demonstration of good cause. On the basis of these factors, an extension for good cause shown is merited without hearing.

By Z.C. Order No. 668-E, dated, February 12, 1996, the Commission granted the applicants' motion for extension and extended the validity of Z.C. Order No. 668 through 668-C for two years, that is, until July 27, 1998, to file for a building permit, with construction to begin no later than July 27, 1999. Additionally, by Z.C. Order No. 668-E, the Commission extended Order No. 668-D for a period of two years, until December 9, 1998, to file for a building permit with construction to begin no later than December 9, 1999.

By correspondence dated September 17, 1997, counsel for the applicant filed a motion requesting the Commission to further extend the validity of Zoning Commission Order Nos. 668, 668-A, 668-B, 668-C, and 668-E for five-years (until July 27, 2003), and for Order No. 668-D, until December 9, 2003, pursuant to Subsection 2408 of the Zoning Regulations.

Finding that the applicant had demonstrated good cause for the extension and that the rationale for granting approval for the PUD had not changed, the Zoning Commission, by Z.C. Order No. 668-F dated February 9, 1998, granted an extension of the validity of Z.C. Order Nos. 668, 668-A, 668-B, 668-C and 668E for a period of two years, until July 27, 2000, and for Z.C. Order No. 668-D until December 9, 2000. The extension was based upon the Zoning Commission's finding of a willingness on the part of the applicant to go forward with the development of the project as soon as market conditions improved, as well as the applicant's diligent, good-faith efforts to secure financing by negotiating the air rights agreement with the District of Columbia Redevelopment Land Agency ("RLA") to improve the marketability of the project

By letter dated February 23, 1999, the applicant submitted a request for a minor modification to the concourse level, or cellar, of the approved PUD to allow for parking and office space, or parking only. The proposed change will result in an increase in the available off-street parking spaces from 313 vehicles to 425 vehicles. The applicant additionally requested that the requested minor modification be placed on the Zoning Commission's consent calendar. By letter dated April 2, 1999, the applicant corrected its request to reflect that the requested minor modification would result in a reduction of the space set aside for office use of 9%. In support of its request, the applicant noted that there was nothing in the initial PUD order which mandated the use of the concourse level for office use, that the office use of the concourse level was not an amenity identified as a basis for the approval of the PUD and because the change involved a cellar level, the use had no effect on the "gross floor area" of the structure or the office use.

Copies of the request for a minor modification were served on Advisory Neighborhood Commission (ANC) 6A, within whose jurisdiction the property is now situated, the D.C. Preservation League and the Committee of 100 on the Federal City. The application for a minor modification was supported by the Office of Planning.

On April 12, 1999, at its regular monthly meeting, the Commission considered the applicant's request for a minor modification to the concourse level to allow for parking or office space or parking only.

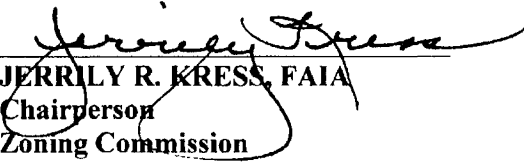
The Zoning Commission agreed that the requested modification was a "minor modification" and voted to approve the minor modification.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS** that the request for a minor modification to the concourse level of the approved PUD so as to allow for parking and office space or parking only be **APPROVED**.

Vote of the Commission taken at the monthly meeting on April 12, 1999. The request was approved by a vote of **4-0-1**: (Jerrily R. Kress, Herbert M. Franklin, Anthony J. Hood, and John G. Parsons voting to **APPROVE**; Angel F. Clarens not present, not voting).

**Z. C. ORDER NO. 668-F-1**  
**CASE NO. 94-4M/89-31C**  
**Page No. 4**

In accordance with the provisions of 11 DCMR 3028.8, this order is final and effective upon publication in the D.C. Register; that is on OCT 12 2001.

  
**JERRILY R. KRESS, FAIA**  
**Chairperson**  
**Zoning Commission**

  
**SHERI M. PRUITT- WILLIAMS**  
**Interim Director**  
**Office of Zoning**

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**Government of the District of Columbia**  
**ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 668-F**  
**Case No. 94-4M/89-31C**  
**(Consolidated PUD & Map Amendment @ 500 5<sup>th</sup> Street, N.W.)**  
**February 9, 1998**

By Zoning Commission Order No. 668, dated July 9, 1990, the Zoning Commission for the District of Columbia approved the application of 488 Associates Limited Partnership, the Salvation Army, the Fraternal Order of Police and John W. and Vinard Paris for a consolidated review and approval of a planned unit development (PUD) and related map amendment from SP-2 to C-3-C for lots 15-19, 24, 25, 821-823, and a closed public alley in Square 488, located at 500 5<sup>th</sup> Street, N.W.

Order No. 668 provided for the construction of a mixed-use commercial building with a height of 120 feet, a maximum floor area ratio (FAR) of 7.64, and a lot occupancy of 99 percent. The approved PUD was subject to certain guidelines, conditions and standards.

By letter dated October 3, 1990, counsel for the applicant requested the Zoning Commission to modify the second sentence in condition No. 6 of Z.C. Order No. 668, relating to ingress and egress. The letter also requested the Commission to extend the validity of the PUD for two years.

By Z.C. Order No. 668-A, dated November 19, 1990, the Commission approved the applicant's request and modified Condition No. 6 to read as follows:

"The applicant shall provide two lanes 'in' and either one or two lanes 'out' for vehicular traffic in the interior of the parking garage."

By Z.C. Order No. 668-B, dated August 5, 1991, the Commission granted the applicant's second extension request and extended the validity of Z.C. Order Nos. 668 and 668-A for a period of two years, until July 27, 1994 with construction to start not later than July 27, 1995.

By Order No. 668-C, the Commission extended the validity of Z.C. Order Nos. 668, 668-A and 668-B for a period of two years, until July 27, 1996 construction to start not later than July 27, 1997.

At the request of the applicant, by letter dated March 10, 1994, the Commission By Z.C. Order No. 668-D, dated November 14, 1994, approved a modification of the existing PUD to include as alternative development, Lots 833 and 842 at the northern end of Square 488. Lots 833 and 842 were unzoned District of Columbia property developed with a fire station. The

applicant requested that the unzoned property be zoned C-3-C to be consistent with the zoning of the remainder of the square approved by the Commission in Z.C. Order No. 668.

Z.C. Order No. 668-D, dated November 14, 1994, the Zoning Commission approved the modification to the PUD and the map amendment to C-3-C for Lots 833 and 842. Z.C. Order No. 668-D provided for an office/retail building with a gross floor area (including the fire station ) of 448,525 square feet, an FAR of 7.64, height of 120 feet and 212 off-street parking spaces with a potential for approximately 313 parking spaces through a staked parking scheme, and a minimum of ten bicycle parking spaces, or in the alternative to proceed under the original PUD approval contained in previous Z.C. Order Nos. 668, 668-A, 668-B, and 668-C.

The validity of Z.C. Order No. 668-D was for two years, that is until December 9, 1996 to file for a building permit, with construction to commence not later than December 9, 1997.

By letter dated September 21, 1995, counsel for the applicant filed a motion for the extension of Z.C. Order Nos. 668, 668-A, 668-B, 668-C, and 668-D for two years. The motion requested that Z.C. Order Nos. 668, 668-A, 668-B, 668-C be extended to July 27, 1998 to file for a building permit, with construction to commence no later than July 27, 1999, and Z.C. Order No. 668-D to be extended to December 9, 1998 to file for a building permit, and construction to begin no later than December 9, 1999.

The applicant's motion for extension stated, in part, the following as the basis for the extension.

1. The applicant has not proceeded with construction since the PUD's approval solely because of unfavorable market conditions. These conditions have placed a halt almost all new private construction projects in the past six years. The applicant has been unable to secure financing to allow the project to proceed without a lead tenant in place and the project substantially pre-leased.
2. The unfavorable market conditions and the applicant's continuous actions to market the project, including the PUD modification to utilize the air rights over the fire house, are both highly relevant to the demonstration of good cause. On the basis of these factors, an extension for good cause shown is merited without hearing.

By Z.C. Order No. 668-E, dated, February 12, 1996, the Commission granted the applicant's motion for extension and extended the validity of Z.C. Order No. 668 through 668-C for two years; that is, until July 27, 1998, to file for building permit, with construction to begin no later than July 27, 1999. Additionally, by Z.C. Order No. 668-E, the Commission extended Order No. 668-D for a period of two years; that is, until December 9, 1998; with construction to begin no later than December 9, 1999.

By correspondence dated September 17, 1997, counsel for the applicant filed a motion requesting the Commission to further extend the validity of Zoning Commission Order Nos. 668, 668-A,

668-B, 668-C, and 668-E for five-years until July 27, 2003, and for Order No. 668-D, until December 9, 2003, pursuant to Subsection 2408 of the Zoning Regulations.

The motion noted that the sole criteria for determining whether a PUD should be extended is whether there is "good cause shown", 11 DCMR 2408.11. In its Order No. 810, the Zoning Commission adopted good cause standards for PUD time extensions.

In Paragraph 2408.11(a), the Commission specifically provides that an inability to obtain sufficient project financing, coupled with an applicant's good faith efforts to obtain such financing, is a criteria for establishing good cause for a time extension.

The Commission, in Order Nos. 668-B, 668-C, 668-D and 668-E, determined that the applicant had not proceeded with construction since the PUD's approval because of unfavorable market conditions, and that as of the time of each extension approval, the applicant had been unable to secure financing that would allow the project to proceed without a lead tenant or without the project being substantially pre-leased."

The applicants motion also discussed Paragraph 2408.10(b) of the Regulations which provides that the Zoning Commission may extend the for the good cause shown; Provided, that the Zoning Commission determines that there is no substantial change in any of the material facts upon which the Zoning Commission based its original approval of the PUD.

The applicants motion stated that there have been no changes impacting the PUD since Order No. 668-D was issued approving the third time extension.

The applicants motion stated that no hearing is necessary pursuant to 11 DMR Subsection 2408.12 regarding this time extension request.

The motion states that the applicant meet the criteria under Paragraph 2408.11(a) as a demonstration of good cause. Thus, there is no need for a Subsection 2408.12 hearing to determine whether a material factual conflict exists with respect to the criteria of Subsection 2408.11.

The counsel for the applicant also indicated that copies of the motion for extension were served on Advisory Neighborhood Commission (ANC) 6A within whose jurisdiction the property is now situated, and to all parties in the case.

By memorandum dated, September 24, 1997, the District of Columbia Office of Zoning (OZ) referred the extension request to the District of Columbia Office of Planning (OP) for an analysis of whether any amendments to the Zoning Map or Regulations, or to the Comprehensive Plan, since the Zoning Commission initially decided the case would affect this request.

OP, by memorandum dated December 3, 1997, analyzed the motion for extension and found that neither the Zoning Regulations and Map nor the Comprehensive Plan, as they relate to the project, have changed since the Zoning Commission originally approved the PUD.

The OP stated that no purpose would be served by denying the extension. Accordingly, OP recommended that the Commission extend the validity of the PUD for two years instead of five years as requested by the appellant.

The OP added that there is nothing substantial in the application to justify departure from the normal two-year period for PUD extensions.

By letter dated December 5, 1997 the District of Columbia Redevelopment Land Agency (RLA) supported the applicant's request for extension. RLA indicated that it has approved the terms and conditions of a contract to sell to the applicant the air rights over the fire station located on Disposition Lot 7 of the Urban Renewal Plan which was incorporated into the project by Z.C. Order No. 688-D. The letter further stated that the contract negotiated with the developer of the project represents the best market driven approach to achieve the objectives of the project.

The OZ received no additional comments on this matter from ANC-6A, nor any other party.

Pursuant to Subsection 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request being made before the expiration of the approval.

On December 8, 1997, at its regular monthly meeting, the Commission considered the applicants' request for a five-year extension of the validity of Z.C. Order Nos. 688, 688-A, 688-B, 688-C, 688-D, and 688-E, the OP report and recommendations, and the RLA letter.

The Commission concurred with the OP that an extension of the order should be granted, and that there is nothing unique in the applicant's request to justify a departure from the normal two-year extension to a five-year extension.

The Commission found that the applicant had met the requirements under Section 2408(a) in regard to good cause and that there is no need for a hearing to determine whether a material conflict exists pursuant to Subsection 2408.12 of the Zoning Regulations.

The Commission determined that the reasons advanced by the applicant for the extension request constitute good cause and that the request was filed timely, pursuant to Subsection 2408.10 of the Zoning Regulations. The Commission determined that the applicant demonstrated its willingness to go forward with the development of the project as soon as market conditions improve, and demonstrated diligent good faith efforts to secure financing by negotiating the air rights agreement with RLA to improve the marketability of the project.

The Commission believes that an extension of time, as requested by the applicant, is not unreasonable, that the rationale for granting approval for the PUD has not changed, and that no adverse consequences will result from approving the request.

The Commission determined that an extension of time, as requested by the applicant, is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS** that the request to extend the validity of Z.C. Order Nos. 668, 668A, 668B, 668C, and 668-E be **APPROVED** for a period of **TWO YEARS**, until July 27, 2000, expiration of that time, the applicant shall file an application for a building permit, as specified in 11 DCMR 2408.8, and construction shall begin on or before July 27, 2001.

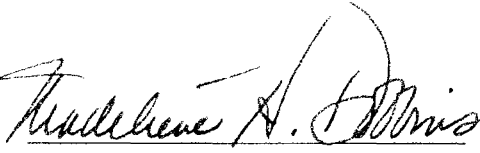
The Commission further **ORDERS** that the request to extend the validity of Z.C. Order No. 668-D be approved for a period of **TWO YEARS**, until December 9, 2000. Prior to the expiration of that time, the applicant shall file an application for a building permit, as specified in 11 DCMR 2408.8, and construction shall begin on or before December 9, 2001.

Vote of the Commission taken at the monthly meeting on December 8, 1997: 4-0 (Herbert M. Franklin, John G. Parsons, Jerrily R. Kress to extend, Maybelle Taylor Bennett, to extend by absentee vote.)

This Order was adopted by the Zoning Commission at its public meeting on February 9, 1998, by a vote of 4-0: (John G. Parsons, Herbert M. Franklin, Maybelle Taylor Bennett and Jerrily R. Kress, to adopt.)

In accordance with the provisions of 11 DCMR 3028.8, this order is final and effective upon publication in the D.C. Register; that, is, on MAR 6 1998.

  
**MAYBELLE TAYLOR BENNETT**  
Chairperson  
Zoning Commission

  
**MADELIENE H. DOBBINS**  
Director  
Office of Zoning

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**Government of the District of Columbia**  
**ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 668-G**  
**Case No. 00-35TE/94-4M/89-31C**  
**(Consolidated PUD & Map Amendment @ 500 5th Street, N.W.)**  
**February 12, 2001**

By Zoning Commission Order No. 668, dated July 9, 1990, the Zoning Commission for the District of Columbia approved the application of 488 Associates Limited Partnership, the Salvation Army, the Fraternal Order of Police and John W. and Vinard Paris for a consolidated review and approval of a planned unit development (PUD) and related map amendment from SP-2 to C-3-C for lots 15-19, 24, 25 and 821-823, and a closed public alley in Square 488, located at 500 5th Street, N.W.

Order No. 668 provided for the construction of a mixed-use commercial building with a height of 120 feet, a maximum floor area ratio (FAR) of 7.64, and a lot occupancy of 99 percent. The approved PUD was subject to certain guidelines, conditions and standards.

By letter dated October 3, 1990, counsel for the applicant requested the Zoning Commission to modify the second sentence in Condition No. 6 of Z.C. Order No. 668, relating to ingress and egress. The letter also requested the Commission to extend the validity of the PUD for two years.

By Z.C. Order No. 668-A, dated November 19, 1990, the Commission approved the applicant's request and modified Condition No. 6 to read as follows:

"The applicant shall provide two lanes 'in' and either one or two lanes 'out' for vehicular traffic in the interior of the parking garage."

By Z.C. Order No. 668-B, dated August 5, 1991, the Commission granted the applicant's second extension request and extended the validity of Z.C. Order Nos. 668 and 668-A for a period of two years, until July 27, 1994, with construction to start no later than July 27, 1995.

By Order No. 668-C, the Commission extended the validity of Z.C. Order Nos. 668, 668-A and 668-B for a period of two years, until July 27, 1996, with construction to start not later than July 27, 1997.

By letter dated March 10, 1994, the applicant requested a modification of the existing PUD to include, as alternative development, lots 833 and 842 at the northern end of Square 488. Lots 833 and 842 were unzoned District of Columbia property developed with a fire station. The applicant requested that the unzoned property be zoned C-3-C to be consistent with the zoning of the remainder of the square, as approved by the Commission in Z.C. Order No. 668.

By Z.C. Order No. 668-D, dated November 14, 1994, the Zoning Commission approved the modification to the PUD and the map amendment to C-3-C for lots 833 and 842. Z.C. Order No. 668-D provided for an office/retail building with a gross floor area (including the fire station) of 448,525 square feet, an FAR of 7.64, height of 120 feet and 212 off-street parking spaces with a potential for approximately 313 parking spaces through a stacked parking scheme, and a minimum of ten bicycle parking spaces, or in the alternative to proceed under the original PUD approval contained in previous Z.C. Order Nos. 668, 668-A, 668-B, and 668-C.

The validity of Z.C. Order No. 668-D was for two years, until December 9, 1996, to file for a building permit, with construction to commence not later than December 9, 1997.

By letter dated September 21, 1995, counsel for the applicant filed a motion for the extension of Z.C. Order Nos. 668, 668-A, 668-B, 668-C, and 668-D for two years. The motion requested that Z.C. Order Nos. 668, 668-A, 668-B, 668-C be extended to July 27, 1998, to file for a building permit, with construction to commence no later than July 27, 1999, and Z.C. Order No. 668-D to be extended to December 9, 1998, to file for a building permit, and construction to commence no later than December 9, 1999.

The applicant's motion for extension stated, in part the following as the basis for the extension.

1. The applicant has not proceeded with construction since the PUD's approval solely because of unfavorable market conditions. These conditions have placed a halt on almost all new private construction projects in the past six years. The applicant has been unable to secure financing to allow the project to proceed without a lead tenant in place and the project substantially pre-leased.
2. The unfavorable market conditions and the applicant's continuous actions to market the project, including the PUD modification to utilize the air rights over the fire house, are both highly relevant to the demonstration of good cause. On the basis of these factors, an extension for good cause shown is merited without a hearing.

By Z.C. Order No. 668-E, dated February 12, 1996, the Commission granted the applicants' motion for extension and extended the validity of Z.C. Order No. 668 through 668-C for two years, until July 27, 1998, to file for a building permit, with construction to begin no later than July 27, 1999. Additionally, by Z.C. Order No. 668-E, the Commission extended Order No. 668-D for a period of two years, until December 9, 1998, to file for a building permit with construction to begin no later than December 9, 1999.

By correspondence dated September 17, 1997, counsel for the applicant filed a motion requesting the Commission to further extend the validity of Zoning Commission Order Nos. 668, 668-A, 668-B, 668-C, and 668-E for five-years (until July 27, 2003), and for Order No. 668-D, until December 9, 2003, pursuant to section 2408 of the Zoning Regulations.

Finding that the applicant had demonstrated good cause for the extension and that the rationale for granting approval for the PUD had not changed, the Zoning Commission, by Z.C. Order No.

668-F dated February 9, 1998, granted an extension of the validity of Z.C. Order Nos. 668, 668-A, 668-B, 668-C and 668-E for a period of two years, until July 27, 2000, and for Z.C. Order No. 668-D until December 9, 2000. The extension was based upon the Zoning Commission's finding of a willingness on the part of the applicant to go forward with the development of the project as soon as market conditions improved, as well as the applicant's diligent, good-faith efforts to secure financing by negotiating the air rights agreement with the District of Columbia Redevelopment Land Agency (RLA) to improve the marketability of the project.

By letter dated December 6, 2000, the National Academy of Sciences (NAS), the successor-in-interest to the original applicant, filed for a five (5) year extension of the validity of Z.C. Order Nos. 668-D, 668-E and 668-F.

The motion noted that the criteria for determining whether the PUD should be extended is whether the applicant has demonstrated that there is good cause for the extension and whether there has been a substantial change in any of the material facts upon which the Zoning Commission based its original approval of the PUD under 11 DCMR § 2408.11(a) and (b).

The motion states that the applicant meets the criteria for good cause for the extension as construction of the first phase of the project by NAS is underway. However, prior to closing on the purchase of the air rights property, further analysis is needed regarding the ability of the existing fire station to support the proposed construction. The motion states that these efforts have been hindered, because the District has had difficulty in locating and providing NAS with building plans (including "as-built" plans) for the existing fire station, which were necessary to complete the study.

The motion states that additional time was also needed to coordinate bond financing for the second stage of the PUD, which method of financing had been used for the first stage of the PUD. The time and effort involved in obtaining construction financing through bonds issued by the District is more extensive than the time required for traditional financing.

Paragraph 2408.11(a) of the Zoning Regulations specifically provides that an inability to obtain sufficient project financing, coupled with an applicant's good faith efforts to obtain such financing, is a criterion for establishing good cause.

The applicant's motion also stated that there were no changes impacting the PUD since Order No. 668-F was issued approving the sixth time extension.

As the applicant demonstrated good cause under 11 DCMR § 2408.11(a), there was no need for a hearing under 11 DCMR § 2408.12 to determine whether a material factual conflict exists with respect to the criteria of Subsection 2408.11.

Counsel for the applicant also indicated that copies of the motion for extension were served on Advisory Neighborhood Commission (ANC) 6A, within whose jurisdiction the property is now situated.

By memorandum dated January 4, 2001, the District of Columbia Office of Zoning referred the extension request to the District of Columbia Office of Planning (OP) for analysis of whether any amendments to the Zoning Map or Regulations, or to the Comprehensive Plan, since the Zoning Commission initially decided the case, would affect this request. By memorandum dated January 4, 2001, the OP recommended approval of the extension.

By letter dated November 17, 2000, RLA supported the request for the extension noting that, although NAS has until at least 2003 to close on the air rights property, NAS had begun discussions with RLA to expedite the purchase of the air rights property.

Pursuant to Subsection 2408.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request being made before the expiration of the approval.

On February 12, 2001, at its regular monthly meeting, the Commission considered the applicant's request for a five-year extension of the validity of Z.C. Order Nos. 668-D, 668-E and 668-F, the OP report and recommendations and the RLA letter.

