BEFORE THE MAYOR'S AGENT FOR THE
DISTRICT OF COLUMBIA HISTORIC LANDMARK AND
HISTORIC DISTRICT PROTECTION ACT

In the Matter of:
APPLICATION OF POTOMAC PLACE II LLC for the Demolition of the Pool Canopy at 800 4th Street, Southwest, Square 540, Lot 106

DECISION AND ORDER

BACKGROUND

This case came before Rohulamin Quander, Senior Administrative Judge, and the designated Mayor’s Agent for Historic Preservation (the “Mayor’s Agent”), on May 23, 2003 upon the request for an administrative hearing filed by Potomac Place II LLC, an affiliate of Monument Realty LLC (collectively “Monument” or “Applicant”) for a raze permit to demolish a pavilion located at 800 4th Street, S.W. (the “Property”). The pavilion, which is also referred to as the pool canopy, is a contributing element to the Capitol Park Apartments, an individual landmark listed in the D.C. Inventory of Historic Sites.

The hearing was convened on May 23, 2003, and conducted pursuant to the provisions of Title 10 of the District of Columbia Municipal Regulations (DCMR). The record was closed at the conclusion of the hearing, except to allow certain post-hearing submissions to be filed by June 27, 2003.

The partial demolition application was previously considered by the Historic Preservation Review Board (“HPRB” or “the Board”) on April 24, 2003 pursuant to D.C. Code Ann. § 6-1104(b). On May 22, 2003, the HPRB considered in concept the proposal to relocate the canopy in HPA No. 03-383. The HPRB recommended against issuance of the raze permit and relocation of the canopy as inconsistent with the purposes of the preservation law. The raze permit application came before the Mayor’s Agent for consideration pursuant to D.C. Code § 6-1104(a).

Whayne S. Quin, Esquire, and Carolyn Brown, Esquire, of Holland & Knight LLP appeared as legal counsel on behalf of the Applicant.

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1 Potomac Place II LLC is the successor in interest to Potomac Place Land LLC, the applicant for the raze permit.
Richard Boone, Esquire, of Jones Day Reavis & Pogue, appeared as legal counsel on behalf of the D.C. Preservation League ("DCPL") and the Committee of 100 on the Federal City, as parties in opposition. By letter dated October 2, 2003, the Committee of 100 withdrew its appearance and is no longer a party to this proceeding.

Bruce Brennan, Esquire, Assistant Corporation Counsel, presented legal argument in opposition to the application on behalf of the HPRB and the City. David Maloney, of the HPRB staff and an expert architectural historian, testified on behalf of the City against the application.

The Applicant, the City (through its Historic Preservation Office ("HPO")) and DCPL subsequently reached a settlement agreement, which would allow for the demolition of the pavilion in exchange for certain historic preservation mitigation measures. Pursuant to that agreement, the Applicant commits to dismantle, relocate and reinstall, at its own expense, the mural located within the pavilion to a location to be determined in consultation with HPO and DCPL, and to use all reasonable efforts to protect the mural from damage during the dismantling, relocation, and reinstallation process. The settlement provides that the parties shall agree upon a location no later than October 15, 2003, and Monument shall relocate the mural to the new location within 90 days of the substantial completion of the Phase 3 building, currently under construction on the Property.

Further pursuant to the settlement agreement, the Applicant commits to pay $450,000.00 into an escrow fund for the benefit of HPO and DCPL. The escrow amount and any interest accruing thereon shall subsequently be transferred to either a reserve fund within the District of Columbia accounts (but which shall not be a part of the general reserves of the District) or into a separate trust account to be under the administration of the National Trust for Historic Preservation (the "National Trust") and reviewed by the HPO for the benefit of the preservation parties and for effectuation of the purposes of the settlement agreement. The transferred balance shall be used to fund historic preservation projects and/or related historic preservation efforts in the District of Columbia benefiting the public generally, but with a specific priority or preference for the following:

(a) an interpretative presentation of the Capitol Park Apartments landmark site at a location accessible to public viewing by District residents;

(b) projects or educational activities in or about Southwest, and/or in or about historic mid-20th century buildings in the District of Columbia;

(c) landscaping improvements or other efforts to enhance or expand public, historic open space in or about Southwest; and/or

(d) costs and fees incurred in conjunction with creating and establishing this reserve fund or administering specific projects from the fund.

Based on the particular circumstances of the application described below -- chiefly the fact that the pavilion no longer contributes significantly to the historic character of the site, given the construction that has already occurred and will occur regardless of how the Mayor’s Agent disposes of the application -- and in light of the mitigation of the effects of the new construction...
and potential demolition of the pavilion that the parties have undertaken to perform, the parties agree that issuance of a raze permit for the pavilion is consistent with the purposes of the Act, and have stipulated to the Findings of Fact and Conclusions of Law set forth below.

The Mayor’s Agent construes the settlement agreement submitted by the parties as an amendment to the application, and considers the application as so amended.

Based on the record taken as a whole, including the evidence submitted and testimony given at the hearing, the Mayor’s Agent concludes that the application for the demolition of the pavilion is necessary in the public interest as consistent with the purposes of the preservation law and therefore should be **GRANTED**.

**ISSUES**

The issues in this proceeding were (1) whether the Mayor’s Agent has jurisdiction pursuant to D.C. Code § 6-1104 to hear this matter in light of questions raised on the timeliness of its designation decision for Capitol Park Apartments; (2) whether the building code requires Monument to obtain a raze permit to demolish the pavilion; and (3) if a raze permit is required, whether the Applicant has sustained its burden of proof that the issuance of the raze permit is necessary in the public interest as consistent with the purposes of the D.C. Historic Landmark and Historic District Preservation Act (“the Historic Preservation Act” or “the Act”) or to construct a project of special merit. By letter to the Mayor's Agent dated September 24, 2003, the Applicant withdrew its "special merit" claim.

Because the Applicant has, by submission of the joint proposed findings of fact and conclusions of law, implicitly waived its procedural objections listed as items (1) and (2) above, the Mayor’s Agent shall address only the substantive claim of consistency with the purposes of the Act.

**FINDINGS OF FACT**

The Mayor’s Agent, having received and reviewed all of the evidence presented in this matter, as well as the provisions of the settlement agreement which is attached hereto, now makes the following Findings of Fact:

**History of the Case**

A. **Background**

Monument is the owner of the property located at 800 4th Street, S.W., Washington, D.C. (Square 540, Lot 106). The site originally contained a nine-story apartment building fronting on 4th Street with a large open area located at the rear that contained a pavilion, reflecting pool, flagstone patio, and a large amount of open space used by the community for recreational purposes. However, the reflecting pool and patio have been removed and only the pavilion remains. A partially constructed apartment building now occupies most of what was open space.
The apartment building is a major component of Monument’s planned redevelopment of the site, which it has divided into three phases. Phase I consists of a planned upgrade of the heating, ventilation and air conditioning (“HVAC”) system and replacement of windows and doors in the existing apartment building. Phase II consists of construction of a new, six-story apartment building covering the north end of the Property where the open area and a parking lot were once located. Phase III consists of the construction of another new, six-story apartment building covering the south end of the property where the pavilion and another parking lot are presently located. A below-grade garage connecting the Phase II and Phase III projects is also planned as part of the Phase II development. The central portion of the garage will be topped by a plaza connecting the two new wings and existing building.

B. Building Permits for the Proposed Development

In June 2002, Monument submitted a building permit application to DCRA’s Building and Land Regulation Administration (“BLRA”) for its proposed addition. Building plans were submitted with the application, including architectural, structural, electrical, mechanical, and plumbing drawings.

Three permits relevant to this litigation were subsequently issued to Monument for its redevelopment project at 800 4th Street, S.W., which are summarized as follows:

<table>
<thead>
<tr>
<th>Permit No.</th>
<th>Issuance Date</th>
<th>Description Listed on Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>B425502</td>
<td>13 Dec 2002</td>
<td>Site clearance, install sediment and erosion control measures; see approved plans for DC File Job #927A. (The “Site Clearance Permit”)</td>
</tr>
<tr>
<td>B448124</td>
<td>9 Jan 2003</td>
<td>(2) 6 story apartment building; separate elec., plumb., &amp; mech. Installation permits are required. (The “New Construction Permit”)</td>
</tr>
<tr>
<td>B448145</td>
<td>10 Jan 2003</td>
<td>Sheeting and Shoring bracing syst[m] on private property only, as per attached superior foundation plans. (The “Sheeting and Shoring Permit”)</td>
</tr>
</tbody>
</table>

C. The Historic Landmark Application

On January 22, 2003, the D.C. Historic Preservation Office accepted for filing an application submitted by DCPL to designate the Property as an historic landmark (the “Landmark Application”) pursuant to the Act. DCPL requested designation of entire Lot 106, all improvements thereon and its associated open space.