The Commission concurred with the OP that an extension of the order should be granted. The Commission found that the applicant had met the requirements under Section 2408(a) in regard to good cause and that there was no need for a hearing to determine whether a material conflict exists pursuant to Subsection 2408.12 of the Zoning Regulations.

The Commission determined that the reasons advanced by the applicant for the extension request constitute good cause and that the request was timely filed pursuant to Subsection 2408.10 of the Zoning Regulations. The Commission determined that the applicant had acted diligently and consistent with its responsibilities in moving forward with construction on the first stage of the PUD and that the applicant was working diligently with respect to securing financing for the second stage. The Commission determined that the applicant was committed to the development of the project.

The Commission determined that the extension of time, as requested by the applicant, is not unreasonable, that the rationale for granting approval for the PUD has not changed, and that no adverse consequences will result from approving the request.

The Commission determined that an extension of time, as requested by the applicant, is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

In consideration of the reasons set forth in this order, the Zoning Commission for the District of Columbia hereby **ORDERS** that the request to extend the validity of Z.C. Order Nos. 668-D, 668-E and 668-F be **APPROVED** for a period of **FIVE YEARS**, until December 9, 2005. Prior to the expiration of that time, the applicant shall file for a building permit, and construction shall begin no later than December 9, 2006.

Z.C. ORDER NO. 668-G  
CASE NO. 00-35TE/94-4M/89-31C  
Page No. 5

This order was **ADOPTED** by the Zoning Commission at its public meeting on February 12 2001, by a vote of 4-0-1: (Herbert M. Franklin, John G. Parsons, Anthony J. Hood and Carol J. Mitten to **ADOPT**, Kwasi Holman not present, not voting).

In accordance with the provisions of 11 D.C.M.R. 3028.8, this order is final and effective upon publication in the D.C. Register; that is on APR - 4 2001.

  
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**ANTHONY J. HOOD**  
**CHAIRMAN**  
Zoning Commission

  
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**JERRILY R. KRESS, FAIA**  
**DIRECTOR**  
Office of Zoning

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**Government of the District of Columbia**  
**ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 668-H**  
**Case No. 01-34MM/00-35TE**  
**(Modification to the Planned Unit Development at 500 5th Street, N.W.)**  
**February 11, 2002**

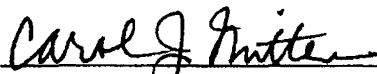
On November 19, 2001, the National Academy of Sciences ("NAS") filed an application for a minor modification to Zoning Commission Order Nos. 668 and 668-A through 668-G authorizing a planned unit development ("PUD") consisting of a mixed-use commercial building for premises at 500 5<sup>th</sup> Street, N.W. The proposed modification would allow the use of the dedicated retail space by an interactive science museum, as an alternative to all or a portion of the retail requirement of the previously approved PUD. NAS requested that the application be considered through use of the Zoning Commission's Consent Calendar procedure of 11 DCMR § 3030.

Pursuant to notice, the Zoning Commission for the District of Columbia held a public meeting on February 11, 2002. At the meeting, the Zoning Commission voted to consider the application under its Consent Calendar process (11 DCMR § 3030), thereby eliminating the need for a hearing. Following discussion, the Commission approved NAS' application for a minor modification to the previously approved PUD.

**FINDINGS OF FACT**

1. By Zoning Commission Order No. 668, dated July 9, 1990, the Zoning Commission for the District of Columbia approved the application of 488 Associates Limited Partnership, the Salvation Army, the Fraternal Order of Police, and John W. and Vinard Paris (collectively, the "applicant") for a consolidated review and approval of a planned unit development (PUD) and related map amendment from SP-2 to C-3-C for lots 15-19, 24, 25, and 821-823, and a closed public alley in Square 488, located at 500 5th Street, N.W. Since July 9, 1990, the Zoning Commission has granted the applicant several extensions of its original order such that the current expiration date of the PUD under Z.C. Order No. 668-G is December 9, 2005, with construction to begin no later than December 9, 2006.
2. In addition to previous requests to extend the PUD, the applicant has requested two previous modifications of the approved PUD. In 1994, the applicant requested a modification of the approved existing PUD and a map amendment to include, as alternative

In accordance with the provisions of 11 DCMR 3028, this Order shall become final and effective upon publication in the D.C. Register; that is on JUL 26 2002.

  
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Carol J. Mitten, Chairperson  
Zoning Commission

  
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Jerrily R. Kress, FAIA, Director,  
Office of Zoning

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# Government of the District of Columbia

## ZONING COMMISSION



ZONING COMMISSION ORDER NO. 668

Case No. 89-31C

(PUD & Map @ Judiciary Center)

July 9, 1990

Pursuant to notice, a public hearing of the Zoning Commission for the District of Columbia was held on May 3, 1990. At that hearing session, the Zoning Commission considered an application of 488 Associates Limited Partnership, the Salvation Army, the Fraternal Order of Police, and John W. & Vinard Paris. The consolidated review and approval of a Planned Unit Development and related amendment to the Zoning Map of the District of Columbia, pursuant to Chapter 24 and Section 102 of the District of Columbia Municipal Regulations, (DCMR), Title 11, Zoning. The public hearing was conducted in accordance with the provisions of 11 DCMR 3022.

### FINDINGS OF FACT

1. The application, which was filed on September 27, 1989, requested consolidated review and approval of a PUD and related change of zoning from SP-2 to C-3-C for lots 15-19, 24, 25, and 821-823 and a closed public alley in Square 488 located at 500 Fifth Street, N.W.
2. The PUD site measures 44,250.1 square feet in area, is presently zoned SP-2, and is in the Square bounded by E, F, 5th and 6th Streets, N.W.
3. The PUD site is currently used for a variety of uses including the headquarters of the Salvation Army, the Fraternal Order of Police buildings, a tour bus service, several vacant buildings, and a surface parking lot.
4. The applicants propose to construct a mixed-use commercial building, including office and retail uses.
5. The zoning pattern in the vicinity of the PUD site include SP-2, C-3-C, C-4 and HR/SP-2.
6. The land uses in the vicinity of the PUD site include

general office and retail/service uses, municipal uses including a fire station and courts, and the site of the old Hecht Co. department store, which is being developed with a mixed-use.

7. The SP-2 District permits matter-of-right medium/high density development including all kinds of residential uses, with limited offices for non-profit organizations, trade associations and professionals permitted as a special exception requiring approval of the BZA, to a maximum height of ninety feet, a maximum floor area ratio (FAR) of 6.0 for residential and 3.5 for other permitted uses, and a maximum lot occupancy of eighty percent for residential uses.
8. The C-3-C District permits matter-of-right major business and employment centers of medium/high density development, including office, retail, housing, and mixed uses to a maximum height of ninety feet, a maximum FAR of 6.5 for residential and other permitted uses, and a maximum lot occupancy of one-hundred percent.
9. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified above. The Zoning Commission may also approve uses that are permitted as a special exception and would otherwise require approval by the Board of Zoning Adjustment.
10. The District of Columbia Generalized Land-Use Map Element of the Comprehensive Plan for the National Capital designates the PUD site within the "high density commercial" category.
11. The applicants propose to construct a ten-story commercial building with general office and retail uses. The building will incorporate the facades of certain buildings in the square that have historic preservation significance. The project would have a maximum height of 120 feet, a maximum FAR of 7.64, a lot occupancy of ninety-nine (99) percent, a gross floor area of approximately 338,125 square feet for office/retail uses, and parking to accommodate 214 self-parked cars and 273 stacked-parked cars. The gross floor area devoted to retail use will be 8,000-10,000 square feet.
12. In the Prehearing Submission filed on March 8, 1990, the applicants noted that certain design-related changes had been made from the proposal that was set for public hearing. These changes include projections

and indentations related to the modeling of the facades. Further, the main entrance bay on 5th Street was widened by 10 feet and an additional loading lane was added. The number of self-parking spaces was reduced from 254 to 214. A stacked parking scheme has been developed with a total of 273 spaces. In the application statement, the applicants offered as an amenity to establish an escrow of \$100,000 for landscaping of adjacent parklands. In the alternative to this escrow account, because of its significance and proximity to the proposed PUD, the applicants would be willing to provide \$100,000 for the benefit of the National Law Enforcement Officers Memorial. The funds would be provided upon the issuance of the building permit for the building.

13. The applicants worked for several months with the D.C. Preservation League and the Committee of 100 on the Federal City, in order to develop a building which incorporated the historically significant building, parts of buildings and/or facades in the southern portion of the square. The project provides a number of special amenities including:
  - a. Historic Preservation. In coordination with the D.C. Preservation League and the Commission of Fine Arts, the project has been designed to preserve the most important buildings, portions thereof, and/or facades of the buildings, in the southern portion of Square 488. These buildings include: Columbia Title Insurance Company - 500 5th Street, N.W.; Salvation Army Building - 503 E Street, N.W.; 509 E Street, N.W.; 511 E Street, N.W.; 507 6th Street, N.W.; 509 6th Street, N.W.; 511 6th Street, N.W.; and 513 6th Street, N.W. This exterior and interior restoration will be undertaken by the applicants at their sole cost, and with the expert technical services of structural engineers and architectural historians, and in consultation with the D.C. Preservation League.
  - b. Public Space Improvements. Offers improvements to public space surrounding the building including improved streetscape and landscaping for the entire Square including the Fire Station, in compliance with and exceeding D.C. streetscape regulations.
  - c. Funds for Landscaping. To ensure the construction and/or maintenance of the National Law Enforcement Officers Memorial, located adjacent to the subject site, the applicants have agreed, upon the issuance of the building permit,

to provide the National Law Enforcement Officers Memorial Fund with \$100,000;

- d. Urban Design. Establishes a superbly designed mixed-use building in a location in the Downtown area consistent with the Comprehensive Plan, the Land Use Plan, the Downtown Plan, and the Preservation and Historic Features Element;
- e. Judiciary Square Area. The applicants propose to improve the appearance and economic vitality of the Judiciary Square area by replacing vacant lots and dilapidated structures, while preseving significant buildings, portions thereof and/or facades, as part of a first-class commercial project that offers jobs, preservation, and new architecture;
- f. Retail Space. Offers space for retail on the first floor along the E Street frontage near a metro station;
- g. Salvation Army. Approval of this project substantially assists the Salvation Army with obtaining the necessary funding to construct its project, pursuant to Zoning Commission Order No. 618; and
- h. Economic Benefits. Provides economic benefits to the City and City residents through:
  - i. Increased real estate tax revenues;
  - ii. Commitment to jobs and contracts for minorities in the construction of the project through the Minority Business Opportunity Commission; and
  - iii. First Source Employment for construction jobs.

14. The preservation architect testified that under the agreement, the following buildings, or portions thereof, shall be retained:

- a. Columbia Title Insurance Company - 500 5th Street, N.W. (entire building);
- b. Salvation Army Building - 503 E Street, N.W. (restored facade);
- c. 509 E Street, N.W. (restored facade);
- d. 511 E Street, N.W. (restored facade);
- e. 507 6th Street, N.W. (restored building - 20 feet

deep);

- f. 509 6th Street, N.W. (restored building - 20 feet deep);
- g. 511 6th Street, N.W. (restored building - 20 feet deep); and
- h. 513 6th Street, N.W. (restored building - 37 feet deep).

15. The preservation architect further stated that under the agreement new infill construction must reflect the scale, design vocabulary, and spirit of the retained buildings and facades. She concluded that the proposed building does so. She also testified that in order to accomplish the preservation goals as contemplated by the agreement, a commercial FAR of approximately 7.64 for general office and retail use was necessary. The building height of 120 feet was stated to be appropriate.
16. The applicants indicated that the proposal is for general office and retail use. The project will have a gross floor area of approximately 338,125 square feet. The applicant requested that the FAR be measured consistent with that permitted in prior Judiciary Square PUDs, so that punched window and recessed window treatments are not penalized. The FAR is 7.64 and the building height is 120 feet. The building will contain parking for approximately 273 cars in a stacked parking arrangement. Ingress and egress for parking and loading will be provided off of 6th Street.
17. The applicants indicated that the subject site is located within the area for which the Judiciary Square Municipal Center Development Plan was proposed and is subject to design review by the Commission of Fine Arts (CFA). The Commission of Fine Arts (CFA) granted conceptual design approval to the original project on September 21, 1989. The revised project, which is subject to the PUD hearing, was reviewed by CFA at its March 15, 1990 meeting. The Commission recommended approval and requested further study of the middle portion of the upper two floors facing 5th Street. The architect requested flexibility to respond to the concerns of the CFA without further processing by the Zoning Commission.
18. The building design was driven by the preservation of historically significant buildings within the Square. Because of the significant nature of the preservation efforts involved in the project, an important part of

which is the retention and preservation of entire buildings or portions thereof, the design does not meet the standard setback requirements of the Judiciary Square Master Plan. Specifically, the old Columbia Title Insurance Company building, located at 500 5th Street, N.W., will be preserved in its entirety. This significant building is not setback as it faces Judiciary Square.

19. The applicants further indicated that the 120 foot height is consistent with other recent developments in the area, including the PUD in Square 532 and the previously approved PUDs in Squares 489 and 531.
20. The following building materials will be used:
  - a. Predominant masonry material Buff-colored stone
  - b. Window mullions Factory Painted Aluminum
  - c. Office windows Clear or tinted glass
  - d. Retail window mullions Factory Painted Aluminum
  - e. Retail windows Clear Tempered Glass
  - f. Side walk pavers D.C. standard precast concrete pavers
21. The architect for the applicants requested flexibility in the following areas to ensure that minor refinements and improvements made during the process of design development and construction documents will be consistent with the intent of the proposed design:
  - a. Varying the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - b. Making minor adjustments in the facade, window and balcony detailing, including the flexibility to shift the location of the doors to the retail uses on the ground floor and vary the type of paneling used on the retail frontage in order to accommodate the different types of retail uses;
  - c. Varying the location and type of exterior lighting fixtures;
  - d. Varying the final selection of the exterior

materials within the color ranges and material types as proposed, based on availability at time of construction;

- e. Varying the species of plant materials;
  - f. Varying landscape and paving details to accommodate utilities requirements and minor refinements incorporating comments of the streetscape committee;
  - g. Varying exterior design related to the setbacks on the upper two floors facing 5th Street to meet the specified conditions of the Commission of Fine Arts.
  - h. Permit the applicant to establish from one to three curb cuts in the location and of the size as shown on the applicants site plan on the 6th Street, N.W. frontage.
  - i. Allowing the flexibility permitted pursuant to the provisions of 11 DCMR, Chapter 24.
22. The applicants indicated that due to the preservation of the buildings/facades, handicapped access by wheelchair is unachievable in approximately 6 percent of the building due to the mismatched floor levels. The remainder of the building will meet the handicapped access standards provided in the D.C. Building Codes.
23. The applicants indicated that the proposed development is consistent with the land use goals and policies established in the Land Use Element of the Plan. Under the Downtown Element of the Comprehensive Plan, the policies in support of the Judiciary Square objectives are provided in Section 968. The proposed project is in accordance with the goals and policies of the Comprehensive Plan.
24. The applicants indicated that the proposed parking and loading provided in the project is adequate. The project provides parking in an underground garage which is entered from 6th Street, N.W. The applicants propose to provide approximately 214 parking spaces to insure that the parking needs of the tenants of the building and visitors are met. The Zoning Regulations require 194 spaces. A total of 273 spaces will be available through the stacked parking scheme.
25. The most appropriate location for the parking and loading access is on 6th Street at the northern end of the subject property next to the D.C. fire house. This location would permit the establishment of retail uses

along 5th Street, keep curb cuts off of 5th Street fronting on Judiciary Square, and maximize the project's relationship to Metro. The proposed parking/loading location would have no significant adverse impacts to pedestrians. If a front-in, front-out loading scheme were provided, demolition of the historic structure at 513 6th Street, N.W. would be required.

26. The District of Columbia Office of Planning (OP), by memorandum dated May 5, 1989 and by testimony presented at the hearing, recommended that the application be approved. Office of Planning noted that the city is supportive of this project's contribution in providing superior architecture, the preservation of historic buildings and additional retail space. The amenities being offered by the applicants justify the zoning relief requested. The proposed PUD and change of zoning would not impair the intent, purpose, and integrity of the Zoning Regulations and are consistent with the Comprehensive Plan.
27. At the hearing, OP indicated that it had reviewed the applicants' proposal to landscape the adjacent parklands, or in the alternative to provide funds to the Law Enforcement Memorial Fund, and had no recommendation as to which proposal was more appropriate.
28. The District of Columbia Department of Public Works (DPW) by report dated April 27, 1990, stated that the applicant's parking and loading were adequate. DPW indicated that a front-in and front-out truck operation was preferable, and that, in the PUD covenant related to the alley closing in the square, only 1 curb cut on 6th Street was allowed.
29. The District of Columbia Department of Finance and Revenue, by letter dated March 23, 1990, expressed no opposition to the proposal.
30. The District of Columbia Department of Recreation, (DOR) by report dated April 18, 1990, stated that the project's amenities are substantial and highly appropriate. DOR believes that the former proposal to improve Judiciary Square landscaping apart from the memorial would be preferable and the model created for such improvements in the Franklin Square area could be successful in this instance. According to approved plans, the Law Enforcement Officers Memorial will contain substantial landscaping treatments that will be maintained by the National Park Service after the land transfer to the Federal government, but adequate funds for landscaping improvements and maintenance in the

areas adjacent to the Superior Court buildings are needed.

31. The District of Columbia Metropolitan Police Department, by report dated April 23, 1990, indicated it was not opposed to the proposed development.
32. Advisory Neighborhood Commission (ANC) 2C, by report dated March 21, 1990, supported the approval of the PUD and map amendment. ANC-2C indicated that the PUD was important and should be approved because it included the preservation of the historically significant buildings in the Square, through an agreement with the D.C. Preservation League.
33. By letter dated May 2, 1990, the D.C. Preservation League supported the application. The letter noted that the project developers have sensitively responded to the challenges these historic buildings represent to the square's redevelopment. The proposed project will include the retention and restoration of the most important and intact buildings and building facades on the block. Many of the historic building interiors will be retained and restored as well. The proposed new construction will incorporate substantial setbacks from the retained structures in order to allow the historic buildings to remain a prominent focus of the block. The architectural vocabulary of the low-scale infill buildings and the new building handsomely compliments the existing ensemble.
34. By letter dated May 1, 1990, the Committee of 100 on the Federal City, supported the application. The Committee noted that it, with D.C. Preservation League, had worked closely with the developers and their architects to ensure the retention and proper restoration of as much of the historic block as possible and to ensure a compatible design for new construction.
35. No parties or persons appeared at the hearing in support or opposition to the application.
36. The Commission finds that the applicants have met the requirements of 11 DCMR Chapter 24 and have satisfied the intent and purpose thereof.
37. The Commission concurs with ANC-2C, OP, and the applicants and finds that the public amenities offered as a part of the PUD are significant, particularly the preservation of the historically significant buildings within the square and the provision of retail along E Street.

38. As to the concern of DPW regarding the loading area, the Commission finds that, if a front-in, front-out loading scheme were provided, demolition of the historic structure at 513 6th Street, N.W., would be required. DPW, through the Office of Planning, left to the Commission the determination of the competing interests as to truck maneuvering versus historic preservation. The Commission finds that the interest of historic preservation outweighs DPW's concern as to truck maneuvering and that, therefore, front-in, front-out loading will not be required for this project. The Commission finds that the applicants' proposed loading arrangement is reasonable.
39. The Commission finds that the rezoning of the subject property from SP-2 to C-3-C is appropriate.
40. The proposed action of the Zoning Commission to approve the application with conditions was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. The NCPC, by report dated July 2, 1990, indicated that the PUD would not adversely affect the Federal Establishment or other Federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

#### CONCLUSIONS OF LAW

1. The Planned Unit Development process is an appropriate means of controlling development of the subject site, because control of the use and site plan is essential to ensure compatibility with the neighborhood.
2. The development of this PUD carries out the purposes of Chapter 24 to encourage the development of well-planned residential, commercial and mixed-use developments which will offer a variety of building types with more attractive and efficient overall planning and design not achievable under matter-of-right development.
3. The development of this PUD is compatible with city-wide goals, plans and programs, and is sensitive to environmental protection and energy conservation.
4. The approval of this application is not inconsistent with the Comprehensive Plan of the National Capital, as amended.
5. The approval of this application is consistent with the purposes of the Zoning Act.
6. The proposed application can be approved with

conditions which ensure that the development will not have an adverse affect on the surrounding community, but will enhance the neighborhood and ensure neighborhood stability.

7. The approval of this application will promote orderly development in conformity with the entirety of the District of Columbia zone plan, as embodied in the Zoning Regulations and Map of the District of Columbia.
8. The Zoning Commission has accorded to the Advisory Neighborhood Commission 2C the "great weight" to which it is entitled.
9. This application is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

#### DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the District of Columbia Zoning Commission hereby orders APPROVAL of this application for a consolidated Planned Unit Development and map amendment from SP-2 to C-3-C for Lots 15, 16, 17, 18, 19, 24, 25, 821, 822 and 823, and a closed portion of a public alley in Square 488 for premises 500 5th Street, N.W. The approval of this PUD and change of zoning are subject to the following guidelines, conditions, and standards:

1. The Planned Unit Development ("PUD") shall be developed in accordance with the plans prepared by Keys Condon Florance, marked as Exhibits No. 20C and 34, of the record, as modified by the guidelines, conditions and standards of the order.
2. The project shall be developed as a general office building, with a retail component, with uses permitted as matter-of-right in the C-3-C District.
3. The floor area ratio (FAR) of the project shall not exceed 7.64.
4. The height of the building shall be 120 feet excluding the roof structure. Setbacks shall be as shown on Exhibit No. 20C.
5. The lot occupancy of the project shall not exceed 99.7 percent of the site.
6. The applicants shall provide a minimum of 214 parking spaces, consisting of full size, compact and handi-capped spaces. The applicant shall provide two lanes "in" and one lane "out" for vehicular traffic at the entrance of the parking garage. The applicant may

provide additional parking through a valet stacked parking scheme.

7. The applicants shall place appropriate plaques on the buildings indicating their history. The placement and wording shall be worked out by the applicant in conjunction with the D.C. Preservation League.
8. Brochures describing the historically significant and their preservation are to be prepaid by the applicants in conjunction with the D.C. Preservation League, and made available to visitors to the building.
9. The project shall include the amenities package proposed as part of this application and described in detail in the findings and record of this case, as follows:
  - a. Historic Preservation. In coordination with the D.C. Preservation League and the Commission of Fine Arts, the project has been designed to preserve the most important buildings, portions thereof, and/or facades of the buildings, in the southern portion of Square 488. These buildings include: Columbia Title Insurance Company - 500 5th Street, N.W.; Salvation Army Building - 503 E Street, N.W.; 509 E Street, N.W.; 511 E Street, N.W.; 507 6th Street, N.W.; 509 6th Street, N.W.; 511 6th Street, N.W.; and 513 6th Street, N.W. This exterior and interior restoration will be undertaken by the applicant at its sole cost, and with the expert technical services of structural engineers and architectural historians, and in consultation with the D.C. Preservation League.
  - b. Public Space Improvements. Offers improvements to public space surrounding the building including improved streetscape and landscaping for the entire Square including the Fire Station, in compliance with and exceeding D.C. streetscape regulations.
  - c. Funds for Landscaping. To ensure the construction and/or maintenance of the National Law Enforcement Officers Memorial, located adjacent to the subject site, the applicant has agreed, upon the issuance of the building permit, to provide the National Law Enforcement Officers Memorial Fund with \$100,000;
  - d. Urban Design. Establishes a superbly designed mixed use building in a location in the Downtown area consistent with the Comprehensive Plan, the

Land Use Plan, the Downtown Plan, and the Preservation and Historic Features Element;

- e. Judiciary Square Area. The applicant proposes to improve the appearance and economic vitality of the Judiciary Square area by replacing vacant lots and dilapidated structures, while preserving significant buildings, portions thereof and/or facades, as part of a first-class commercial project that offers jobs, preservation, and new architecture;
  - f. Retail Space. Offers space for retail on the first floor near a metro station;
  - g. Salvation Army. Approval of this project substantially assists the Salvation Army with obtaining the necessary funding to construct its project, pursuant to Zoning Commission Order No. 618; and
  - h. Economic Benefits. Provides economic benefits to the City and City residents through:
    - i. Increased real estate tax revenues;
    - ii. Commitment to jobs and contracts for minorities in the construction of the project through the Minority Business Opportunity Commission; and
    - iii. First Source Employment for construction jobs.
9. The facade design treatment and materials of the proposed building shall be generally consistent with the plans marked as part of Exhibit No. 34 in the record of the case, consistent with the areas of flexibility requested by the applicant noted in Condition No. 11 of this order. The building materials shall be as follows:
- a. Predominant masonry material      Buff-colored stone
  - b. Window mullions      Factory Painted Aluminum
  - c. Office windows      Clear or tinted glass
  - d. Retail window mullions      Factory Painted Aluminum
  - e. Retail windows      Clear Tempered Glass
  - f. Side Walk pavers      D.C. standards precast

concrete pavers

10. The final selection of exterior materials shall be within the color ranges as proposed based on availability at time of construction, and shall be approved by the Zoning Commission prior to the issuance of a building permit.
11. The applicants are granted flexibility in the final detailing of the buildings with respect to the following matters:
  - a. Varying the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, provided that the variations do not change the exterior configuration of the building;
  - b. Making minor adjustments in the facade, window and balcony detailing, including the flexibility to shift the location of the doors to the retail uses on the ground floor and vary the type of paneling used on the retail frontage in order to accommodate the different types of retail uses;
  - c. Varying the location and type of exterior lighting fixtures;
  - d. Varying the species of plant materials;
  - e. Varying landscape and paving details to accommodate utilities requirements and minor refinements incorporating comments of the streetscape committee;
  - f. Varying exterior design related to the setbacks on the upper two floors facing 5th Street to meet the specified conditions of the Commission of Fine Arts;
  - g. Provide one to three curb cuts in the location and of the size shown in applicant's Site Plan Exhibit No. 20C, of the record, along the 6th Street, N.W. frontage and subject to the approval of the Department of Public Works; and
  - h. Allowing the flexibility permitted pursuant to the provisions of 11 DCMR, Chapter 24.
12. Antennas within the screen walls of the mechanical penthouse areas may be permitted in accordance with the Zoning Regulations.

13. The planned unit development approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, application must be filed for a building permit as specified in Section 2407.1 DCMR Title 11. Construction shall start within three (3) years of the effective date of this order.
14. No building permit shall be issued for this PUD until the applicants have recorded a covenant in the Land Records of the District of Columbia, between the owner and the District of Columbia and satisfactory to the Office of the Corporation Counsel and the Zoning Regulations Division of the Department of Consumer and Regulatory Affairs (DCRA), which covenant shall bind the applicant and successors in title to construct on and use this property in accordance with this order, or amendments thereof, of the Zoning Commission.
15. The change of zoning from SP-2 to C-3-C for lots 15-19, 24, 25 and 821-823 and the closed portion of a public alley in Square 488 shall be effective upon recordation of a PUD covenant, pursuant to 11 DCMR 2407.
16. The Zoning Secretariat shall not release the record of this case to the Zoning Regulations Division of the DCRA until the applicant has filed a certified copy of said covenant in the records of the Zoning Commission.
17. Pursuant to D.C. Code Sec. 1-2531 (1987), Section 267 of D.C. Law 2-38, the Human Rights Act of 1977, the applicant is required to comply fully with the provisions of D.C. Law 2-38, as amended, codified as D.C. Code, Title 1, Chapter 25 (1987), and this Order is conditioned upon full compliance with those provisions. Nothing in this Order shall be understood to require the Zoning Regulations Division/DCRA to approve permits, if the applicants fails to comply with any provision of D.C. Law 2-38, as amended.

Vote of the Zoning Commission taken at the public hearing on May 3, 1990: 5-0 (Tersh Boasberg, Maybelle Taylor Bennett, John G. Parsons, Lloyd D. Smith and William L. Ensign, to approve with conditions).

This order was adopted by the Zoning Commission at the public meeting on July 9, 1990 by a vote of 5-0: (Maybelle Taylor Bennett, Lloyd D. Smith, Tersh Boasberg, William L. Ensign and John G. Parsons, to adopt).

Z.C. ORDER NO. 668  
CASE NO. 89-31C  
PAGE 16

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in the D.C Register; that is, on JUL 27 1990.

  
\_\_\_\_\_  
TERESH BOASBERG  
Chairman  
Zoning Commission

  
\_\_\_\_\_  
EDWARD L. CURRY  
Executive Director  
Zoning Secretariat

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Government of the District of Columbia

ZONING COMMISSION



Zoning Commission Order No. 668-A

Case No. 89-31C

(PUD & Map & Judiciary Center)

November 19, 1990

On July 9, 1990, by Z.C. Order No. 668, the Zoning Commission for the District of Columbia approved the application of 488 Associates Limited Partnership, the Salvation Army, the Fraternal Order of Police and John W. & Vinard Parris for a consolidated review and approval of a Planned Unit Development and related amendment to the zoning map from SP-2 to C-3-C, for lots 15-19, 24, 25, 821-823, and a closed public alley in Square 488, located at 500 - 5th Street, N.W.

By letter dated October 3, 1990, counsel for the applicant requested that the Zoning Commission modify the second sentence in Condition No. 6, relating to ingress and egress.

Application's specific request is that the condition be amended so that it relates to the interior of the parking garage and allows the applicant to provide either one or two out lanes. Applicant submits that the requested change is consistent with the recommendation of the Department of Public Works.

At its public meeting on October 15, 1990, the Zoning Commission considered the proposed change in Z.C. Order No. 688. The Commission finds that the requested change in conditions for garage ingress and egress, as requested by the applicants is not unreasonable, is consistent with the rationale for approving the PUD, and will not cause any adverse consequences.

The proposed action of the Zoning Commission to approve the request for modification of Z.C. Order No. 688, relating to interior of the parking garage and provision of either one or two out lanes was referred to the National Capital Planning Commission (NCPC) under the terms of Zoning Commission self-government and Governmental Reorganization Act. The NCPC by a report dated November 16, 1990, indicated that the proposed action of the Zoning Commission would not adversely affect any Federal establishment or other Federal interests in the National Capital, nor be inconsistent with the comprehensive plan for the National Capital.

In consideration of the above reasons set forth herein, the Zoning Commission for the District of Columbia hereby ordered that Condition No. 6 in Zoning Commission Order No. 668 be amended to read as follows:

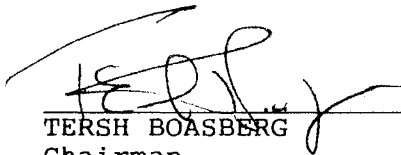
Z.C. ORDER NO. 668-A  
CASE NO. 89-31C

The applicant shall provide two lanes "in" and either one or two lanes "out" for vehicular traffic in the interior of the parking garage.

Vote of the Zoning Commission taken at the public meeting on October 15, 1990: (Maybelle Taylor Bennett, John G. Parsons, Lloyd D. Smith, and Tersh Boasberg, to approve; William L. Ensign, not voting, not having participated in the case).

This order was adopted by Zoning Commission at the regular public meeting on November 19, 1990 by a vote of 5-0 (Maybelle Taylor Bennett, John G. Parsons, Tersh Boasberg, William L. Ensign, and Lloyd D. Smith, to adopt).

In accordance with the provisions of 11 DCMR 3028, this order is final and effective upon publication in D.C. Register, that is, on DEC 28 1990.

  
\_\_\_\_\_  
TERSHER BOASBERG  
Chairman  
Zoning Commission  
\_\_\_\_\_  
EDWARD L. CURRY  
Executive Director  
Zoning Secretariat

89-31C.GUIDE/BHS

I

Government of the District of Columbia  
ZONING COMMISSION



ZONING COMMISSION ORDER NO. 668-B  
Case No. 89-31C  
(PUD & Map @ Judiciary Center)  
August 5, 1991

On July 9, 1990, by Z.C. Order No. 668, the Zoning Commission for the District of Columbia approved the application of 488 Associates Limited Partnership, the Salvation Army, the Fraternal Order of Police and John W. and Vinard Parris for a consolidated review and approval of a Planned Unit Development and related amendment to the zoning map from SP-2 to C-3-C for lots 15-19, 24, 25, 821-823, and a closed public alley in Square 488, located at 500 - 5th Street, N.W.

The PUD site will have a maximum height of 120 feet, a maximum FAR of 7.64, a lot occupancy of ninety-nine (99%) percent and a gross floor area of approximately 338,125 square feet for office/retail.

Z.C. Order No. 668 approved the construction of the mixed-use commercial building subject to certain guidelines, conditions and standards. Condition No. 13 of Z.C. Order No. 668 states the following:

"The planned unit development approved by the Zoning Commission shall be valid for a period of two years from the effective date of this order. Within such time, application must be filed for a building permit as specified in Section 2407.1 DCMR Title 11. Construction shall start within three (3) years of the effective date of this order."

Z.C. Order No. 668 became final and effective on July 27, 1990. The validity of this order is for two years; that is, until July 27, 1992, provided that application for a building permit is filed within that period of time, after which construction would have to start by July 27, 1993.

By letter dated October 3, 1990, counsel for the applicant requested the Zoning Commission to modify the second sentence in Condition No. 6 of Z.C. Order No. 668, relating to ingress and egress.

At its public meeting on October 15, 1990, the Zoning Commission approved the propose change in Z.C. Order No. 688, and adopted Z.C. Order No. 668-A at its monthly meeting of November 19, 1990.

Z.C. ORDER NO. 668-B  
Case No. 89-31C  
PAGE 2

The letter indicated that the basis for an extension stems from the following:

"In light of the current market conditions, the applicant requires additional time to continue its efforts to secure a lead tenant for the building. As the affidavit from Hines Square 488 Limited Partnership states, the applicant has been continuously marketing the project for a lead tenant since October, 1989. As the Commission is aware, presently there is a severe softening of the office market with lower rental rates. The applicant believes that (i) it is not prudent to commence construction, and (ii) construction financing will not be available, until a lead tenant is secured and the project substantially pre-leased.

The Commission's Order in Paragraph 11 of the decision allows the applicant certain flexibility to be reflected in the working drawings. This flexibility was requested by applicant, and is essential, to permit the building to be designed to address the particular needs and requirements of a lead tenant. Therefore, it is necessary that the applicant be given additional time to defer final design and submission of working drawings since the lead tenant will want and require input on these matters."

ANC-2C, by letter dated August 3, 1990, supported the applicant's request to extend the time frame for PUD approval given current market conditions.

The D.C. Preservation League, by letter dated August 2, 1990 also supported the request.

The Zoning Commission received no comments on this matter from the Office of Planning, nor any other party or person.

Pursuant to 11 DCMR 2406.10 of the Zoning Regulations, the Commission may extend the validity of a PUD approval for good cause shown upon a request made before the expiration of the approval.

On July 8, 1991, at its regular monthly meeting, the Zoning Commission considered the request of the applicant and determined that an extension of time is not unreasonable, that the rationale for granting the approval for the PUD has not changed, and that no adverse consequences will result by approving the request.

The Commission believes that the approval of request is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

Z.C. ORDER NO. 668-B  
Case No. 89-31C  
PAGE 3

and purpose of the Zoning Regulations and Zoning Act, and is not inconsistent with the Comprehensive Plan for the National Capital.

This extension of the validity of the approved PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders that the validity of Z.C. Orders No. 668 and 668-A be **EXTENDED** for a period of **TWO YEARS**; that is, until July 27, 1994. Prior to the expiration of that time, the applicant shall file an application for a building permit, as specified in 11 DCMR 2406.8. Construction shall start within five years of the effective date of Z.C. Order No. 668; that is, not later than July 27, 1995.

Vote of the Zoning Commission taken at the monthly meeting on June 13, 1991: 5-0 (Lloyd D. Smith, Maybelle Taylor Bennett, John G. Parsons, Tersh Boasberg, and William L. Ensign, to extend for two years).

This order was adopted by the Zoning Commission at the August 5, 1991 public meeting by a vote of 5-0: (William L. Ensign, Lloyd D. Smith, Maybelle Taylor Bennett, Tersh Boasberg, and John G. Parsons to approve).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on AUG 16 1991.



MAYBELLE TAYLOR BENNETT  
Chairperson  
Zoning Commission



EDWARD L. CURRY  
Executive Director  
Zoning Secretariat

zco668-B/kjw

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**Government of the District of Columbia**  
**ZONING COMMISSION**



**ZONING COMMISSION ORDER NO. 668-C**  
**Case No. 89-31C**  
**(PUD & Map @ Judiciary Center)**  
**March 14, 1994**

By Z.C. Order No. 668 dated July 9, 1990, the Zoning Commission for the District of Columbia granted approval to an application from the 488 Associates Limited Partnership, the Salvation Army, The Fraternal Order of Police and John W. and Vinard Parris for consolidated review and approval of a planned unit development (PUD) and related amendment to the zoning map from SP-2 to C-3-C for lots 15-19, 24, 25, 821-823 and a closed public alley in Square 488, located at 500 5th Street, N.W.

The PUD approval was for the construction of a 120-foot office/retail building, subject to certain guidelines, conditions and standards. The PUD project would have a total gross floor area of 338,125 square feet, a maximum floor area ratio of 7.64 and a lot occupancy of 99 percent.

Z.C. Order No. 688 became final and effective on July 27, 1990. The validity of this order is for two years; that is, until July 27, 1992. Provided that application for a building permit is filed within that period of time, after which construction would have to start by July 27, 1993.

By Z.C. Order No. 688-A dated November 19, 1990, the Zoning Commission granted the applicant's request to modify Condition No. 6 of Z.C. Order No. 688, relating to ingress and egress. Z.C. Order No. 688-A became final and effective on December 28, 1990.

Pursuant to 11 DCMR 2406.10 of the Zoning Regulations, the Commission may extend the validity of the PUD approval for good cause shown upon a request made before the expiration of the approval.

By Z.C. Order No. 688-B, dated August 5, 1991, the Zoning Commission extended the validity of the PUD and Z.C. Order Nos. 668 and 668-A for two years; that is until July 27, 1994, provided that, application for a building permit was filed within that period of time, after which construction would have to start within three years; that is by July 27, 1995.

Z.C. ORDER NO. 668-C  
PAGE NO. 2

By letter dated November 24, 1993, counsel on behalf of the applicant, filed a request to extend the validity of the previous approved PUD for a period of two years.

This letter indicated that the basis for an extension of the validity of the PUD is as follows:

"At this time, the applicant hereby requests an additional two-year extension of the Orders to July 27, 1996 before application and plans must be filed for a building permit and July 27, 1997 before construction must commence. This request is necessary at this time so that the Applicant's primary efforts can continue to be focused on finding a tenant and financing, and so that the Applicant does not have to finalize permit drawings prior to identification of the lead tenant for the building."

By memorandum dated November 30, 1993, the District of Columbia Office of Zoning (OZ) referred this matter to the District of Columbia Office of Planning (OP) for an analysis of the effect of the request on any amendments to the Zoning Map or Regulations, or to the Comprehensive Plan for the National Capital, since the Zoning Commission initially decided the case.

By memorandum dated February 3, 1994, OP recommended that the applicant's request be granted and believes that no purpose would be served in this instance by denying the request. OP indicated the following:

"... the Office of Planning concludes that neither the Zoning Regulations and Map, nor the Comprehensive Plan, have changed since the Zoning Commission approved the subject PUD and map amendment. Given the time necessary for the present owner to find a lead tenant for the PUD project, the Office of Planning recommends that the Zoning Commission grant the applicant's request to extend the deadline for the filing of a building permit application to July 27, 1996, and to extend the deadline for commencing construction to July 27, 1997."

The Zoning Commission received no comments on this matter from ANC-2C, nor any other party or person.

On February 14, 1994 at its regular monthly meeting, the Zoning Commission considered the request from counsel for the applicant and the OP report. The Commission determined that an extension of time, as requested by the applicant, is reasonable and would not adversely affect any party or person.

Z.C. ORDER NO. 668-C  
PAGE NO. 3

The Commission believes that its proposed action to grant the request is in the best interest of the District of Columbia, is consistent with the intent and purpose of the Zoning Regulations and the Zoning Act, and is not inconsistent with the Comprehensive Plan or the National Capital, as amended.

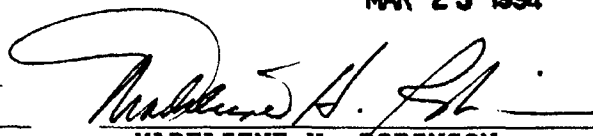
In consideration of the reasons set forth herein, the Zoning Commission for the District of Columbia hereby orders that the validity of Z.C. Order Nos. 668, 668-A and 668-B be **EXTENDED** for a period of two years, that is, until July 27, 1996. Prior to the expiration of that time, the applicant shall file an application for a building permit, as specified in 11 DCMR 2406.8. Construction shall start within five years of the effective date of Z.C. Order No. 668; that is, not later than July 27, 1997.

Vote of the Zoning Commission taken at the monthly meeting on February 14, 1994: 4-0 (John G. Parsons, Jerrily R. Kress; William L. Ensign, and Maybelle Taylor Bennett, to approve a two-year PUD extension - William B. Johnson, not present, not voting).

This order was adopted by the Zoning Commission at the March 14, 1994 public meeting by a vote of 5-0 (William L. Ensign, John G. Parsons, Maybelle Taylor Bennett and William B. Johnson, to adopt and Jerrily R. Kress, to adopt by proxy).

In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register; that is, on MAR 25 1994.

  
MAYBELLE TAYLOR BENNETT  
Chairperson  
Zoning Commission

  
MADELIENE H. ROBINSON  
Director  
Office of Zoning

zco668-C/SB/LJP

K

Contract No. DC-RLA-

DISTRICT OF COLUMBIA  
REDEVELOPMENT LAND AGENCY

TERMS AND CONDITIONS

PART I

OF

CONTRACT

FOR

SALE OF AIR RIGHTS FOR PRIVATE DEVELOPMENT

By and Between

DISTRICT OF COLUMBIA  
REDEVELOPMENT LAND AGENCY

and

488 A.R. ASSOCIATES LIMITED PARTNERSHIP  
(a District of Columbia limited partnership)

Instrument No. \_\_\_\_\_

Recordation No. \_\_\_\_\_

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TABLE OF CONTENTS

| RECITALS                                   | PAGE |
|--------------------------------------------|------|
| (A) Renewal Program .....                  | 1    |
| (B) Urban Renewal Plan .....               | 1    |
| (C) Assistance to Agency and Program ..... | 1    |
| (D) Sale of Property to Redeveloper .....  | 1    |
| (E) Contract in Public Interest .....      | 2    |

SECTIONS

|                                                                                |    |
|--------------------------------------------------------------------------------|----|
| 1. Definitions .....                                                           | 2  |
| 2. Sale; Purchase Price .....                                                  | 5  |
| 3. Conveyance of Property; Commencement of<br>Construction; Closing Date ..... | 7  |
| 4. Intentionally Deleted                                                       |    |
| 5. Recordation of Documents .....                                              | 11 |
| 6. Deposit .....                                                               | 11 |
| 7. Time for Submission of Drawings .....                                       | 12 |
| 8. Compliance with Plan Period of Duration of Covenants<br>On Use .....        | 14 |
| 9. Notices of Demands .....                                                    | 14 |
| 10. No Broker Involved .....                                                   | 15 |
| 11. Counterparts .....                                                         | 15 |

EXHIBITS

|           |                                     |
|-----------|-------------------------------------|
| Exhibit A | Description of Property             |
| Exhibit B | Form of Special Warranty Deed       |
| Exhibit C | Description of Schematic Drawings   |
| Exhibit D | Description of Preliminary Drawings |
| Exhibit E | Affirmative Action Plan             |
| Exhibit F | Community Participation Plan        |

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

CONTRACT FOR SALE OF AIR RIGHTS  
FOR PRIVATE DEVELOPMENT

PART I

THIS CONTRACT (consisting of two parts, Part I and Part II), duly made and entered into this 4<sup>th</sup> day of March, 1998, by and between the DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY (the "AGENCY") and 488 A.R. ASSOCIATES LIMITED PARTNERSHIP, a District of Columbia limited partnership (the "REDEVELOPER").

R E C I T A L S:

A. Renewal Program.

The AGENCY is operating as an independent government corporation with the District of Columbia for the purpose of replanning and rebuilding of slum, blighted, and other areas pursuant to the District of Columbia Redevelopment Act of 1945, approved August 2, 1946, as amended (the "ACT").

B. Urban Renewal Plan.

In furtherance of the objectives of the ACT, an Urban Renewal Plan was prepared for an urban renewal project area known as the Downtown Urban Renewal Area (the "PROJECT AREA"), which Urban Renewal Plan was adopted by the National Capital Planning Commission (the "PLANNING COMMISSION") on April 18, 1969, and approved by the Council of the District of Columbia on June 17, 1969, and as modified prior to the date of this CONTRACT shall hereinafter be referred to as the "PLAN."