D.C. Code § 6-1102(6) defines a historic landmark as follows:

(6) “Historic landmark” means a building, structure, object, or feature, and its site, or a site:

* * *
(B) Listed in the District of Columbia’s inventory of historic sites, or for which application for such listing is pending with the Historic Preservation Review Board, provided that, the Review Board shall schedule a hearing on the application within 90 days of one having been filed, and will determine within 90 days of receipt of an application pursuant to §§ 6-1104 to 6-1108 whether to list such property as a historic landmark pursuant to the procedures contained in §6-1103(c)(5).


D. The First Stop Work Order

On January 27, 2003, DCRA issued a Stop Work Order (the “First Stop Work Order”), directing Monument to immediately cease all construction work on the Property. The BLRA Administrator informed Monument orally that the Stop Work Order had been imposed because a Landmark Application had been filed. BLRA further stated orally that, under the D.C. Construction Codes, the Site Clearance Permit did not authorize removal of the pavilion.

The pavilion is a 100-foot long open-air shelter consisting of a series of concrete barrel vaults supported by steel columns, nine of which rest in a former reflecting pool. A mural is incorporated into the pavilion and there are remnants of a flagstone patio adjacent to the pool. The pavilion, reflecting pool, mural and remaining patio are located primarily on the southern portion of the site where the Phase III addition is to be constructed and part of the underground garage and plaza of Phase II.

On January 29, 2003, Monument applied for a raze permit to remove the canopy structure. On January 30, 2003, the District lifted the Stop Work Order for all permits but stated that the pavilion “cannot be razed, demolished or modified with the previously issued permits.” Because the Landmark Application was on file, DCRA refused to issue the raze permit until the HPRB acted on the Landmark Application.

E. Proceedings Before the HPRB

On February 28, 2003, the D.C. Register published a notice that the HPRB would hold a hearing on the Landmark Application on March 27, 2003, in conformance with D.C. Code § 6-1103(c)(3) and 10 DCMR §§ 2615-2624. The hearing was later rescheduled for April 24, 2003. At the conclusion of the hearing on April 24, HPRB voted orally to list the Property in the D.C. Inventory of Historic Sites.

On that same day that it voted to designate the property, the HPRB reviewed the Raze Permit Application pursuant to D.C. Code 6-1104(b). The HPRB voted orally to adopt the recommendation of the HPRB staff to deny the raze permit. The Raze Permit Application was then forwarded to the Mayor’s Agent for consideration pursuant to section 6-1104(a) of the Act.

On April 28, 2003, HPRB issued a written decision designating the Property as an historic landmark (the “Landmark Decision”), which was mailed on May 9, 2003.
On May 22, 2003, Monument returned to the HPRB for consideration of a conceptual plan to relocate the canopy from its current position and incorporate it into the new plaza area that separates the two wings of the addition under construction. The staff recommended against the relocation as inconsistent with the purposes of the Act and the HPRB adopted that recommendation.

On April 25, 2003, one day after the HPRB voted orally to designate the Property, BLRA issued a Stop Work Order (the “Second Stop Work Order”) for all work being conducted in the vicinity of the pavilion structure, stating that demolition and excavation work in the reflecting pool immediately adjacent to the pavilion must be stopped until bracing and shoring plans are submitted to ensure that work being performed in the pool would not cause damage to the pavilion. On May 8, 2003, Monument filed the requested bracing plans for the pavilion.

F. Extent of Construction Authorized Under Existing Permits

At the Mayor’s Agent hearing, the parties contested the extent of construction authorized under the New Construction Permit. Monument introduced a letter to record from the BLRA Administrator dated May 22, 2003, stating that BLRA agreed to amend the Stop Work Order to reflect that site clearance work could continue within four feet of the footings located in the reflecting pool.