C. Assistance to Agency and Program.

In order to enable the AGENCY to achieve the objectives of the PLAN, both the Federal Government and the DISTRICT have undertaken to provide and have provided substantial aid and assistance to the AGENCY.

D. Sale of Property to Redeveloper.

The AGENCY has offered to sell and the REDEVELOPER is willing to purchase a certain air space known as Parcel 7

Air Rights in the Downtown Urban Renewal Area, the air space above Lots 833 and 842 in Square 488, containing approximately 20,000 square feet of surface area (the "PROPERTY"), situated within the boundaries of the PROJECT AREA and more specifically shown in Exhibit A attached hereto. The PROPERTY shall not include that portion of the air space over the east portion of Lot 833 which is the open driveway space from grade level to an elevation equal to that of the roof of the existing firehouse structure, all as shown on Exhibit A attached hereto, other than gates and a facade as approved by the Commission of Fine Arts and the District of Columbia Zoning Commission (the "ZONING COMMISSION"). The PROPERTY shall include all necessary easements, rights of entry and other rights from the AGENCY or the DISTRICT, as the case may be, for the construction, maintenance, repair and use of the IMPROVEMENTS to be constructed at the PROPERTY pursuant to the PLAN and any easement or other rights necessary within Lot 833 to upgrade structural support for the IMPROVEMENTS to be constructed at the PROPERTY pursuant to the PLAN (subject only to the agreement of the AGENCY's technical staff reviewing the plans for the IMPROVEMENTS that such easements do not unreasonably interrupt the operation of the firehouse located below the PROPERTY and are necessary for construction of the IMPROVEMENTS pursuant to the PLAN) (all such easements and rights required to be granted hereby are hereinafter collectively referred to as the "NECESSARY EASEMENTS"). The purchase price to be paid to the AGENCY by the REDEVELOPER for the PROPERTY shall be Four Million Two Hundred Thousand and No/Dollars (\$4,200,000.00), subject to the adjustments set forth in Section 2 hereof. The REDEVELOPER hereby agrees to develop the PROPERTY according to, and in full compliance with, the PROPOSAL as herein defined and the PLAN.

E. Contract in Public Interest.

The AGENCY believes that the redevelopment of the PROPERTY pursuant to this CONTRACT is in the vital and best interests of the DISTRICT and the health, safety, morals and welfare of its residents, and in accordance with the public purposes and provisions of the applicable Federal and local laws and requirements under which the PROJECT AREA has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of the parties hereto covenants and agrees that:

SECTION 1. DEFINITIONS

For the purposes of this CONTRACT, the following terms shall have the meanings ascribed to them below and unless the context

clearly indicates otherwise, shall include the plural as well as the singular:

- A. "ACT" shall mean the District of Columbia Redevelopment Land Act of 1945, as amended, (D.C. Code 5-801 et seq., 1981 Edition) and as it may hereinafter be further amended from time to time.
- B. "AGENCY" shall mean the District of Columbia Redevelopment Land Agency created by Section 4 of the ACT, and shall include any successor in interest or assign by act of a party or parties to this CONTRACT or by operation of law (other than as a result of the exercise of the right of eminent domain by public authority), or otherwise.
- C. "COMMISSIONERS" shall mean the Board of Commissioners of the District of Columbia, the Mayor or the Council of the District of Columbia, as the case may be, under the District of Columbia Self-Government and Governmental Reorganization Act of 1973, or their successors.
- D. "CONTRACT" shall mean this Contract consisting of this Part I and Part II bearing even date and executed by the parties hereto, and as such may be hereinafter mutually amended or modified in writing by parties from time to time.
- E. "DEED" shall have the meaning ascribed to it in Section 4 hereof.
- F. "DEPOSIT" shall have the meaning ascribed to it in Section 6 hereof.
- G. "DISTRICT" shall mean the District of Columbia.
- H. "ERA" shall mean the Exclusive Right Agreement by and between the AGENCY and 488 A.R., Inc., dated November 13, 1993, with respect to the PROPERTY.
- I. "IMPROVEMENTS" shall mean any structures, landscaping or site improvements now or hereafter constructed or placed on the PROPERTY by the REDEVELOPER in accordance with the terms of this CONTRACT; provided however, that in no event shall trade fixtures, furniture, operating equipment (in contrast to building equipment), stock in trade, inventory or other personal property used in connection with the conduct of any business within the Improvements be deemed included in the term improvements as used in this CONTRACT.
- J. "MORTGAGE" shall include such terms as "deed of trust" "mortgage deed", or such classes of instruments as are commonly given to secure advances on real estate and leasehold estates under the laws of the District of Columbia.

- K. "MORTGAGEE" or the "Holder of such MORTGAGE" shall mean the party or parties to whom a money obligation is owed, the payment of which is secured by the REDEVELOPER's interest in the PROPERTY under the terms of a mortgage, deed of trust, assignment or any other legal instrument in the nature of a mortgage or building and loan agreement.
- L. "PLAN" shall mean the Downtown Urban Renewal Plan identified in Recital B hereof.
- M. "PROJECT" shall mean the approximately 475,000 square foot development within Square 488 as described in the PROPOSAL. The PROPERTY and the IMPROVEMENTS to be constructed thereon are contemplated as part of the PROJECT.
- N. "PROJECT AREA" shall mean the Downtown Urban Renewal Area Project, as described in the PLAN.
- O. "PROPOSAL" shall mean the development proposal (including all amendments) submitted by 488 A.R., Inc.
- P. "PURCHASE PRICE" shall have the meaning ascribed to it in Section 2 hereof.
- Q. "REDEVELOPER" shall mean 488 A.R. Associates Limited Partnership, a limited partnership, organized and existing under the laws of the District of Columbia, or any purchaser, assignee or transferee of the REDEVELOPER or other successor in interest of the REDEVELOPER by act of a party of the parties to this CONTRACT, or by operation of law (other than as a result of condemnation proceedings by public authority), or otherwise.
- R. "SIGNIFICANT CHANGES" shall mean any of the following changes in the REDEVELOPER or the PROPOSAL:
- (i) any change requiring a modification of the Urban Renewal Plan;
  - (ii) any change in the size or type of IMPROVEMENTS in excess of ten percent (10%) of the total square footage of the IMPROVEMENTS, subject to the terms and conditions of the ERA, which permits a range of sizes of improvements for the site, or any change that would result in a material change in the primary use for which the IMPROVEMENTS were designed;
  - (iii) any change in the ownership of the REDEVELOPER that would result in a transfer of more than ten percent (10%) of the stock of REDEVELOPER; provided, however, that it shall not be deemed a

SIGNIFICANT CHANGE if either (i) there occurs a transfer of no more than fifty percent (50%) of the stock of REDEVELOPER and prior written notice of the identity of the transferee(s) is provided to AGENCY, or (ii) there occurs a transfer of more than fifty percent (50%) of the stock of REDEVELOPER with respect to which AGENCY has provided its prior written consent as to the identity of the proposed transferee(s), such consent not to be unreasonably withheld, conditioned or delayed (failure by AGENCY to respond within thirty (30) days to REDEVELOPER's request for such consent shall be deemed to be the consent of AGENCY to such transfer). Notwithstanding anything to the contrary set forth in clauses (i) or (ii) above, no transferee of stock of REDEVELOPER shall be subject to any applicable law which prohibits such transferee from contracting with the DISTRICT or the AGENCY.

- (iv) any change in the membership of the development team resulting in a new REDEVELOPER, architect, or other major component of the team from that previously presented to the AGENCY's Board; and
- (v) any change in the minority or local participation in the ownership or management of the REDEVELOPER that alters the percentage of minority or local participation more than ten percent (10%) from that previously presented to the AGENCY's Board, or a change that results in loss of minority status.

- S. "DATE OF SUBSTANTIAL COMPLETION" shall mean the date by which a Certificate of Completion (as such term is defined in Section 306 of Part II of this CONTRACT) has been issued (or deemed issued) by the AGENCY, and a Certificate of Occupancy for the IMPROVEMENTS (exclusive of tenant work) has been issued by the District of Columbia government.

## SECTION 2. SALE; PURCHASE PRICE

- A. Subject to all the terms, covenants, and conditions of this CONTRACT, the AGENCY shall sell the PROPERTY to the REDEVELOPER and the REDEVELOPER shall purchase the PROPERTY from the AGENCY and pay therefore, the total purchase price of Four Million Two Hundred Thousand and No/100 Dollars (\$4,200,000.00) (the "PURCHASE PRICE"), subject to the adjustments set forth below in this Section 2. The PURCHASE PRICE shall be paid in cash or by certified or cashiers check drawn to the order of the AGENCY simultaneously with the delivery of the DEED conveying the PROPERTY to the REDEVELOPER.

- B. The parties hereto acknowledge that REDEVELOPER has secured alternative approvals to develop the PROJECT. Notwithstanding anything in this CONTRACT to the contrary, the REDEVELOPER shall have the right at any time prior to the date title to the PROPERTY is conveyed hereunder to elect (by written notice to the AGENCY) to proceed to develop the PROJECT without utilization of the PROPERTY. If REDEVELOPER shall elect not to utilize the PROPERTY, then this CONTRACT shall be terminated and REDEVELOPER shall have no obligation to the AGENCY of any nature whatsoever under the terms and provisions of this CONTRACT except that the DEPOSIT shall be retained by the AGENCY as liquidated damages.
- C. The PURCHASE PRICE of \$4,200,000.00 is based on a total of 137,702 square feet of gross usable floor area of air rights development to be constructed at the PROPERTY and incorporated as part of the PROJECT (excluding gross floor area which is attributable to building overhangs which do not contain rentable office space underneath or the NECESSARY EASEMENTS). Notwithstanding anything to the contrary in this paragraph, REDEVELOPER may, at its sole option and in its sole discretion, may elect to construct fewer than 137,702 square feet of usable gross floor area of office space at the PROPERTY; provided, however, that REDEVELOPER makes such election in the form of written notice to the AGENCY (such notice hereinafter referred to as the "NOTICE TO PROCEED") delivered to the AGENCY no later than ninety (90) after the date REDEVELOPER receives a ZONING ORDER (as hereinafter defined) and all necessary governmental approvals necessary to permit construction of the number of square feet of usable gross floor area of office space at the PROPERTY set forth in the NOTICE TO PROCEED. If REDEVELOPER elects, in the manner provided in the immediately preceding sentence, to construct fewer than 137,702 square feet of usable gross floor area of office space at the PROPERTY, the PURCHASE PRICE shall be reduced by \$30.50 for each square foot of usable gross floor area of office space under 137,702 set forth in the NOTICE TO PROCEED; provided, however, if REDEVELOPER issues its NOTICE TO PROCEED with respect of fewer than 100,000 square feet of usable gross floor area of office space (as allowed by a ZONING ORDER and such governmental approvals), the AGENCY shall then have the right, to be exercised by written notice delivered to REDEVELOPER within ninety (90) days after the date of the NOTICE TO PROCEED (the "NOTICE OF CONDITIONAL TERMINATION"), to terminate this CONTRACT and thereupon REDEVELOPER shall have no obligation to the AGENCY of any nature whatsoever under the terms and provisions of this CONTRACT; provided further, however, that the NOTICE OF CONDITIONAL TERMINATION shall be null and void ab initio and this CONTRACT shall continue unabated if REDEVELOPER elects,

by written notice delivered to AGENCY within ninety (90) days after REDEVELOPER'S receipt of the NOTICE OF CONDITIONAL TERMINATION, to agree, notwithstanding REDEVELOPER'S stated intention set forth in the NOTICE TO PROCEED to construct fewer than 100,000 square feet of usable gross floor area of office space, that the PURCHASE PRICE shall be computed on 100,000 square feet of usable gross floor area of office space (i.e. a PURCHASE PRICE of \$3,050,000.00) and in such event REDEVELOPER shall be permitted to construct such number of square feet of usable gross floor area of office space as set forth in the NOTICE TO PROCEED.

For purposes of this Section 2.C, the term "ZONING ORDER" shall mean a final order issued by the ZONING COMMISSION modifying and/or extending REDEVELOPER'S existing Planned Unit Development (PUD) (most recently Zoning Commission Orders No. 668-A and 668-D, as extended by Order No. 668-E) and related rezoning permitting REDEVELOPER to construct the IMPROVEMENTS as part of the PROJECT, acceptable to REDEVELOPER in its sole discretion, not appealed or if appealed after resolution of such appeal in a form acceptable to REDEVELOPER in its sole discretion. For purposes of this CONTRACT, an order shall not be deemed a "ZONING ORDER" unless, on any applicable date provided in this CONTRACT or at all times within any applicable time period provided in this CONTRACT, such order shall have been extended by a valid order of the ZONING COMMISSION, acceptable to REDEVELOPER in its sole discretion, through such date or time period, such extension order not appealed or if appealed after resolution of such appeal in a form acceptable to REDEVELOPER in its sole discretion.

- D. REDEVELOPER shall bear all costs of rezoning the PROPERTY. The AGENCY shall provide support of REDEVELOPER's rezoning applications before the ZONING COMMISSION and Advisory Neighborhood Commission. The AGENCY will not bear or be liable for any costs in the administrative process necessary to obtain REDEVELOPER's approval to utilize the PROPERTY.
- E. The AGENCY shall return the DEPOSIT (and all interest accrued thereon for the benefit of REDEVELOPER) to REDEVELOPER promptly upon the termination by the AGENCY of this CONTRACT as permitted by Subsection 2(C) hereof.

### SECTION 3. CONVEYANCE OF PROPERTY; COMMENCEMENT OF CONSTRUCTION; CLOSING DATE

- A. The REDEVELOPER shall purchase and develop the PROPERTY substantially in accordance with the following timetable:

Conveyance of the PROPERTY:

Settlement shall take place on the day established by this CONTRACT. Deposit with a title company acceptable to REDEVELOPER of the PURCHASE PRICE and the DEED, and such other papers as are required by the terms hereof (including without limitation written instruments in recordable form granting the NECESSARY EASEMENTS to REDEVELOPER) shall be deemed and construed as a good and sufficient tender of performance of the terms hereof. Settlement shall occur on the date set forth in a written notice from REDEVELOPER to the AGENCY, but in no event shall settlement occur later than two hundred seventy (270) days after the later to occur of: (i) ten (10) days after execution of this CONTRACT by both the AGENCY and the REDEVELOPER or (ii) the receipt by REDEVELOPER of any and all approvals under the PLAN and any other governmental authorizations required (A) to permit the transfer of fee simple title to the PROPERTY to REDEVELOPER (including without limitation, to the extent required, approval of this CONTRACT and the transactions contemplated herein by the Financial Responsibility and Management Assistance Authority), and (B) allowing for the construction of the IMPROVEMENTS on the PROPERTY (collectively, the "GOVERNMENTAL APPROVALS"), or (iii) the date on which REDEVELOPER and a credit worthy tenant (such credit worthiness to be determined in the sole discretion of REDEVELOPER) has executed documents binding on it to lease a sufficient portion of the IMPROVEMENTS such that the PROJECT may then be financed under reasonable and customary market terms and conditions reasonably acceptable to REDEVELOPER (such documents executed by the REDEVELOPER and such a tenant, hereinafter referred to as the "CREDIT LEASE"). If settlement has not occurred within five (5) years after receipt of the GOVERNMENTAL APPROVALS the AGENCY shall have the right upon written notice to REDEVELOPER to terminate this AGREEMENT and thereupon the AGENCY may retain the DEPOSIT and no party shall have any further obligation to the other; provided, however, that REDEVELOPER shall have the right to one 2-year extension period upon payment prior to the expiration of the initial 5-year period of the amount of \$42,000.00, which funds shall be earned by the AGENCY upon payment, shall be non-refundable and shall not be deemed part of the DEPOSIT.

Notwithstanding anything in this Section 3.A to the contrary, the REDEVELOPER shall have the right at any time prior to the date title to the PROPERTY is conveyed hereunder to elect (by written notice to the AGENCY) to terminate this CONTRACT if it determines in its reasonable discretion that there exists a substantial likelihood that any of the following will not occur in a timely manner: (i) the receipt of any of the GOVERNMENTAL APPROVALS, or (ii) the full execution of a CREDIT LEASE, or (iii) the

receipt by REDEVELOPER of a satisfactory written agreement by the District of Columbia Department of Public Works for utilization of the PROPERTY pursuant to the PROPOSAL, or (iv) the granting of all of the NECESSARY EASEMENTS. Upon such termination of this CONTRACT, REDEVELOPER shall have no obligation to the AGENCY of any nature whatsoever under the terms and provisions of this CONTRACT and the AGENCY shall promptly return the DEPOSIT (and all interest accrued thereon for the benefit of REDEVELOPER) to REDEVELOPER; provided, however, if REDEVELOPER terminates this CONTRACT as permitted by clause (iii) above and, at the time of such termination, REDEVELOPER is in receipt of the GOVERNMENTAL APPROVALS, then the AGENCY shall have the right to retain the DEPOSIT as liquidated damages.

- B. The REDEVELOPER, at its option, may elect to waive the conditions set forth in Section 3.A above and accelerate the settlement date for conveyance of the PROPERTY upon giving the AGENCY thirty (30) days prior written notice of any such waiver(s) and acceleration, provided that the REDEVELOPER has complied with all other conditions to closing contained in this CONTRACT, or as such conditions are mutually agreed to by the parties in writing.
- C. The REDEVELOPER shall have the right to postpone the date otherwise required for conveyance of the PROPERTY for up to ninety (90) days beyond such date, upon payment to the AGENCY of an extension fee for each day conveyance is postponed (pursuant to this Section 3.C as distinguished from any postponement otherwise permitted under this CONTRACT) beyond the date otherwise required for conveyance pursuant to Section 3.A above.

The REDEVELOPER shall deliver to the AGENCY written notice of its intent to postpone on or prior to the date of conveyance of the PROPERTY. The extension fee for each calendar day of the extension period shall be \$1,000.00, due and payable upon conveyance of the PROPERTY. Notwithstanding the foregoing, the extension fee may be waived by the AGENCY, and an extension granted, upon the request of the REDEVELOPER for good cause shown.

#### Commencement of Construction.

- D. The REDEVELOPER shall commence construction of the IMPROVEMENTS within one hundred eighty (180) days after conveyance of the PROPERTY. The REDEVELOPER shall diligently pursue to completion construction of the IMPROVEMENTS. The DATE OF SUBSTANTIAL COMPLETION of the IMPROVEMENTS must occur within thirty-six (36) months after commencement of construction, provided, that the AGENCY shall extend the required substantial completion date for an additional six (6) month period upon request of the REDEVELOPER for good cause shown.

- E. On, or before ten (10) days prior to the date for conveyance of the PROPERTY, the REDEVELOPER agrees to submit to the AGENCY a commitment letter from a lender selected by the REDEVELOPER indicating the lender's willingness to make a loan to the REDEVELOPER in an amount sufficient to fund, together with any other monies available to REDEVELOPER, the acquisition of the PROPERTY and the construction of the IMPROVEMENTS, which letter may contain such terms and conditions as the lender may require.

A. Form of DEED.

The AGENCY shall convey to the REDEVELOPER, title to the PROPERTY by special warranty deed substantially in the form attached to this CONTRACT (hereinafter collectively called the "DEED") as Exhibit B. The conveyance and title to the PROPERTY shall free and clear of all liens, encumbrances, tenancies, reservations and exceptions, of record, other than the following (the "PERMITTED EXCEPTIONS"):

1. Applicable building and zoning laws and regulations;
2. Covenants, conditions and restrictions set forth in this CONTRACT;
3. Such easements, covenants, conditions and restrictions which may be mutually agreed upon hereafter by the AGENCY and the REDEVELOPER, in writing and recorded among the Land Records of the District of Columbia, prior to the Conveyance of the PROPERTY to the REDEVELOPER, including without limitation all of the NECESSARY EASEMENTS; and
4. Those easements, if any, which are shown as "Easements" on the Site Development Plan for the PROJECT AREA, which is part of the PLAN.

B. Time and Place for Delivery of DEED.

Except as otherwise provided in Section 306 of Part II of this CONTRACT and subject to the terms of this CONTRACT, the AGENCY shall deliver the DEED and possession of the PROPERTY to the REDEVELOPER and the REDEVELOPER hereby agrees subject to the terms of this CONTRACT to accept delivery of the DEED and possession of the PROPERTY, within the time period(s) provided herein.

Conveyance of the PROPERTY shall be made at the principal office of the AGENCY or at such other place in the District of Columbia, acceptable to the AGENCY and the REDEVELOPER, and, subject to the terms of this CONTRACT, the REDEVELOPER shall accept such conveyance and pay to the AGENCY at such

time and place, the PURCHASE PRICE and such other payments as may be required herein.

C. Taxes.

Any taxes for the current tax period which have been paid, or are payable on the PROPERTY, shall be apportioned between the AGENCY and the REDEVELOPER as of the date of the delivery of the DEED so that the REDEVELOPER shall pay that portion of such charges which that part of the tax period during which the REDEVELOPER is in possession of the PROPERTY bears to the entire tax period.

Notwithstanding anything to the contrary, AGENCY hereby affirms there are no taxes paid or payable with respect to the PROPERTY until such time as the REDEVELOPER has obtained delivery of the deed.

SECTION 5. RECORDATION OF DOCUMENTS

Promptly after delivery of the DEED, the REDEVELOPER shall file for recordation among the Land Records of the DISTRICT, this CONTRACT (Part I and Part II and Exhibits), the DEED and such other documents which are to be so recorded pursuant to the terms of this CONTRACT. At the request of REDEVELOPER, the AGENCY and REDEVELOPER shall enter into a memorandum of this CONTRACT, in recordable form, which memorandum shall exclude the PURCHASE PRICE and shall be recorded against the PROPERTY.

The REDEVELOPER shall pay (1) premiums for title insurance, if required; (2) District of Columbia Real Estate Recordation Tax payable in connection with recording the DEED and the NECESSARY EASEMENTS; (3) the costs of recording the CONTRACT and any memorandum of this CONTRACT; and (4) the costs of recording the DEED and such other documents required by the CONTRACT. Each party shall otherwise bear its own expenses of settlement.

SECTION 6. DEPOSIT

A. Amount.

Pursuant to the terms of the ERA, REDEVELOPER previously posted with the AGENCY the sum of Forty-two Thousand and No/100 Dollars (\$42,000.00) in the form of a certificate of deposit as a "good faith deposit" under the ERA, and such sum shall also serve as the deposit (the "DEPOSIT") under this CONTRACT.

Promptly after execution of this CONTRACT by the AGENCY and REDEVELOPER, the AGENCY shall transfer the DEPOSIT to an escrow agent selected by the AGENCY and acceptable to REDEVELOPER (the "ESCROW AGENT"). The DEPOSIT shall thereafter be held as security for the performance of all

obligations of the REDEVELOPER under this CONTRACT prior to the return of the DEPOSIT to the REDEVELOPER, or its retention by the AGENCY as liquidated damages, all in accordance with the CONTRACT. The DEPOSIT (and all interest accrued thereon for the benefit of REDEVELOPER and not previously paid to REDEVELOPER) shall not be credited to the PURCHASE PRICE at settlement but shall be returned to the REDEVELOPER upon issuance of the CERTIFICATE OF COMPLETION.

B. Interest.

Interest payable on the DEPOSIT shall be promptly paid to the REDEVELOPER as it accrues; provided however, that all interest payable on the DEPOSIT after all GOVERNMENTAL APPROVALS have been obtained shall be promptly paid to the AGENCY as it accrues.

C. Retention by AGENCY.

Upon termination of the CONTRACT as provided in Sections 703 and 704 of Part II of this CONTRACT, the DEPOSIT, including all interest accrued thereon and not previously paid to the REDEVELOPER, if any, after such termination shall be retained by the AGENCY as liquidated damages as provided in the aforesaid sections.

D. Return of DEPOSIT to REDEVELOPER.

Upon termination of this CONTRACT, as provided in Sections 2 or 3 of Part I of this Contract or in Section 702 of Part II of this CONTRACT, the DEPOSIT, including all interest accrued thereon for the benefit of REDEVELOPER, if any, shall be returned to the REDEVELOPER by the AGENCY as provided in the aforesaid sections. If the CONTRACT has not been terminated as provided in Sections 2 or 3 of Part I of this Contract or in Sections 703 or 704 of Part II of this CONTRACT, the AGENCY may, in its sole discretion, permit the substitution of suitable securities reasonably satisfactory to the AGENCY or return the DEPOSIT to the REDEVELOPER upon receipt by the AGENCY of evidence reasonably satisfactory to the AGENCY that the REDEVELOPER has adequate financing and sufficient construction contracts and bonds to complete construction of the IMPROVEMENTS (as outlined in Section 601(b) of Part II hereof).

SECTION 7. TIME FOR SUBMISSION OF DRAWINGS

A. Schematic Drawings.

As of the date hereof, the Schematic Drawings (the "SCHEMATIC DRAWINGS") have been submitted to the AGENCY by the REDEVELOPER and have been approved by the AGENCY. A

description of the Schematic Drawings is attached hereto as Exhibit C.

B. Preliminary Drawings.

As of the date hereof, the Preliminary Drawings (the "PRELIMINARY DRAWINGS") have been submitted to the AGENCY by the REDEVELOPER and have been approved by the AGENCY. A description of the Preliminary Drawings is attached hereto as Exhibit D.

C. Final Drawings.

Within one hundred fifty (150) days of the execution of a CREDIT LEASE, or such longer period of time as shall be mutually agreed upon in writing, the REDEVELOPER shall submit working drawings and contract specifications for the IMPROVEMENTS and referred to as the Final Drawings (the "FINAL DRAWINGS") that are in substantial conformity with the approved Preliminary Drawings pursuant to Section 7.B above, and the PLAN. The FINAL DRAWINGS shall be deemed approved unless, within sixty (60) days after receipt of the FINAL DRAWINGS by the AGENCY, the AGENCY shall reject the FINAL DRAWINGS by delivering to REDEVELOPER, within said sixty (60) day period, a written notice of rejection and a detailed written explanation of the grounds of such rejection.

The FINAL DRAWINGS shall be at the indicated scale or other scale satisfactory to the AGENCY, and shall include the following items:

1. site plan (scaled at 1" equals 40') showing:
  - lot lines and dimensions
  - adjacent buildings, structures
  - street and curb lines, driveways
  - public improvements, known or proposed
  - summary chart of floor areas
2. ground floor plan (scaled at 1" equal 16') showing:
  - building entrances
  - service loading
  - retail space
  - stairs, elevators, lobbies, public area
  - structural system
3. below-ground floor plan (scaled at 1" equals 16') showing:
  - elevators and other circulation
  - common spaces

4. typical floor plan (scaled at 1" equals 16') showing:
  - elevators and other circulation
  - common spaces, toilets, ducts, etc.
  - structural system
5. building elevations (scaled at 1" equals 16') showing:
  - building materials (may be in form of outside specifications)
  - floor-to-floor dimensions
  - elevations of adjacent structures
6. typical sections of building (scaled at 1" equals 16') showing:
  - floor-to-ceiling dimensions, including below ground levels
  - structural system and floor thickness
  - relation to existing grades
7. or other scale drawings agreed to by REDEVELOPER and the AGENCY.

**SECTION 8. COMPLIANCE WITH PLAN; PERIOD OF DURATION OF COVENANT ON USE**

- A. The AGENCY acknowledges and agrees that its approval of the FINAL DRAWINGS as to the IMPROVEMENTS shall constitute its determination that the FINAL DRAWINGS conform to the covenants and restrictions contained in the PLAN. Such determination may be relied upon by any lender that has made a mortgage loan secured by the PROPERTY and as permitted by this CONTRACT.
- B. Notwithstanding anything to the contrary, the covenants and restrictions contained in the PLAN shall remain in effect for a period of ten (10) years following the date of commencement of construction of the IMPROVEMENTS or the date on which the Plan expires by its terms, whichever is earlier.

**SECTION 9. NOTICES AND DEMANDS**

A notice, demand or other communication under this CONTRACT by either party to the other shall be sufficiently given or delivered if it is personally delivered to the president or vice president of the corporate general partner of the REDEVELOPER, or other designated agent of the REDEVELOPER authorized to receive notice on its behalf, or if sent by U.S. certified mail, return receipt requested, postage prepaid, to:

(a) the REDEVELOPER:

488 A.R. Associates Limited Partnership  
c/o Rock Spring Properties  
6500 Rock Spring Drive, Suite 600  
Bethesda, Maryland 20817  
Attn: Mr. F. Davis Camalier

with a copy to:

Norman M. Glasgow, Jr., Esquire  
Wilkes, Artis, Hedrick & Lane, Chartered  
1666 K Street, N.W.  
Suite 1100  
Washington, D.C. 20006

(b) the AGENCY:

D.C. Redevelopment Land Agency  
51 "N" Street, N.E. Room 500  
Washington, D.C. 20002  
Attn: Duryea C. Smith

(c) the MORTGAGEE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

#### SECTION 10. NO BROKER INVOLVED

The AGENCY and the REDEVELOPER agree that no broker brought about the sale and purchase of the PROPERTY provided for in this CONTRACT.

#### SECTION 12. COUNTERPARTS

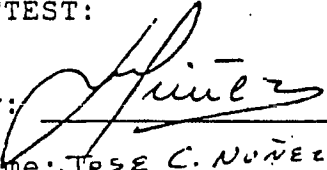
This Agreement is executed in counterparts, each of which shall constitute one and the same instrument.

IN TESTIMONY WHEREOF, the AGENCY, in accordance with the provisions of a duly adopted resolution of its Board of Directors, has caused these presents to be signed in its corporate name by Duryea C. Smith, its Secretary, attested by Jose C. Nuñez, its Assistant Secretary, and its corporate seal

to be hereunto affixed and does hereby constitute and appoint said Duryea C. Smith, its true and lawful Attorney-in-Fact for it and in its name to acknowledge and deliver these presents as its act and deed; and

IN TESTIMONY WHEREOF, the REDEVELOPER, in accordance with the provisions of a duly adopted resolution of its Board of Directors, has caused these presents to be signed in its name by its President, attested by its Vice-President, and its Corporate Seal to be hereunto affixed and does hereby constitute and appoint its true and lawful Attorneys-in-Fact for it and in its name to acknowledge and deliver these presents as its act and deed.

ATTEST:

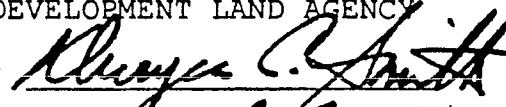
By: 

Name: JOSE C. NUÑEZ

Title: Assistant Secretary

(SEAL)

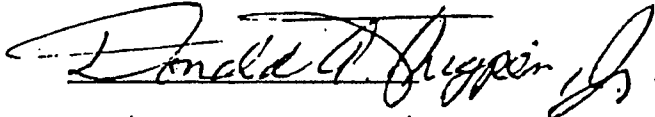
DISTRICT OF COLUMBIA  
REDEVELOPMENT LAND AGENCY

By: 

Name: Duryea C. Smith

Title: Secretary

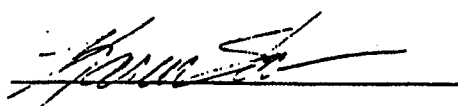
APPROVED AS TO LEGAL  
SUFFICIENCY



Assistant Corporation  
Counsel

488 A.R. ASSOCIATES LIMITED  
PARTNERSHIP, a District of  
Columbia limited partnership

ATTEST

By: 

Name:

Title:

By: 488 A.R. I, INC., a  
District of Columbia  
corporation, general  
partner

By: 

Name: Charles A. Camalier, III

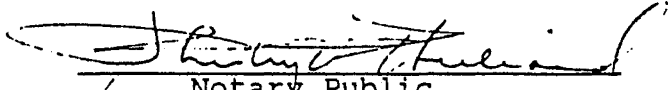
Title: Vice President and Secretary

ACKNOWLEDGEMENT

UNITED STATES OF AMERICA )  
 ) ss.  
DISTRICT OF COLUMBIA )

I, Shirley V. Howard, a Notary Public in and for the District of Columbia, DO HEREBY CERTIFY THAT Duryea C. Smith, who is personally well known to me (or proved by oaths of credible witnesses to be) the person named as the Attorney-in-Fact in the foregoing and annexed Contract for Sale of Land bearing date on the 4th day of March, 1998, personally appeared before me in said District of Columbia, and as Attorney-in-Fact as aforesaid, acknowledged the same to be the act and deed of the District of Columbia Redevelopment Land Agency, one of the parties thereto.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 11th day of March, 1998, A.D.

  
Notary Public

SEAL.

My Commission Expires: \_\_\_\_\_

UNITED STATES OF AMERICA )  
 ) ss.  
DISTRICT OF COLUMBIA )

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 4th day of March, 1998, A.D.

  
Notary Public

-18-

Contract No. DC-RLA-

DISTRICT OF COLUMBIA  
REDEVELOPMENT LAND AGENCY

TERMS AND CONDITIONS

PART II

OF

CONTRACT

FOR

SALE OF AIR RIGHTS FOR PRIVATE DEVELOPMENT

By and Between the

DISTRICT OF COLUMBIA  
REDEVELOPMENT LAND AGENCY

AND

488 A.R. ASSOCIATES LIMITED PARTNERSHIP

(a District of Columbia limited partnership)

Instrument No. \_\_\_\_\_

Recordation No. \_\_\_\_\_

TABLE OF CONTENTS

ARTICLE I.      CONDITION OF PROPERTY; WAIVER OF CLAIMS;  
PUBLIC PROPERTY IMPROVEMENTS

PAGES

|                                                                      |   |
|----------------------------------------------------------------------|---|
| SEC. 101 Condition of Property .....                                 | 1 |
| 102 Redeveloper's Waiver of Claims and Joining in<br>Petitions ..... | 1 |
| 103 Public Property Improvements .....                               | 2 |
| 104 Site Preparation .....                                           | 2 |

ARTICLE II.     RIGHTS OF ACCESS TO PROPERTY

|                                                         |   |
|---------------------------------------------------------|---|
| SEC. 201 Right of Entry .....                           | 3 |
| 202 Redeveloper Not to Construct Over Utility Easements | 4 |
| 203 Access to Property .....                            | 4 |

ARTICLE III.    PREPARATION OF PLANS, CONSTRUCTION OF  
IMPROVEMENTS AND CERTIFICATE OF COMPLETION

|                                                                          |   |
|--------------------------------------------------------------------------|---|
| SEC. 301 Submission of Detailed Building Site Plan .....                 | 5 |
| 302 Procedure for Approval of Final Drawings .....                       | 5 |
| 303 Changes in Final Drawings .....                                      | 6 |
| 304 Commencement and Completion of Construction<br>of Improvements ..... | 6 |
| 305 Progress Reports .....                                               | 7 |
| 306 Certificate of Completion .....                                      | 7 |
| 307 Changes to Completed Improvements .....                              | 8 |
| 308 Delay of Conveyance of PROPERTY .....                                | 8 |
| 309 Retention of Plans, Working Drawings and<br>Specifications .....     | 8 |

ARTICLE IV.     RESTRICTIONS UPON USE OF PROPERTY

|                                                                                 |    |
|---------------------------------------------------------------------------------|----|
| SEC. 401 Restrictions on Use .....                                              | 9  |
| 402 Covenants; Binding Upon Successors in Interest;<br>Period of Duration ..... | 9  |
| 403 Agency, District of Columbia and United States<br>Rights to Enforce .....   | 10 |
| 404 Intentionally Deleted                                                       |    |
| 405 Sign Control .....                                                          | 10 |
| 406 Equal Employment Opportunity .....                                          | 11 |
| 407 Opportunity for Training and Employment .....                               | 13 |
| 408 Advertising .....                                                           | 14 |
| 409 Opportunities for Minority Business Enterprises ..                          | 14 |

ARTICLE V. PROHIBITION AGAINST ASSIGNMENT, TRANSFER  
AND LEASE

PAGES

|                                                                                                                                             |    |
|---------------------------------------------------------------------------------------------------------------------------------------------|----|
| SEC. 501 Representations As To Development .....                                                                                            | 15 |
| 502 Protection Against Transfer of Partnership Interest<br>or Shares of Stock; Binding Upon Partners and<br>Stockholders Individually ..... | 15 |
| 503 Prohibition Against Transfer of Property and<br>Assignment of Agreement .....                                                           | 16 |
| 504 Information as to Stockholders and Partners<br>Maintenance of Separate Books and Accounts .....                                         | 19 |

ARTICLE VI. MORTGAGE FINANCING

|                                                                        |    |
|------------------------------------------------------------------------|----|
| SEC. 601 Limitation Upon Encumbrances of Property .....                | 21 |
| 602 Copy of Notice of Default to Mortgagee .....                       | 22 |
| 603 Mortgagee May Cure Breach of Redeveloper .....                     | 22 |
| 604 Rights and Duties of Mortgagee .....                               | 24 |
| 605 Agency's Option to Pay Mortgage Debt or Purchase<br>Property ..... | 25 |
| 606 Agency's Option to Cure Mortgage Default .....                     | 26 |

ARTICLE VII. REMEDIES

|                                                                                  |    |
|----------------------------------------------------------------------------------|----|
| SEC. 701 In General .....                                                        | 27 |
| 702 Termination by Redeveloper Prior to Conveyance....                           | 27 |
| 703 Termination by Agency Prior to Conveyance .....                              | 27 |
| 704 Termination by Agency Subsequent to Conveyance<br>to Redeveloper .....       | 28 |
| 705 Resale of Reacquired Property; Disposition<br>of Proceeds .....              | 30 |
| 706 Other Rights and Remedies of the Agency; No Waiver<br>by Delay; Waiver ..... | 31 |
| 707 Forced Delay in Performance for Causes Beyond<br>Control of Party .....      | 32 |
| 708 Rights and Remedies Cumulative .....                                         | 33 |
| 709 Party in Position of Surety with Respect<br>to Obligations.....              | 33 |
| 710 Estoppel Certificate .....                                                   | 33 |
| 711 Assignment of Plans and Specifications .....                                 | 33 |

ARTICLE VIII. MISCELLANEOUS

|                                                                                    |    |
|------------------------------------------------------------------------------------|----|
| SEC. 801 Conflict of Interests; Agency Representative<br>Individually Liable ..... | 34 |
| 802 Provisions not Merged with Deed .....                                          | 34 |
| 803 Title of Articles and Sections .....                                           | 34 |
| 804 Singular and Plural Usage; Gender .....                                        | 34 |
| 805 Law Applicable .....                                                           | 34 |
| 806 Entire Agreement .....                                                         | 35 |
| 807 Savings Clauses .....                                                          | 35 |
| 808 Counterparts .....                                                             | 35 |
| 809 Soil Characteristics .....                                                     | 35 |

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

CONTRACT OF SALE OF AIR RIGHTS  
FOR PRIVATE DEVELOPMENT

PART II

This CONTRACT (consisting of Parts I and II) duly made and entered into this \_\_\_\_ day of \_\_\_\_\_, 1998, by and between the DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY (hereinafter referred to as the "AGENCY") and the 488 A.R. ASSOCIATES LIMITED PARTNERSHIP, a District of Columbia limited partnership (hereinafter referred to as the "REDEVELOPER").

WITNESSETH THAT:

In consideration of the premises and the mutual obligations of the parties hereto, each of the parties hereto covenants and agrees that:

ARTICLE I.      CONDITION OF PROPERTY; WAIVER OF CLAIMS; PUBLIC  
PROPERTY IMPROVEMENTS

SECTION 101     CONDITION OF THE PROPERTY

A.   No Warranties.

The AGENCY shall convey the PROPERTY to the REDEVELOPER in "as is" physical condition unless otherwise specified in this CONTRACT for reasons of pre-existing soil contaminants. The AGENCY shall have no responsibility to prepare the PROPERTY for redevelopment at any time unless otherwise specified in this CONTRACT for the aforementioned situation, and makes no representation or warranties, either expressed or implied, as to the physical condition of the PROPERTY.

SECTION 102     REDEVELOPER'S WAIVER OF CLAIMS AND JOINING IN  
PETITIONS.

The REDEVELOPER, hereby waives (as the purchaser of the PROPERTY under this CONTRACT and as the owner after the conveyance of the PROPERTY provided for in the DEED) any and all claims to or awards of damages, if any, to compensate for the closing, vacating, or change of grade of any street, alley, or other public right-of-way within or fronting or abutting on, or

adjacent to, the PROPERTY which in connection with the redevelopments contemplated hereby is to be closed or vacated, or the grade of which is to be changed, and shall upon the request of the AGENCY subscribe to, and join with, the AGENCY in any ~~petition or proceeding required for such vacating, dedication,~~ change of grade and, to the extent necessary, rezoning, and execute any waiver or other document in respect thereof; Provided, however, that such closing or vacating of any street, alley or other public right-of-way shall not deprive REDEVELOPER, of its sole means of egress and ingress to the IMPROVEMENTS.

Notwithstanding the foregoing, the REDEVELOPER does not waive any claims to or awards of damages related to the closing, vacating or change in grade of streets or alleys not contemplated by the redevelopment of the PROPERTY or otherwise occurring after the issuance of the certificate of completion for the PROPERTY.

#### SECTION 103 PUBLIC PROPERTY IMPROVEMENTS.

During the period of construction of the IMPROVEMENTS, the REDEVELOPER shall repair any damage to public sidewalks and curbs caused by the REDEVELOPER or his contractor(s).

#### SECTION 104 SITE PREPARATION.

The REDEVELOPER, at its sole expense, shall be responsible for all preparation of the PROPERTY for redevelopment including costs associated with the creation of a lot of record for the air space, demolition, construction of site improvements, utility abandonment, relocation and rearrangement of water and sewer lines and hook-ups, and construction or repair of alley ways on the PROPERTY and abutting public property necessary for the IMPROVEMENTS, unless otherwise provided for in this CONTRACT for reason of pre-existing soil contaminants.

All such work including but not limited to excavation, backfill, and upgrading of the lighting and drainage, shall be performed under proper public space permits and in accordance with all appropriate D.C. Government agency approvals and District of Columbia government standards, laws and regulations.

The AGENCY shall provide upon request by REDEVELOPER such documents and the results of any tests as may be required by REDEVELOPER or any MORTGAGEE to ascertain the environmental condition of the ground and improvements located beneath the PROPERTY. The costs of any such tests or provision of such documents shall be borne equally by REDEVELOPER and the AGENCY, and the portion of such costs to be borne by the AGENCY shall be credited to REDEVELOPER at settlement.

The AGENCY shall be solely responsible for compliance at all times prior to settlement hereunder with all environmental laws, regulations, rules and orders applicable to Lot 833 in Square 488 (including with respect to underground or above ground storage

tanks which may in the past or may currently or may in the future be located on or under Lot 833 in Square 488) (collectively, "ENVIRONMENTAL LAWS"). In the event an environmental condition shall be detected prior to settlement on or under Lot 833 in Square 488 which, under any ENVIRONMENTAL LAW, could impose on REDEVELOPER any liability under any ENVIRONMENTAL LAW, REDEVELOPER shall have the right to perform such remediation, clean up and/or other corrective action as required by such ENVIRONMENTAL LAWS and the PURCHASE PRICE shall be reduced at settlement by an amount equal to the total reasonable costs thereof; provided, however, if such reasonable costs shall exceed Two Hundred Thousand and No/100 Dollars (\$200,000.00), REDEVELOPER shall have the right upon written notice to the AGENCY to elect either (i) to terminate this AGREEMENT and thereupon the DEPOSIT shall be promptly returned to REDEVELOPER and REDEVELOPER shall have no obligation to perform such remediation, clean up and/or other corrective action or (ii) to proceed with the remediation, clean-up or other corrective action at REDEVELOPER'S own cost and expense except that at settlement the PURCHASE PRICE shall be reduced by an amount equal to the lesser of the actual reasonable costs to REDEVELOPER of said remediation, clean-up or other corrective action or Two Hundred Thousand and No/100 Dollars (\$200,000.00). The AGENCY shall have the right to review and approve all contractors and contracts for such remediation and clean-up work, provided that such approval shall not be unreasonably withheld, delayed or condition and provided further that all such contractors and contracts shall be deemed approved if the Agency fails to respond to any request by REDEVELOPER for approval within fifteen (15) business days after receipt by the AGENCY of such request. The date of settlement shall be delayed until all remediation, clean-up or other corrective action has been completed so long as such remediation, clean-up or other corrective action is being pursued in a reasonable and diligent manner. REDEVELOPER shall have no obligation to the AGENCY, the DISTRICT or any third party with respect to any environmental condition detected after settlement hereunder on or under Lot 833 in Square 488 and not caused solely by REDEVELOPER in connection with the construction or occupancy of the IMPROVEMENTS.

## ARTICLE II. RIGHTS OF ACCESS TO PROPERTY

### SECTION 201 RIGHT OF ENTRY.

#### A. Utility Service.

The AGENCY reserves for itself, the DISTRICT, and any public utility company as may be appropriate, the right to enter upon the PROPERTY at all reasonable times upon five (5) days prior written notice to the REDEVELOPER for the purpose of reconstructing, maintaining, repairing, or servicing the public utilities located within the PROPERTY boundary lines

and provided for in easements described in the PROPOSAL or described or referred to elsewhere in this CONTRACT or Exhibits hereto. Notwithstanding the above, no notice shall be required for the DISTRICT to enter upon the property to prevent a serious threat to the public safety. No such activities by the AGENCY, the DISTRICT or any public utility company shall unreasonably interfere with the construction or operation of the IMPROVEMENTS on the PROPERTY.

B. Inspection of Construction.

The AGENCY reserves for itself and the DISTRICT, the right, upon five (5) days prior written notice to the REDEVELOPER, to enter the PROPERTY as may be reasonable and necessary for the purpose of performing routine inspections in connection with the construction of the IMPROVEMENTS. The REDEVELOPER understands that the AGENCY or its representative will enter the PROPERTY from time to time, prior to the issuance of the CERTIFICATE OF COMPLETION, for the sole purpose of undertaking the inspection of the IMPROVEMENTS to determine conformance to the FINAL DRAWINGS.

Further, the REDEVELOPER waives any claim that it may have against the AGENCY arising out of entry upon the PROPERTY resulting from causes other than unreasonable interference with REDEVELOPER's construction or operation of the IMPROVEMENTS on the PROPERTY or the negligence or willful misconduct of the AGENCY, its employees, contractors, or agents.

SECTION 202 REDEVELOPER NOT TO CONSTRUCT OVER UTILITY EASEMENTS.

The REDEVELOPER, shall not construct any building or other structure or improvement on, over, or within the boundary lines of any easement for public utilities described in the PROPOSAL or described or referred to elsewhere in this CONTRACT, unless such construction is provided for in the PROPOSAL and has been approved by the District Government. If approval for such construction is requested by REDEVELOPER, the AGENCY shall use its best efforts to assure that such approval shall not be withheld or delayed unreasonably.

SECTION 203 ACCESS TO PROPERTY.

Prior to the conveyance of the PROPERTY by the AGENCY to the REDEVELOPER, the AGENCY shall permit representatives of the REDEVELOPER to have access to any part of the PROPERTY to which the AGENCY holds title at all reasonable times for the purpose of obtaining data and making various tests concerning the PROPERTY necessary to carry out this CONTRACT: Provided, that the REDEVELOPER shall save the AGENCY harmless from all liability arising therefrom, abide by any reasonable terms and conditions imposed by the AGENCY on the right of entry and restore the

PROPERTY to substantially the same condition as existed immediately prior to REDEVELOPER's entry on the PROPERTY or such lesser action as the AGENCY may direct.

ARTICLE III. PREPARATION OF PLANS, CONSTRUCTION OF IMPROVEMENTS AND CERTIFICATE OF COMPLETION

SECTION 301 SUBMISSION OF DETAILED SITE PLAN.

The REDEVELOPER, at its sole cost and expense, shall prepare or cause to be prepared, and submit to the AGENCY, a detailed site plan, working drawings, and contract specifications for the IMPROVEMENTS. The architectural design, site planning, material and aesthetic qualities of the drawings and specifications shall be subject to approval of the AGENCY and shall be in conformity with the provisions, objectives, restrictions, standards and controls of the PLAN, all other applicable laws and regulations of the DISTRICT and all provisions of this CONTRACT. The drawings and specifications shall be submitted and reviewed in accordance with the procedures set forth in this CONTRACT. Notwithstanding the foregoing, the AGENCY acknowledges that the foregoing submissions have been made and approved.

SECTION 302 PROCEDURE FOR APPROVAL OF FINAL DRAWINGS.

A. Submission of FINAL DRAWINGS.

At the time specified in Section 7.C of Part I of this CONTRACT, the REDEVELOPER, at its sole cost and expense, shall submit to the AGENCY the FINAL DRAWINGS and outline specifications for the IMPROVEMENTS including a site plan, elevations, and typical floor plans.

Such FINAL DRAWINGS shall be in sufficiently complete and detailed form to enable the AGENCY to determine whether they substantially conform to the PRELIMINARY DRAWINGS and the PLAN.

If the AGENCY rejects the FINAL DRAWINGS, the AGENCY shall advise the REDEVELOPER in writing as to the specific reasons for the rejection; provided, however, that the AGENCY may reject the FINAL DRAWINGS only if such plans do not substantially conform to the PRELIMINARY DRAWINGS and the PLAN. In the event of rejection, the REDEVELOPER shall resubmit revised plans pursuant to subsection B. hereof.

The FINAL DRAWINGS shall be deemed approved unless, within sixty (60) days after receipt of the FINAL DRAWINGS by the AGENCY, the AGENCY delivers to REDEVELOPER a written notice of rejection and a detailed written explanation of the grounds of such rejection. Notwithstanding the foregoing, the AGENCY hereby acknowledges that the SCHEMATIC DRAWINGS and the PRELIMINARY DRAWINGS have been reviewed and approved

B. Procedure if FINAL DRAWINGS are Rejected.

If the AGENCY gives the REDEVELOPER required notice of its rejection of the FINAL DRAWINGS submitted in accordance with this Section, the REDEVELOPER shall submit revised FINAL DRAWINGS within thirty (30) days after receipt of such notice; the provisions of this Section with respect to approval, rejection, and resubmission of revised FINAL DRAWINGS hereinabove provided shall continue to apply, and the REDEVELOPER shall in good faith continue to resubmit corrected FINAL DRAWINGS until approved by the AGENCY.

SECTION 303 CHANGES IN FINAL DRAWINGS

If the REDEVELOPER desires to make any SIGNIFICANT CHANGES in the FINAL DRAWINGS after their approval by the AGENCY, the REDEVELOPER shall submit the proposed change(s) to the AGENCY for its approval.

If the FINAL DRAWINGS, as modified by the proposed change(s), conform to the requirements of Article III Section 302 above with respect to such previous approval of FINAL DRAWINGS, the AGENCY shall approve the proposed change(s) and notify the REDEVELOPER within a reasonable time period in writing of its approval.

Such change(s) in the FINAL DRAWINGS shall, in any event, be deemed approved by the AGENCY unless rejection thereof, in whole or in part, shall be made within thirty (30) days after submission to the AGENCY by written notice thereof delivered to REDEVELOPER accompanied by a written explanation of the grounds of such rejection, in which event the procedures of Article III Section 302 above with respect to approval, rejection and resubmission of the FINAL DRAWINGS shall apply; provided, however that such resubmitted change(s) shall be deemed approved unless within the above-specified period, the REDEVELOPER receives written notice of rejection (accompanied by such written explanation) from the AGENCY pursuant to this subsection.

SECTION 304 COMMENCEMENT AND COMPLETION OF CONSTRUCTION OF IMPROVEMENTS

The REDEVELOPER agrees for itself, its successors and assigns, and every successor in interest to the PROPERTY, or any part thereof, and the Deed shall contain covenants on the part of the REDEVELOPER, and such successors and assigns that the REDEVELOPER and such successors and assigns shall promptly begin in accordance with Section 3.A of Part I of this Contract and diligently prosecute to completion the redevelopment of the PROPERTY by the construction of the IMPROVEMENTS thereon, in accordance with the FINAL DRAWINGS.

Such construction shall in any event begin and end within the period specified in Section 3 of Part I hereof. It is intended

and agreed, and the Deed shall so expressly provide, that such agreements and covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the CONTRACT itself, be to the fullest extent permitted by law and equity, binding for the benefit of the community and the AGENCY and enforceable by the AGENCY against the REDEVELOPER.

#### SECTION 305     PROGRESS REPORTS

Subsequent to conveyance of the PROPERTY, or any part thereof, to the REDEVELOPER, and until issuance of the CERTIFICATE OF COMPLETION as provided in Section 306 below, the REDEVELOPER shall make reports as to the progress of construction in such detail and at such times as may reasonably be requested in writing by the AGENCY.

#### SECTION 306     CERTIFICATE OF COMPLETION

- A. Promptly after completion of the IMPROVEMENTS in accordance with those provisions of the CONTRACT relating solely to the obligations of the REDEVELOPER to construct the IMPROVEMENTS, (including the dates for beginning and completion thereof) the AGENCY will, within a reasonable time period, furnish the REDEVELOPER with an appropriate confirmatory instrument (hereinafter sometimes referred to as the "CERTIFICATE OF COMPLETION").

Such CERTIFICATE OF COMPLETION shall constitute a conclusive and incontestable determination (and it shall be so provided in such certificate and in the DEED) that all of the terms, covenants, agreements, conditions and provisions of this CONTRACT, and in the DEED, obligating the REDEVELOPER with respect to the construction of said IMPROVEMENTS, including the times for the commencement and completion of the construction of the IMPROVEMENTS, have been fully satisfied and terminated, and that the REDEVELOPER and its successors and assigns shall have no further obligations whatsoever with respect to the commencement and completion of the construction of those IMPROVEMENTS and that any rights and remedies with respect to re-entry, repossession, reversion and forfeiture, as provided for in Article VII, Section 704 hereof and in the Deed, which the AGENCY may have with respect to the PROPERTY are extinguished and shall not thereafter apply; and that the REDEVELOPER is thereafter free to transfer the PROPERTY or interest therein, without any approval of the AGENCY. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of the obligations of the REDEVELOPER to the individual MORTGAGEE, unless the MORTGAGEE agrees to accept the certification as such evidence.

- B. Each CERTIFICATE OF COMPLETION provided for in this Section 306 shall be in such form as will enable it to be recorded in the Office of the Recorder of Deeds of the District of Columbia. If the AGENCY shall refuse or fail to provide any certification in accordance with the provision of this Section, the AGENCY shall, within thirty (30) days after written request by the REDEVELOPER, provide the REDEVELOPER with a written statement, indicating in adequate detail in what respects the REDEVELOPER has failed to complete the IMPROVEMENTS or any part or parcel thereof in accordance with the provisions of this CONTRACT, or is otherwise in default, and what measures or acts will be necessary, in the reasonable opinion of the AGENCY, for the REDEVELOPER to take or perform in order to obtain such certification. If the AGENCY shall fail to provide the aforesaid written statement within the required time frame, REDEVELOPER shall have the right to execute and record an appropriate certification/CERTIFICATION OF COMPLETION that shall have the same force and effect as if it had been executed and issued by the AGENCY.

SECTION 307. CHANGES TO COMPLETED IMPROVEMENTS.

After completion of the IMPROVEMENTS, for a period of five (5) years thereafter, the REDEVELOPER shall not reconstruct, demolish, subtract therefrom or make any additions or extensions to the exterior of the IMPROVEMENTS or the PROPERTY, except for the restoration or reconstruction of the IMPROVEMENTS after a casualty, without the prior written approval of the AGENCY, such approval not to be unreasonably withheld. The requirements of this Section 307 shall survive the termination of this CONTRACT and shall be binding upon the successors and assigns of the REDEVELOPER.

SECTION 308. DELAY OF CONVEYANCE OF PROPERTY.

Notwithstanding any other provision in this CONTRACT, the AGENCY may, in its sole discretion, delay sale of the PROPERTY until the REDEVELOPER has submitted evidence satisfactory to the AGENCY that it has a construction contract and the necessary equity capital, mortgage financing, or other refinancing to assure the completion of the IMPROVEMENTS as required by Article VI Section 601 B. hereof.

SECTION 309. RETENTION OF PLANS, WORKING DRAWINGS AND SPECIFICATIONS.

For a period of five (5) years from the date upon which FINAL DRAWINGS are approved by the AGENCY, the REDEVELOPER shall retain in its records a copy of all design materials including plans, working drawings, and contract specifications prepared by it for, or as a basis for, the submission of SCHEMATIC and FINAL DRAWINGS or otherwise used by the REDEVELOPER for the construction of the

IMPROVEMENTS. Copies of such material shall be available to the AGENCY upon its request during that period.

#### ARTICLE IV. RESTRICTIONS UPON USE OF PROPERTY

##### SECTION 401. RESTRICTIONS ON USE.

The REDEVELOPER agrees for itself, and its successors and assigns, and every successor in interest to the PROPERTY, or any part thereof, and any Deed shall contain covenants on the part of the REDEVELOPER for itself, and such successors and assigns, that the REDEVELOPER, and such successors and assigns, shall:

- A. To the extent the PROPERTY is being used and occupied, devote the PROPERTY to and in accordance with, the uses, specified in the PLAN so long as the PLAN shall be in effect and this CONTRACT only; and
- B. Not discriminate upon the basis of race, color, religion, sex, national origin, or any other factor which would constitute a violation of the D.C. Human Rights Act or any other applicable law, in the sale, lease or rental or in the use or occupancy of the PROPERTY or its respective IMPROVEMENTS thereon.

##### SECTION 402. COVENANTS; BINDING UPON SUCCESSORS IN INTEREST; PERIOD OF DURATION.

It is intended and agreed, and any Deed shall so expressly provide, that the agreements and covenants provided in this CONTRACT shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this CONTRACT, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the AGENCY, the DISTRICT and any successor in interest to the PROPERTY against the REDEVELOPER, its successors and assigns, and the agreement and covenant provided in Article IV Section 401 A. hereof shall remain in effect for the period of time or until the date specified or referred to in Section 8 B. of Part I of the CONTRACT (at which time such agreements and covenants shall terminate) and that the remaining agreements and covenants provided in Section 401 shall remain in effect without limitation as to time: Provided, That such agreements and covenants shall be binding on the REDEVELOPER, each successor in interest to the PROPERTY and each party in possession or occupancy, only for such period as such successor or party shall have title to, or an interest in, or possession or occupancy of, the PROPERTY or part thereof.

The terms "uses specified in local law" and "land use" referring to provisions of the local law, or similar language in the CONTRACT, shall include the land and all building, housing and other restrictions of the local law pertaining to such land.

SECTION 403. AGENCY, DISTRICT OF COLUMBIA AND UNITED STATES RIGHTS TO ENFORCE.

In amplification, and not in restriction of, the provisions of the preceding Section 402, it is intended and agreed that the AGENCY and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in Section 401 above, both for and in their own right and also for the purposes of protecting the interests of the community and the other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided.

Such agreements and covenants shall run in favor of the AGENCY (and, if the REDEVELOPER receives Federal financial assistance with respect to the PROPERTY, the UNITED STATES) for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the AGENCY (or the UNITED STATES) has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate.

The AGENCY (or the UNITED STATES) shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions or suits, at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

SECTION 404. Intentionally deleted.

SECTION 405. SIGN CONTROL.

Until the issuance of the CERTIFICATE OF COMPLETION:

- A. No sign or other means or objects of identification or advertisement or any subsequent modifications thereof shall be erected or displayed upon the PROPERTY without prior written approval by the AGENCY, which approval shall not be unreasonably withheld, conditioned or delayed.
- B. The REDEVELOPER shall submit plans of such signs, means, or objects of identification to the AGENCY in sufficient completeness and detail to enable the AGENCY to evaluate the design and aesthetic qualities of such signs.
- C. The REDEVELOPER shall, at its expense during construction, design and erect a sign identifying the PROJECT as a

development undertaken under the auspices of the AGENCY. The sign shall be designed in accordance with the terms hereof and erected within forty-five (45) days of execution of this CONTRACT.

SECTION 406. EQUAL EMPLOYMENT OPPORTUNITY.

The REDEVELOPER, for itself, its successors, and assigns, agrees that in the construction of the IMPROVEMENTS required by the AGENCY and this CONTRACT to be constructed on the PROPERTY:

- A. The REDEVELOPER shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, age, national origin, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, physical handicap or any other factor which would constitute a violation of the D.C. Human Rights Act or other applicable law.

The REDEVELOPER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, national origin, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, political affiliation, or physical handicap or any other factor which would constitute a violation of the D.C. Human Rights Act or other applicable law.

Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and REDEVELOPER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the AGENCY setting forth the provisions of this non-discrimination clause.

- B. The REDEVELOPER will, in all solicitations or advertisements for employees placed by or on behalf of the REDEVELOPER state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or any other factor which would constitute a violation of the D.C. Human Rights Act or other applicable law.
- C. If the REDEVELOPER receives Federal financial assistance with respect to the PROPERTY, the REDEVELOPER shall:
- (i) send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the AGENCY, advising the said labor union or worker's representative of the REDEVELOPER's

commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

- (ii) comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules and regulations and relevant orders of the Secretary of Labor, including the goals and timetables for minority and female participation and the Standard Federal Equal Employment Opportunity Construction Contract Specifications, attached hereto and incorporated herein, to the extent applicable;
- (iii) furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations, and orders of the Secretary of Labor and the Secretary of the Department of Housing and Urban Development, and will permit access to its books, records, and accounts by the AGENCY, and the Departments of Labor and HUD for purpose of any investigation to ascertain compliance with such rules, regulations and orders;
- (iv) require the inclusion of the provisions of subsections A through D of this Section in every contract or purchase order, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor vendor.

The REDEVELOPER will take such action with respect to any subcontract or purchase order as the AGENCY reasonably may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event the REDEVELOPER becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the AGENCY, or the Department of Housing and Urban Development, the REDEVELOPER may request the UNITED STATES to enter into such litigation to protect the interest of the UNITED STATES.

- D. In the event of the REDEVELOPER's non-compliance with the nondiscrimination clause of this CONTRACT or with any applicable rule, regulation, or order, prior to receipt of a CERTIFICATE OF COMPLETION, this CONTRACT may be (subject to the provisions for notice and opportunity to cure contained in Article VII hereof) canceled, terminated, or suspended in whole or in part and the REDEVELOPER may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other actions may be

imposed and remedies invoked as provided in said Executive Order, or by rules, regulations, or order of the Secretary of Labor, or as otherwise provided by law. Given the severity of the aforesaid remedies, REDEVELOPER shall have a period of thirty (30) days after its receipt of written notice of the AGENCY's election of such remedy to cure the subject non-compliance. In the event that the AGENCY deems the cure satisfactory, in the AGENCY's reasonable discretion, the elected remedy shall be revoked, rescinded and withdrawn by the AGENCY in writing. The aforesaid thirty (30) day period shall be extended by such period of time as shall be reasonable and necessary provided REDEVELOPER is diligently pursuing to completion the cure of this subject non-compliance. After delivery of a CERTIFICATE OF COMPLETION the AGENCY shall enforce such clauses in the manner provided in Section 704 of Part II of this CONTRACT.

SECTION 407. OPPORTUNITY FOR TRAINING AND EMPLOYMENT.

- A. The AGENCY requires that, to the extent reasonably feasible, opportunities for training and employment be given to lower income residents of the PROJECT AREA and construction contracts for work in connection with the PROJECT AREA be awarded to business concerns which are located in, or owned in substantial part by persons residing in the PROJECT AREA.
- B. REDEVELOPER agrees to:
  - (i) comply with its Affirmative Action Plan and Community Participation Plan, previously approved as part of the ERA; copies of such plans are attached hereto as Exhibit E and Exhibit F of Part I and made a part hereof;
  - (ii) achieve the hiring goals stated in Mayor's Order 83-265; and
  - (iii) comply with all applicable labor and employment standards, laws, regulations and orders in the development and operation of the PROPERTY.
- C. In addition, the REDEVELOPER agrees that in the construction of the IMPROVEMENTS shown in the FINAL DRAWINGS and this CONTRACT:
  - (i) The general contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or worker's representative of the general contractor's commitment under this Section 407 and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

- (ii) The general contractor will include this Section 407 in every subcontract for work in connection with the construction of the IMPROVEMENTS and will, at the direction of the AGENCY, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of the provisions of this Section.

The general contractor will not let any subcontract where the general contractor has notice or knowledge that the subcontractor has been found in violation of these requirements, and will not let any subcontract unless the subcontractor has first provided the general contractor with a preliminary written statement of ability to comply with the requirements in this Section 407.

#### SECTION 408. ADVERTISING.

The REDEVELOPER agrees for itself, its successors and assigns that it shall include in all advertising for the sale or rental of the PROPERTY, a statement to the effect that:

- (a) the PROPERTY is open to all persons without discrimination on the basis of race, color, religion, sex, national origin or any other factor which would constitute a violation of the D.C. Human Rights Act or other applicable law; and
- (b) that there shall be no discrimination in public access or use of the PROPERTY to the extent that it is open to the public.

#### SECTION 409. OPPORTUNITIES FOR LOCAL, SMALL, OR DISADVANTAGED BUSINESS ENTERPRISES.

In cooperation with the AGENCY, the DISTRICT, and Federal and other public and private agencies and organizations, REDEVELOPER agrees that it will promote opportunities for local, small, or disadvantaged businesses in the construction of the IMPROVEMENTS to the fullest extent consistent with sound economic development.

- A. In order to assure that local, small, or disadvantaged businesses in accordance with District of Columbia Law 9-217 are provided equal opportunity in the contracting, the REDEVELOPER will:

- (i) publicize available opportunities through private and public agencies, organizations and local, small, or disadvantaged business associations; and
- (ii) solicit letters of interest through these agencies and organizations and from individual entrepreneurs and

cooperate with public and privately funded business and technical assistance agencies and organizations, to assist in identifying potentially viable local, small, or disadvantaged businesses for contracting; and

- (iii) enter into a Memorandum of Understanding with the D.C. Department of Human Rights and Minority Business Development.

ARTICLE V. PROHIBITION AGAINST ASSIGNMENT, TRANSFER AND SUBLEASE

SECTION 501. REPRESENTATIONS AS TO DEVELOPMENT.

The REDEVELOPER represents and agrees that its purchase of the PROPERTY, and its other undertakings pursuant to the CONTRACT are and will be used for the purpose of redevelopment of the PROPERTY and not for speculation in land holding. The REDEVELOPER further recognizes that, in view of:

- a. the importance of the redevelopment of the PROPERTY to the general welfare of the community;
- b. the public assistance that has been made available by the Federal and local Governments to the PROJECT AREA;
- c. the fact that a transfer of the stock or partnership interest in the REDEVELOPER or of a substantial part thereof, or any other act or transaction involving or resulting in a SIGNIFICANT CHANGE as herein defined in the ownership or distribution of such stock or partnership interest or with respect to the identity of the parties in control of the REDEVELOPER or the degree thereof, is for practical purposes a transfer or disposition of the PROPERTY then owned by the REDEVELOPER;

the qualifications and identity of the REDEVELOPER, and its stockholders or partners, are of particular concern to the community and the AGENCY.

The REDEVELOPER further recognizes that it is because of such qualifications and identity that the AGENCY is entering into the CONTRACT with the REDEVELOPER, and in so doing, is further willing to accept and rely on the obligations of the REDEVELOPER for the faithful performance of all undertakings and covenants in the CONTRACT.

SECTION 502. PROTECTION AGAINST TRANSFER OF PARTNERSHIP INTEREST OR SHARES OF STOCK; BINDING UPON PARTNERS AND STOCKHOLDERS INDIVIDUALLY.

For the foregoing reasons set forth in Section 501 above, the REDEVELOPER represents and agrees for itself, its partners or stockholders, and any successors in interest of itself and its partners or stockholders that, prior to the issuance of the CERTIFICATE OF COMPLETION, without prior written approval of the AGENCY, which approval shall not be unreasonably withheld or delayed, neither the REDEVELOPER nor any party owning stock or a partnership interest in the REDEVELOPER (which term shall be deemed for the purpose of this and related provisions to include successors in interest of such partnership interest or stock, or any part thereof or interest therein) shall cause or suffer to be made any assignment, sale, conveyance or other transfer of stock or partnership interests if such transfer might cause a SIGNIFICANT CHANGE in the identity of such owner or the ownership of such stock or partnership interest (or in the relative distribution thereof) or the identity of the parties in control of the REDEVELOPER or the degree thereof, by any other method or means, whether by increased capitalization, merger with another corporation or combination with another partnership or corporation, or other amendments, issuance of additional or new stock or partnership interests or reclassification of stock, or otherwise.

With respect to this provision, the REDEVELOPER and the parties signing the CONTRACT on behalf of the REDEVELOPER represents that they have the authority of all its existing stockholders or partners to agree to this provision on their behalf and to bind them with respect hereto.

SECTION 503. PROHIBITION AGAINST TRANSFER OF THE PROPERTY AND ASSIGNMENT OF AGREEMENT.

- A. For the reasons set forth in Section 501 above, the REDEVELOPER represents and agrees for itself, and its successors and assigns, that, except only for any mortgage loan (as permitted by Section 601 B. below) or other method of financing the PROJECT (including without limitation a sale to a mortgagee, foreclosure sale or deed in lieu of foreclosure), the REDEVELOPER has not made or created, and will not, prior to the issuance of the CERTIFICATE OF COMPLETION, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, lease, trust, power, or transfer in any other mode or form, with respect to the CONTRACT or the PROPERTY (or any part thereof or any interest therein) or make any contract or agreement to do any of the same, without prior written approval of the AGENCY, which approval shall not be unreasonably withheld, conditioned or delayed.
- B. Where the AGENCY approval of a transfer of stock for or partnership interest of the REDEVELOPER or a transfer of the PROPERTY or any part thereof is required, the AGENCY may require the REDEVELOPER to meet the following conditions:

- (1) Any proposed transferee shall have the professional and financial qualifications (as unreasonably determined by the AGENCY) adequate to fulfill the obligations undertaken in the CONTRACT by the REDEVELOPER.
- (2) Any proposed transferee, by a writing in form reasonably satisfactory to the AGENCY and recordable among the land records, for itself and its successors and assigns, and expressly for the benefit of the AGENCY, shall have expressly assumed all of the obligations of the REDEVELOPER under the CONTRACT and agreed to be subject to all the conditions and restrictions to which the REDEVELOPER is subject hereunder.

If any transferee, or any other successor in interest whatsoever to the PROPERTY, or any part thereof, shall fail to expressly assume such obligations or shall fail to so agree, such failure shall not (unless specifically agreed to in writing by the AGENCY) relieve or except such transferee or successor of or from such obligations, conditions or restrictions, or deprive or limit the AGENCY of or with respect to any rights or remedies or controls with respect to the PROPERTY or the construction of the IMPROVEMENTS;

It being the intent of this provision, together with other provisions of the CONTRACT, that (to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in the CONTRACT) no transfer of, or change with respect to, ownership in the PROPERTY or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the AGENCY of or with respect to any right or remedies or controls provided in or resulting from the CONTRACT with respect to the PROPERTY and the construction of the IMPROVEMENTS that the AGENCY would have had, had there been no such transfer or change.

- (3) All instruments and other legal documents involved in effecting a transfer shall be submitted to the AGENCY prior to execution; and

If approved in writing by the AGENCY, which approval shall not be unreasonably withheld, conditioned or delayed, such approval shall be indicated to the REDEVELOPER in writing within thirty (30) days after the aforesaid instruments and legal documents have been submitted to the AGENCY. Should the AGENCY fail to respond within said thirty (30) day period, the submitted instruments and documents shall be deemed automatically approved.

- (4) The consideration or portion thereof payable for the transfer by the transferee or on its behalf, to the extent payable prior to the completion of the IMPROVEMENTS, shall not exceed an amount representing the ACTUAL COST (as hereinafter defined) to the REDEVELOPER of developing the PROPERTY (including the IMPROVEMENTS) (or allocated by REDEVELOPER to the part thereof or interest therein transferred) theretofore made thereon by it;

It being the intent of this provision to preclude assignment of the CONTRACT or transfer of the PROPERTY (or any parts thereof other than those referred to in the first paragraph of this Section 503) for profit prior to the completion of the IMPROVEMENTS and to provide that in the event any such assignment or transfer is made (and is not canceled), and to the extent any consideration is payable prior to the completion of the Improvements, the AGENCY shall be entitled to increase the PURCHASE PRICE to the REDEVELOPER by the amount that the consideration payable for the assignment or transfer exceeds the amount that may be authorized pursuant to this subsection and such consideration to the extent it exceeds the amount so authorized, belong to the AGENCY and be tendered forthwith.

- (5) The REDEVELOPER and its transferee shall comply with such other conditions as the AGENCY reasonably may find desirable in order to achieve and safeguard the purposes of the ACT and this CONTRACT, provided that in the absence of specific written agreement by the AGENCY to the contrary, no such transfer or approval by the AGENCY thereof shall be deemed to relieve the REDEVELOPER or any other party bound in any way by the CONTRACT or otherwise with respect to the construction of the IMPROVEMENTS from any of its obligations with respect thereto.
- (6) For the purposes hereof, the term "ACTUAL COST" shall mean the PURCHASE PRICE of the PROPERTY (or the part thereof allocable to the part of the PROPERTY transferred) and the reasonable costs (including any CARRYING CHARGES and overhead) incurred by the REDEVELOPER after the date of the award of the PROPERTY by the AGENCY to the REDEVELOPER (i.e., the date of the ERA) in connection with the negotiation of the CONTRACT, the acquisition of the PROPERTY, and the development and construction of the IMPROVEMENTS on the PROPERTY or part thereof transferred, and any portion of outstanding amounts under any mortgage loan or loans to finance the acquisition of the PROPERTY and/or the construction of the IMPROVEMENTS in excess of all such costs, less any

net income received by the REDEVELOPER in connection with the PROPERTY or allocated by REDEVELOPER to the portion of the PROPERTY transferred. "CARRYING CHARGES" shall be defined to include all development costs, construction costs, interest costs and all other costs and fees (including any prepayment premiums) incurred in connection with financing the acquisition and/or construction of the PROPERTY (including the IMPROVEMENTS), operational costs, Taxes and all other property, design and construction charges incurred by the REDEVELOPER in connection with the development and implementation of the proposal with regards to, or allocated by REDEVELOPER with respect to, the PROPERTY (including without limitation (i) all costs, including without limitation unpaid attorney's fees and expenses, related to the rezoning of the PROJECT (including the PROPERTY) and modification of the PLAN and the Planned Unit Development and (ii) all additional hard and soft costs of REDEVELOPER related to designing and constructing the IMPROVEMENTS, including all costs of support for the IMPROVEMENTS and reinforcing the existing improvements beneath the PROPERTY).

SECTION 504. INFORMATION AS TO STOCKHOLDERS AND PARTNERS  
MAINTENANCE OF SEPARATE BOOKS AND ACCOUNTS.

- A. The REDEVELOPER agrees that until the issuance of the CERTIFICATE OF COMPLETION for the entire project:
- (i) the REDEVELOPER shall promptly notify the AGENCY of any and all SIGNIFICANT CHANGES in the ownership of stock or partnership interest, legal or beneficial, or of any other act or transaction involving or resulting in any SIGNIFICANT CHANGE in the ownership of such stock or partnership interest or the relative distribution thereof, or with respect, to the identity of the parties in control of the REDEVELOPER or the degree thereof, of which it or any of its officers or managing partners have been notified or otherwise have knowledge or information; and
  - (ii) the REDEVELOPER shall, at such time or times as the AGENCY may request, furnish the AGENCY with a complete statement, subscribed and sworn to by the President or other executive officer or general partner of the REDEVELOPER, setting forth all of the stockholders or partners in the REDEVELOPER and the extent of their respective holdings, and in the event any other parties have a beneficial interest in such stock, their names and the extent of such interest, all as determined or indicated by the records of the REDEVELOPER, by specific inquiry made by such officer or managing partner of all parties who on the basis of such records own any stock

in the REDEVELOPER or by such other knowledge or information as such officer or managing partner shall have.

Such lists, dates, and information shall in any event be furnished to the AGENCY immediately prior to the execution of this CONTRACT as a condition precedent thereto, and annually thereafter on the anniversary of the date of execution of the CONTRACT until the issuance of the CERTIFICATE OF COMPLETION.

B. The REDEVELOPER agrees that, until the issuance of the CERTIFICATE OF COMPLETION:

(i) the REDEVELOPER shall keep books and accounts of its operations and transactions relating to the PROPERTY, separate and distinct from any other property or business enterprise owned or operated by it, and in accordance with the requirement of the ACT will not use any portion of the PROPERTY to secure any indebtedness or obligations of the REDEVELOPER incurred for or in relation to any other such real property or business enterprise except in accordance with Article VI of this CONTRACT.

(ii) the REDEVELOPER shall not substantially amend, modify, replace or otherwise alter its commitment or agreement with the MORTGAGEE or enter into any subsequent or new agreements, without prior written notification to and approval of the AGENCY, which approval shall not be unreasonably withheld, conditioned or delayed, provided such amendment, modification, replacement or agreement is not in conflict with the terms and objectives embodied herein.

ARTICLE VI. MORTGAGE FINANCING

SECTION 601. LIMITATION UPON ENCUMBRANCES OF PROPERTY.

A. Prior to the issuance of the CERTIFICATE OF COMPLETION, neither the REDEVELOPER nor any successor in interest to the PROPERTY or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the PROPERTY, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the PROPERTY without the prior written approval of the AGENCY, which approval shall not be unreasonably withheld, conditioned or delayed.

B. The AGENCY shall not unreasonably withhold approval of any financing if the REDEVELOPER submits to the AGENCY evidence satisfactory to the AGENCY that the financing is necessary for acquiring the PROPERTY and constructing the IMPROVEMENTS

and there are sufficient funds committed to and available to complete the IMPROVEMENTS in accordance with the terms of this CONTRACT. Such evidence shall include, but not be limited to, the following:

- (1) A copy of the loan commitment or agreement between the REDEVELOPER and the MORTGAGEE, certified by the REDEVELOPER to be a true and correct copy thereof;
  - (2) A detailed estimate of the total cost of developing the PROPERTY in accordance with the terms of this CONTRACT including, but not limited to, the cost of purchasing the PROPERTY, architectural and engineering fees, lawyers fees, construction of the IMPROVEMENTS, financing fees, interest, taxes, and administration, certified by the REDEVELOPER to be true and accurate or good faith estimates, as the case may be;
  - (3) A statement detailing the disbursement of the proceeds of the proposed financing, certified by the REDEVELOPER to be true and accurate as the disbursement schedule submitted to and/or approved by the MORTGAGEE (AGENCY shall accept loan draw schedules in satisfaction of this requirement);
  - (4) A copy of REDEVELOPER's construction contract with a General Contractor, reasonably acceptable to the AGENCY at a fixed price or for a maximum upset price, requiring performance and payment bonds for 100% of the contract price, or other assurance of completion acceptable to MORTGAGEE, and certified by the REDEVELOPER to be a true and correct copy thereof;
  - (5) A copy of the MORTGAGEE's standard form of mortgage, deed of trust or such other instrument proposed to be used to secure a lien against the PROPERTY; the Agency acknowledges that such standard form will be substantially modified to conform to the specific financing terms.
- C. The REDEVELOPER shall promptly, after obtaining actual or constructive knowledge thereof, notify the AGENCY of any encumbrance or lien that has been granted on or attached to the PROPERTY, whether by voluntary act of the REDEVELOPER or otherwise.
- D. Any such mortgage shall contain the express provision that the MORTGAGEE's title in and to the PROPERTY, or to any portion thereof, is subject to this CONTRACT.
- E. The reversionary rights of the AGENCY under Section 704 of this CONTRACT shall always be subject to, and shall not defeat, render invalid, or limit in any way:

- (i) the lien of any mortgage or deed of trust entered into pursuant to the terms of this CONTRACT or any rights or remedies thereunder; and
  - (ii) any rights, remedies or interests provided in this CONTRACT for the protection of the holders of such mortgages or deed of trust.
- F. For purposes of any mortgage financing made pursuant to this CONTRACT, the PROPERTY may, at the option of the REDEVELOPER (or successor in interest), be divided into several parts or parcels, provided that such subdivision, in the opinion of the AGENCY, is not inconsistent with the purposes of the ACT and the CONTRACT and is approved in writing by the AGENCY.

SECTION 602. COPY OF NOTICE OF DEFAULT TO MORTGAGEE.

Whenever the AGENCY shall deliver any notice or demand to the REDEVELOPER with respect to any actual or alleged breach or default by the REDEVELOPER in its obligations or covenants under the CONTRACT, the AGENCY shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by the CONTRACT, at the address of such holder shown in Part I of this CONTRACT.

SECTION 603. MORTGAGEE MAY CURE BREACH OF REDEVELOPER.

- A. In the event that the REDEVELOPER receives notice from the AGENCY of a breach or default under this CONTRACT and such breach is not cured by the REDEVELOPER pursuant to the provisions of this CONTRACT, the AGENCY shall, in addition to the notice to the MORTGAGEE provided in Section 602 above, give written notice of the failure to cure on the part of the REDEVELOPER to the MORTGAGEE at the expiration of the period within which the REDEVELOPER may cure as set forth in this CONTRACT.

Upon receipt of such notice, the MORTGAGEE may then, at its option:

- (1) cure such failure by proceeding with due diligence to commence and complete or by completing, as the case may be, FINAL DRAWINGS or construction in accordance with the provisions of this CONTRACT, except that the time limits set forth in Section 7 of Part I of the CONTRACT shall be extended by the AGENCY for such reasonable period of time as may then be necessary for such MORTGAGEE, with the exercise of due diligence, to extinguish the REDEVELOPER's interest in this CONTRACT and in the PROPERTY and for such reasonable period of time as may be necessary to complete any such construction; or

- (2) institute and, in as timely a manner as possible, complete foreclosure proceedings or otherwise extinguish the REDEVELOPER's interest in this CONTRACT and in the PROPERTY, and at foreclosure or at any time thereafter, subject to Part I, Section 8.B of this CONTRACT, sell, assign or transfer, all of its right, title and interest to the PROPERTY to a purchaser, assignee or transferee who shall expressly assume all of the covenants, agreements and obligations of the REDEVELOPER under this CONTRACT with respect to the PROPERTY, or such portion thereof, by written instrument to be filed promptly and recorded among the Land Records of the District of Columbia, in which event the time limits set forth in Section 7 of Part I of this CONTRACT shall be extended by the AGENCY for such reasonable period of time as may then be necessary to complete any such construction referred to in (1) above; or
  - (3) proceed with due diligence to acquire possession of the PROPERTY through proceedings to foreclose the mortgage, or otherwise extinguish the REDEVELOPER's interest in this CONTRACT and in the PROPERTY and convey all of its right, title and interest in this CONTRACT and in the PROPERTY to the AGENCY. Upon such conveyance to the AGENCY, the AGENCY agrees forthwith to comply with the provisions of Part II, Section 705 of this CONTRACT, as if the AGENCY had exercised its right of termination thereunder.
- B. The MORTGAGEE shall have the right to elect (1), (2) or (3) above subject to Part I, Section 8.B of the CONTRACT and only if it shall to exercise such right within sixty (60) days after receipt of the notice herein set forth and deliver to the AGENCY within the sixty (60) day period an instrument in writing duly executed and acknowledged wherein the MORTGAGEE agrees that:
- (1) MORTGAGEE shall, during the period that such MORTGAGEE is in possession of the PROPERTY and/or during the period of any such foreclosure or other proceedings and until the interest of the REDEVELOPER in this CONTRACT and the PROPERTY are terminated, as the case may be, pay or cause to be paid to the AGENCY, or other public agency all taxes or other assessments then due and payable and which from time to time shall become due payable under this CONTRACT, and;
  - (2) in the event the MORTGAGEE elects to proceed under Section 603 (A) (1) and if delivery of possession of the PROPERTY shall be made to such MORTGAGEE or to its nominee pursuant to any foreclosure or otherwise, such MORTGAGEE shall, promptly following such delivery of possession perform or cause such nominee to perform, as the case may be, all covenants, terms, provisions and

agreements herein contained on the REDEVELOPER's part to be performed to the extent that the REDEVELOPER shall have failed to perform the same to the date of delivery of possession, as aforesaid.

In the event the MORTGAGEE elects to proceed under Section 603(A)(2) or (3), during the period that MORTGAGEE is seeking a transferee of the PROPERTY or the period prior to transferring the PROPERTY to the AGENCY, the MORTGAGEE will not be responsible for fulfilling the obligations of the REDEVELOPER set forth in Sections 2, 3, 6, 7, and 8 of Part I or Sections 103, 104, 301, 302, 303, 304, 305 and 306, 405, 406, 407, 408, 409, 504 of Part II of this CONTRACT.

- C. In the event that a MORTGAGEE elects to proceed in accordance with the provisions of Section 603(A)(1) hereof and thereafter defaults by failing to commence or complete construction, the provisions of Section 704 and 705 relating to reversion, sale or lease shall apply provided that such reversion shall be subject to a lien in favor of MORTGAGEE which lien is hereby created in the event that it shall have lost its prior lien, whether or not as a result of a prior foreclosure, in an amount equal to the amount of funds theretofore advanced or expended (on an accrual basis) including costs attributable to such construction by normal and reasonable accounting procedures but not including penalty charges, if any, whether such expenditure was before or after it elected to proceed in accordance with the provisions of Section 603(A)(1) hereof.
- D. In the event the MORTGAGEE elects to cure the default of the REDEVELOPER pursuant to this Section 603 and in the further event that the MORTGAGEE does so cure, the DISTRICT and the AGENCY, upon receipt of written notice to that effect from the MORTGAGEE, shall execute an instrument suitable for recording in the Land Records of the District of Columbia, setting forth that the default has been cured and reinstating all of the right, title and interest of the REDEVELOPER hereunder.

#### SECTION 604. RIGHTS AND DUTIES OF MORTGAGEE.

In no event shall any MORTGAGEE be deemed to be the REDEVELOPER hereunder or be obligated to perform or observe any of the covenants, terms and conditions of this CONTRACT on the part of the REDEVELOPER to be performed or observed, whether as a result of:

- (i) its having become a MORTGAGEE;
- (ii) the exercise of any of its rights under the instrument or instruments whereby it became a MORTGAGEE (including

without limitation, foreclosure or the exercise of any rights in lieu of foreclosure); and/or

- (iii) ~~the performance of any of the covenants, terms or conditions on the part of the REDEVELOPER to be performed or observed under this CONTRACT or, otherwise,~~ unless such MORTGAGEE shall either make the election set forth in Section 603 A.1 of this CONTRACT or shall specifically elect under this Section 604 to become the REDEVELOPER by written notice to the AGENCY, whereupon such MORTGAGEE, upon making any such election as aforesaid, shall then and thereafter for all purposes of this CONTRACT be deemed to be the REDEVELOPER hereunder, provided that as between the parties to such instrument or instruments referred to in clause (ii) hereof, their rights and obligation shall continue to be governed exclusively by the provisions of such instrument or instruments.

SECTION 605. AGENCY'S OPTION TO PAY MORTGAGE DEBT OR PURCHASE PROPERTY.

In any case, where, subsequent to default or breach of the ~~REDEVELOPER under this CONTRACT,~~ the MORTGAGEE approved in writing by the AGENCY pursuant to Section 601 hereof:

- A. has not exercised its option under subsections (2) or (3) of Section 603(A) hereof within the time prescribed therein; or
- B. undertakes construction or completion of the IMPROVEMENTS but does not complete such construction within the period as agreed upon by the AGENCY and such holder in accordance with the provisions of Section 603 A.1 and the cure of such default shall not have been commenced within forty-five (45) days after the MORTGAGEE's receipt of written demand by the AGENCY, the AGENCY shall (and every mortgage instrument made prior to completion of the IMPROVEMENTS with respect to the PROPERTY by the REDEVELOPER or successor in interest shall so provide) have the option (which option the AGENCY must notify such holder of the note and mortgage in writing of its intention to exercise within thirty (30) days following the occurrence of either event described in this Section 605 (A) or (B) above and then carry out the terms of such option within ninety (90) days thereafter) of paying to the holder the amount of the mortgage debt secured by the PROJECT and receiving an assignment of the mortgage or, in the event ownership of the PROJECT has vested in such holder by way of foreclosure or action in lieu thereof, the AGENCY shall be entitled, at its option (which option the AGENCY must notify such holder of the note and mortgage in writing of its intention to exercise within thirty (30) days following the occurrence of either event described in this Section 605 (A) or (B) above and then carry out the terms of such option within ninety (90) days thereafter), to a conveyance of the

PROJECT upon payment to such holder of an amount equal to the sum of:

- (i) the unpaid principal balance of the debt secured by the PROJECT and all interest accrued thereon, and all other fees and charges payable to MORTGAGEE in connection therewith (including without limitation any prepayment premiums), but less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- (ii) all reasonable expenses of MORTGAGEE, including reasonable attorneys' fee, with respect to the foreclosure;
- (iii) the net expense, if any (exclusive of general overhead), reasonably incurred by such holder in and as a direct result of the subsequent ownership and/or management of the PROJECT, including reasonable attorneys' fees;
- (iv) the costs of any IMPROVEMENTS or other improvements made by such holder; and
- (v) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence.

SECTION 606. AGENCY'S OPTION TO CURE MORTGAGE DEFAULT.

In the event of a default or breach prior to the completion of the IMPROVEMENTS by the REDEVELOPER, or any successor in interest, in or of any of its obligations under, and to the holder of, any mortgage or other instrument creating an encumbrance or lien upon the PROPERTY or part thereof, the AGENCY, upon giving fifteen (15) days prior to written notice to REDEVELOPER, may at its option cure, within the time periods provided for such cure in any such mortgage or other instruments, such default or breach in which case the AGENCY shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by the CONTRACT, operation of law, or otherwise, to reimbursement from the REDEVELOPER or successor in interest of all costs and expenses reasonably incurred by the AGENCY in curing such default or breach; provided, however, that such right to reimbursement shall be subject and subordinate to the lien and the terms and conditions of any mortgages encumbering the PROPERTY which have been approved by the AGENCY pursuant to Section 601 above.

## ARTICLE VII. REMEDIES

### SECTION 701. IN GENERAL.

- A. Except as otherwise provided in the CONTRACT, in the event of any default in or breach of the CONTRACT, or any of its terms and conditions, by either party hereto, or any successor to such party, said defaulting party shall, upon receipt of written notice from the other, proceed immediately to cure or remedy such default or breach. In case such default or breach shall not be cured or remedied within thirty (30) days after receipt of such notice of default or breach, or such longer period of time as may be provided for in this Contract or as may be necessary to complete such cure provided the defaulting party is diligently pursuing which cure to completion, but not to exceed one hundred twenty (120) days, the aggrieved party may institute such proceedings as may be necessary or desirable in its reasonable opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligation without obligating itself to necessarily grant an extension of the aforesaid 120 day period. AGENCY hereby agrees that it will consider a further extension of time upon written by REDEVELOPER upon good cause shown.
- B. Notwithstanding any provisions in this Article VII to the contrary, any and all sales proceeds upon foreclosure by AGENCY hereunder shall be applied according to the formula contained in Part II Section 705 of this CONTRACT.

### SECTION 702. TERMINATION BY THE REDEVELOPER PRIOR TO CONVEYANCE.

In the event that the AGENCY does not tender conveyance of the PROPERTY, or possession thereof, in the manner and condition, and by the date provided in the CONTRACT (except if such is due to the inadequacy, in the AGENCY's reasonable opinion, of REDEVELOPER's FINAL or SCHEMATIC DRAWINGS), and any such failure shall not be cured within thirty (30) days after the date of written demand by the REDEVELOPER, then the CONTRACT shall, at the option of the REDEVELOPER, be terminated by written notice thereof to the AGENCY, and, except with respect to the return of the Deposit as provided in Part I, Section 6.D of this CONTRACT, neither the AGENCY nor the REDEVELOPER shall have any further rights against or liability to, the other under the CONTRACT. Notwithstanding anything herein to the contrary, if REDEVELOPER has complied in full with the terms and provisions of this CONTRACT, then REDEVELOPER, in addition to all other remedies it may have available under this CONTRACT or by law or equity, shall have the right to specifically enforce its rights hereunder.

### SECTION 703. TERMINATION BY AGENCY PRIOR TO CONVEYANCE.

In the event that:

- A. Prior to CONVEYANCE of the PROPERTY to the REDEVELOPER and in violation of the CONTRACT:
  - (i) the REDEVELOPER (or any successor in interest) assigns or attempts to assign the CONTRACT or any rights therein, or in the PROPERTY, other than as permitted by this CONTRACT, or
  - (ii) there is any SIGNIFICANT CHANGE in the ownership or distribution of the assets or interest in the REDEVELOPER or with respect to the identity of the parties in control of the REDEVELOPER or the degree thereof; or
- B. the REDEVELOPER does not submit FINAL DRAWINGS, as required by the CONTRACT; or
- C. the REDEVELOPER does not pay the PURCHASE PRICE or take title to the PROPERTY upon tender of conveyance by the AGENCY pursuant to the CONTRACT,

and if any default or failure referred to in subsections A. through C. of this Section 703 shall not be cured within thirty (30) days after the date of written demand by the AGENCY.

Then, the CONTRACT, and any rights of the REDEVELOPER, or any assignee or transferee, in the CONTRACT, or arising therefrom with respect to the AGENCY or the PROPERTY, shall, at the option of the AGENCY which shall be deemed executed upon the REDEVELOPER's receipt of written notice from the AGENCY, be terminated by the AGENCY, in which event, as provided in Part I, Section 5 C. of this CONTRACT, the DEPOSIT shall be retained by the AGENCY as liquidated damages, without any deduction, offset, or recoupment whatsoever, and neither the REDEVELOPER (or assignee or transferee) nor the AGENCY shall have any further rights against or liability to the other under the CONTRACT.

SECTION 704. TERMINATION BY AGENCY SUBSEQUENT TO CONVEYANCE TO REDEVELOPER.

In the event that subsequent to conveyance of the PROPERTY or any part thereof to the REDEVELOPER and prior to the issuance of the CERTIFICATE OF COMPLETION:

- A. the REDEVELOPER shall default in or violate its obligations with respect to the construction of the IMPROVEMENTS (including the dates for the beginning and completion thereof) or shall abandon or substantially suspend construction work, and any such default, violation, abandonment or suspension shall not be cured,

ended, or remedied within thirty (30) days after REDEVELOPER's receipt of written demand by the AGENCY to do so or such longer period of time not to exceed one hundred eighty (180) days as shall be reasonable so long as REDEVELOPER is diligently pursuing to cure such default; or

- B. the REDEVELOPER shall fail to pay real estate taxes or assessments on the PROPERTY or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by the CONTRACT or shall suffer any levy or attachment to be made, or any materialmen's or mechanics lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision reasonably satisfactory to the AGENCY made for such payment, removal, or discharge, within sixty (60) days after REDEVELOPER's receipt of written demand by the AGENCY so to do or such longer period of time as shall be reasonable so long as REDEVELOPER is diligently pursuing to cure the default; or
- C. there is, in violation of the CONTRACT, any significant transfer of the PROPERTY or any part thereof, or any other act or transaction involving or resulting in a SIGNIFICANT CHANGE as defined by Section 1(R) of Part I, and such violation shall not be cured within sixty (60) days after REDEVELOPER's receipt of written demand by the AGENCY to the REDEVELOPER; or
- D. the REDEVELOPER shall violate or default in any of the obligations of this CONTRACT and such violation shall not be cured within thirty (30) days after REDEVELOPER'S receipt of written demand by the AGENCY to the REDEVELOPER or such longer period of time as shall be reasonable (but not to exceed one hundred eighty (180) days) so long as REDEVELOPER is diligently pursuing to cure such default;

then, in any such event described by subsections A. through D. of this Section 704, the AGENCY, at its option to be exercised upon giving thirty (30) days prior written notice to the REDEVELOPER, shall (i) pay to MORTGAGEE the entire unpaid principal balance of the instrument secured by the MORTGAGE encumbering the PROJECT and all unpaid interest accrued thereon and other sums due thereunder (including any prepayment premium) and (ii) re-enter and take possession of the PROPERTY and to terminate (and revest in the AGENCY) the estate conveyed by the deed to the REDEVELOPER, it being the intent of this provision, together with other provisions of the CONTRACT, that the conveyance of the PROPERTY to the REDEVELOPER shall be made upon, and that the deed shall contain, a condition subsequent to the effect that in the event of any default, failure, violation, or other action or

inaction by the REDEVELOPER specified in subsections A. through D. of this Section 704, failure on the part of the REDEVELOPER to remedy, end, or abrogate such default, failure, violation, or other action or inaction, within the period and in the manner stated in such subsections and a failure by the MORTGAGEE to cure in accordance with the provisions of this CONTRACT, the AGENCY at its option, upon giving ninety (90) days prior written notice to the REDEVELOPER, may declare a termination in favor of the AGENCY of the title, and of all the rights and interests in and to the PROPERTY conveyed by the DEED to the REDEVELOPER, and that such title and all rights and interests of the REDEVELOPER, and any assigns or successors in interest to and in the PROPERTY, shall revert to the AGENCY, provided, that such conditions subsequent and any reversion of title as a result thereof in the AGENCY shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, (i) the lien of any mortgage approved in writing by the AGENCY pursuant to Section 601 above or any rights or remedies thereunder; and (ii) any rights, remedies or interests provided in the CONTRACT for the protection of the holders of such mortgages.

Notwithstanding anything herein to the contrary, the AGENCY acknowledges and agrees that any such divestiture of title to the AGENCY may constitute an immediate default under the MORTGAGE secured by the PROJECT, and that MORTGAGEE shall thereupon have the right to declare the entire unpaid principal balance of the instrument secured by the MORTGAGE encumbering the PROJECT and all unpaid interest accrued thereon and other sums due thereunder (including any prepayment premium) to be immediately due and payable and the AGENCY hereby understands that it may be liable to MORTGAGEE for the payment of the entire amount of all such principal, interest, and fees (including prepayment premiums).

SECTION 705. RESALE OF REACQUIRED PROPERTY; DISPOSITION OF PROCEEDS.

Subsequent to the reversion of title to the PROPERTY or any part thereof as provided in Section 704 above, the AGENCY shall, pursuant to its responsibilities under DISTRICT law, use its best efforts to resell the PROPERTY or part thereof (which sale shall be subject to Section 701 B. above), as soon and in such manner as the AGENCY shall find feasible and consistent with the objectives of the ACT (as determined by the AGENCY), to a qualified and responsible party or parties (as reasonably determined by the AGENCY) who will assume the obligation of making or completing the IMPROVEMENTS or such other improvements in their stead as shall be satisfactory to the AGENCY and in accordance with the uses specified for such PROPERTY or part thereof in this CONTRACT. Upon such resale or lease of the PROPERTY, the proceeds thereof shall be applied as follows:

- A. First, to reimburse the AGENCY on its own behalf, or on behalf of the DISTRICT for all reasonable costs and expenses incurred by the AGENCY, including but not limited to salaries

of personnel, in connection with the recapture, management and resale of the PROPERTY or part thereof (but less any income derived from the PROPERTY or part thereof in connection with such management);

All taxes, assessments, and water and sewer charges with respect to the PROPERTY or part thereof accrued prior to any such revestiture of title of AGENCY;

Any payments reasonably made or necessary to be made to discharge any encumbrances or liens (excluding any MORTGAGE approved by the AGENCY pursuant to Section 601 above and repaid under subsection A. of this Section 705) existing on the PROPERTY or part thereof at the time of revesting of title thereto in the AGENCY or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the REDEVELOPER, its successors or transferees;

Any reasonable expenditures made or obligations reasonably incurred with respect to the making or completion of the IMPROVEMENTS or any part thereof on the PROPERTY; and

Any amounts otherwise due and owing the AGENCY by the REDEVELOPER, ~~its successors or transferees~~, pursuant to this CONTRACT; and

B. Second, to reimburse the REDEVELOPER, its successors or transferees, up to the amount equal to:

- (1) the amount (or the allocable portion thereof) of the cash actually invested by it and/or the reasonable costs and reasonable expenses otherwise actually incurred by it to third parties in making any of the IMPROVEMENTS on the PROPERTY; less
- (2) any gains or income withdrawn or made by it in connection with the PROPERTY, but only after liens which were not approved pursuant to Section 601 above have been paid.

SECTION 706. OTHER RIGHTS AND REMEDIES OF AGENCY; NO WAIVER BY DELAY; WAIVER.

The AGENCY shall have the right to institute such actions or proceedings as it reasonably may deem desirable for effectuating the purposes of this Article VII, including without limiting the generality of the foregoing, the right, after this CONTRACT has been terminated by the AGENCY pursuant to Section 704 above, to execute and record or file among the public Land Records in the Office of the Recorder of Deeds of the DISTRICT a written declaration of the termination of all the right, title, and interest, of the REDEVELOPER, and (except for such individual parts or parcels which have been completed, in accordance with

the CONTRACT, and for which a CERTIFICATE OF COMPLETION as provided in Section 306 above has been delivered and subject to such mortgage liens approved in writing by the AGENCY pursuant to Section 601 above, and leasehold interests all as provided in Section 704 above) its successors in interest and assigns, in the PROPERTY, and the reverting of title thereto in the AGENCY, provided:

- (i) that any delay by the AGENCY in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article VII or any other right or remedy available under law or in equity, shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the AGENCY shall not be constrained by waiver, laches, or otherwise in the exercise of such remedies); nor
- (ii) shall any waiver in fact made by the AGENCY with respect to any specific default by the REDEVELOPER under this Section be considered or treated as a waiver of the AGENCY with respect to any other defaults by the REDEVELOPER or with respect to the particular default except to the extent specifically waived in writing.

SECTION 707. FORCED DELAY IN PERFORMANCE FOR CAUSES BEYOND CONTROL OF PARTY.

Neither the AGENCY nor the REDEVELOPER, as the case may be, nor any successor in interest, shall be considered in breach of, or in default of, its obligations with respect to the preparation of the PROPERTY for redevelopment, conveyance of the deed or the beginning and completion of construction of the IMPROVEMENTS, or progress in respect thereto.

In the event of forced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, such as, acts of God, acts of the public enemy, acts of the Federal Government, acts of the DISTRICT, or other governmental agency (except that acts of the AGENCY shall not be deemed events of forced delay for performance by the AGENCY or the District), acts of freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such forced delay, the time or times for performance of the obligations of the AGENCY or of the REDEVELOPER shall be extended for the period of the forced delay as determined by both the REDEVELOPER and the AGENCY, provided, that the party seeking the benefit of this Section shall, within fifteen (15) days after the beginning of any such forced delay, have first notified the other party thereof in writing, and of the cause or causes thereof, and requested an extension for the period of the forced delay.

SECTION 708. RIGHTS AND REMEDIES CUMULATIVE.

The rights and remedies of the parties to the CONTRACT, whether provided by law or by the CONTRACT, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach.

SECTION 709. PARTY IN POSITION OF SURETY WITH RESPECT TO OBLIGATIONS.

The REDEVELOPER, for itself and its successors and assigns and for all other persons who are or who shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under the CONTRACT, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the grounds of its (or their) being or having become a person in the position of surety, whether real, personal, or otherwise or whether by agreement or operation of law, including, without limitation any and all claims and defenses based upon extension of time, indulgence or modification of CONTRACT.

SECTION 710. ESTOPPEL CERTIFICATE.

From time to time upon request of the REDEVELOPER (in connection with encumbering a PROPERTY with a mortgage or a transfer of a PROPERTY) and provided the REDEVELOPER is not then in default of its obligation under this CONTRACT beyond any applicable grace period, the AGENCY will upon written request of the REDEVELOPER issue (in a form suitable for recording among the Land Records of the Office of the Recorder of Deeds of the DISTRICT) an estoppel certificate or other instrument certifying that the REDEVELOPER, on the date of such certificate or instrument, is not in default under this CONTRACT and SECURITY DOCUMENTS and certifying such other information as the MORTGAGEE or transferee may reasonably request.

SECTION 711. ASSIGNMENT OF PLANS AND SPECIFICATIONS.

Subject to the rights of any MORTGAGEE approved in accordance with Section 601 of Part II of the CONTRACT, upon termination of the CONTRACT prior to CONVEYANCE or reversion or any reconveyance of the PROPERTY to the AGENCY (or its Agent) as provided in Section 704 above, the REDEVELOPER hereby agrees to transfer and assign to the AGENCY without warranty, representation or recourse, and to the extent assignable by REDEVELOPER, all of its right, title and interest in and to all construction contracts, architectural and engineering contracts, plans and specifications (including the SCHEMATIC and FINAL DRAWINGS), building permits, bonds in favor of a REDEVELOPER, sewer permits and tap fees, utility deposits and all other contracts, agreements, permits and authorizations in any way related to the construction of the IMPROVEMENTS, now or at any

time hereafter during the term of this CONTRACT; said assignment to vest automatically or upon AGENCY's payment to REDEVELOPER of all reasonable costs, reasonable expenses and/or reasonable fees actually incurred by REDEVELOPER with respect to any and all of such items and matters.

#### ARTICLE VIII. MISCELLANEOUS

##### SECTION 801. CONFLICT OF INTERESTS; AGENCY REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

No member, official, or employee of the AGENCY shall participate in any decision relating to the CONTRACT which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested.

No member, official, or employee of the AGENCY shall be personally liable to the REDEVELOPER or any successor in interest in the event of any default or breach by the AGENCY or for any amount which may become due to the REDEVELOPER or successor or on any obligations hereunder.

##### SECTION 802. PROVISIONS NOT MERGED WITH DEED.

Except as otherwise provided in this CONTRACT, none of the provisions of the CONTRACT are intended to or shall be merged by reason of any deed transferring title to the PROPERTY from the AGENCY to the REDEVELOPER or any successor in interest, and, except as otherwise provided in this CONTRACT any such deed shall not be deemed to affect or impair the provisions and covenants of the CONTRACT.

##### SECTION 803. TITLES OF ARTICLES AND SECTIONS.

Titles and Captions of the several parts, Articles and Sections of the CONTRACT are inserted for convenience reference only and shall be disregarded in construing or interpreting CONTRACT provisions.

##### SECTION 804. SINGULAR AND PLURAL USAGE; GENDER.

Whenever the sense of this CONTRACT so requires, the use herein of the singular number shall be deemed to include the plural; the masculine gender shall be deemed to include the feminine or neuter gender; and the neuter gender shall be deemed to include the masculine or feminine gender.

##### SECTION 805. LAW APPLICABLE.

This CONTRACT and SECURITY DOCUMENTS shall be construed in accordance with and governed by the laws of the DISTRICT.

SECTION 806 ENTIRE AGREEMENT.

This CONTRACT and SECURITY DOCUMENTS constitute the entire agreement and understanding between the parties and supersedes all prior agreements and understandings related to the subject matter hereof.

SECTION 807 SAVINGS CLAUSES.

In case any provision (or any part of any provision) contained in this CONTRACT shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision (or remaining part of the affected provision) of this CONTRACT, but this CONTRACT shall be construed as if such invalid, illegal or unenforceable provision (or part thereof) had never been contained herein but only to the extent it is invalid, illegal, or unenforceable. If the provisions of this CONTRACT are construed or held by a court of competent jurisdiction to violate any applicable rule against perpetuities, rule against restraints on alienation or similar rule, then settlement shall occur on the later to occur of twenty-one (21) years after the date of death of the last to die of the now-living descendants of (i) William Clinton, President of the United States, and (ii) Norman M. Glasgow, Sr.

SECTION 808 COUNTERPARTS.

This CONTRACT and SECURITY DOCUMENTS may be executed in any number of counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.

SECTION 809 SOIL CHARACTERISTICS.

The characteristic of the soil of Lot 833, as described by the Soil Conservation Service of the U.S. Department of Agriculture in the Soil Survey of the District of Columbia published in 1976, and as shown on the Soil Maps of the District of Columbia at the back of that publication, is "Urban Land - Not Rated." For further information, REDEVELOPER may contact a soil testing laboratory, the District of Columbia Department of Environmental Services or the Soil Conservation Service of the U.S. Department of Agriculture.

IN TESTIMONY WHEREOF, the AGENCY, in accordance with the provisions of a duly adopted resolution of its Board of Directors, has caused these presents to be signed in its corporate name by Duryea C. Smith, its Secretary, attested by Jose C. Nuñez, its Assistant Secretary, and its corporate seal to be hereunto affixed and does hereby constitute and appoint said Duryea C. Smith, its true and lawful Attorney-in-Fact for it and in its name to acknowledge and deliver these presents as its act and deed; and

IN TESTIMONY WHEREOF, the REDEVELOPER, in accordance with the provisions of a duly adopted resolution of its Board of Directors, has caused these presents to be signed in its name by \_\_\_\_\_ its President, attested by \_\_\_\_\_, its \_\_\_\_\_, and its Corporate Seal to be hereunto affixed and does hereby constitute and appoint \_\_\_\_\_ its true and lawful Attorneys-in-Fact for it and in its name to acknowledge and deliver these presents as its act and deed.

DISTRICT OF COLUMBIA  
REDEVELOPMENT LAND AGENCY

ATTEST

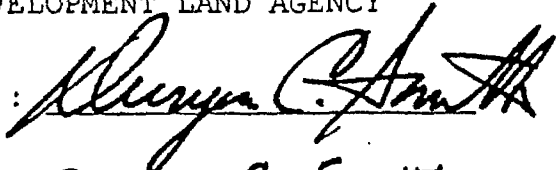
By :



Name : JOSE C. NUNEZ  
Title: ~~MANAGER~~  
ASSISTANT SECRETARY

(SEAL)

By :



Name : Duryea C. Smith  
Title: Secretary

APPROVED AS TO LEGAL  
SUFFICIENCY



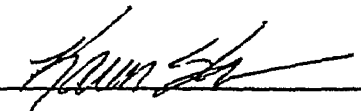
Assistant Corporation  
Counsel

488 A.R. ASSOCIATES LIMITED  
PARTNERSHIP, a District of  
Columbia limited partnership

ATTEST

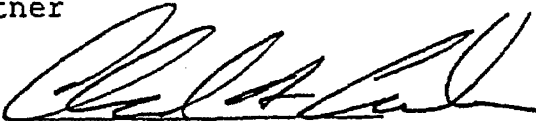
By: 488 A.R. I, INC., a  
District of Columbia  
corporation, general  
partner

By:



Name:  
Title:

By:



Name: Charles A. Cavalier, III  
Title: Vice President and Secretary

UNITED STATES OF AMERICA )  
 ) ss.  
DISTRICT OF COLUMBIA )

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 11TH day of March, 1998, A.D.

  
Notary Public

My Commission Expires:

Henry P. Jones  
My Commemorative Page

UNITED STATES OF AMERICA )  
 ) ss.  
DISTRICT OF COLUMBIA )

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 4<sup>th</sup> day of March, 1988, A.D.

Notary Public

Notary Public, District of Columbia  
Commission Expires Nov. 14, 1934

EXHIBIT A

(Description of Property)

(To Be Replaced Upon Issuance of Title Commitment)

A certain air space known as Parcel 7 Air Rights in the Downtown Urban Renewal Area, the air space above Lots 833 and 842 in Square 488, containing approximately 20,000 square feet of surface area, situated within the boundaries of the PROJECT AREA. The property shall not include that portion of the air space over the east portion of Lot 833 which is the open driveway space from grade level to an elevation equal to that of the roof of the existing firehouse structure.