In a letter dated June 19, 2003, the BLRA further clarified its position that the Applicant could build within four feet of the canopy but that if such a change became permanent, the Applicant would be required to amend the plans associated with the New Construction Permit under section 107.5 of the D.C. Construction Codes. BLRA further stated that such an amendment would be deemed part of the original permit, consistent with that provision of the Construction Codes, and thus would not be referred to HPRB for consideration. The Government adopted this letter as its official position before the Mayor’s Agent.

The key fact in this matter, therefore, is that the Phase III building will be built on the Property regardless of how the Mayor’s Agent rules. If the Mayor’s Agent grants the application, then the pavilion will be razed and the Phase III building will be built where the pavilion once stood. If the Mayor’s Agent denies the application, then the Phase III building will also be built, but it will be “notched”, i.e., a section of the building’s footprint will be cut out and the building will be built around the pavilion. In either case, other features of the original site, including the reflecting pool, stepping stones, flagstone patio and open space, have already been removed as a result of permits issued before the landmark application was filed for the Property. These unique circumstances underlying the raze permit application, together with the mediation measures proffered by the parties, inform the findings below.

DISCUSSION

Pursuant to D.C. Code § 6-1104(e), the Mayor's Agent may authorize the issuance of permits to demolish or partially demolish historic landmarks if the issuance of such permits is necessary in the public interest as consistent with the purposes of the preservation law. D.C. Code § 6-1102(10). With respect to historic landmarks, the purposes of the law are "to retain

With respect to the pavilion, the issue in this case is therefore whether demolition or retention of the pavilion is the best means to encourage the adaptation for current use of the entire landmark property, of which the pavilion is but one component. Regardless of what the optimum protection solution might have been before construction began at this site, the issuance of valid building permits before landmark status was requested for the Property presents only two alternatives: allow the pavilion to remain in situ where it will be enveloped by new construction or allow the pavilion to be demolished.

Under the existing building permits, the Applicant has the right to build to within four feet of the pavilion and the Applicant has stated that it is proceeding with this construction if the application is denied. Accordingly, the pavilion, standing alone, has already lost much of its intended significance as a central feature of a park that once stood on the site. The designation describes this park, stating:

The major built feature of the park is a wading pool and pavilion, surrounded by flagstone walkways and a large, asymmetrically placed flagstone terrace. Brick-paved stepping stones cross the pool and connect to the site grid. Sheltered under the running concrete vaults of the pavilion roof are a raised hearth with sculptural hood and flue, and a small brick equipment enclosure faced on one side by a large polychrome glass mosaic mural of a branching tree, by artist Leo Lionni. The mural and pavilion with its eye-catching vaulted roof are strategically placed to give a view upon entering the apartment building lobby (or indeed from the street before entering the transparent lobby) of a “pavilion in the park” – a time-honored conceit of landscape architectural design.

Designation at 5.

All that remains of the park described in the above-quoted passage is the pavilion. The open space, landscaping, pool, and patio have all given way to new construction. And, once that construction is complete, the pavilion will be lost at the back of the property, hidden behind the wall of a six-story apartment building. Its proximity to the new building and the fact that it will sit at a level that is below grade and, therefore, inaccessible to residents, means that it will also be unusable. Moreover, the mural that is currently within the pavilion, will face toward the new construction and will not be visible to the public, unless it is moved. In short, the pavilion’s significance as a central feature of a park and a gathering place for residents will be forever lost.

The mitigation measures offered by Applicant and the parties in opposition pursuant to their settlement agreement, however, offer remediation consistent with the purposes of the Act. The parties commit to undertake an interpretative presentation of the original Capitol Park Apartments site at a location accessible to public viewing by District residents, which will convey the historic design and significance of the landmark property. The parties offer to undertake landscaping improvements or other efforts to enhance or expand public, historic open space in or about Southwest, which will retain some of the public open space features of Capitol Park Apartments that have already been lost.
In these circumstances, the Mayor’s Agent concludes that demolition of the pavilion is consistent with the purposes of the Act. Accordingly, the Applicant should be issued all permits necessary to remove the pavilion.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Mayor’s Agent now makes the following Conclusions of Law:

1. Pursuant to D.C. Code § 6-1104(e), before the Mayor or his designated agent may issue a permit to demolish a historic landmark or a building in a historic district, the Mayor shall find that issuance of the permit is necessary in the public interest, or that failure to issue a permit shall result in unreasonable economic hardship to the owner.

2. The term “necessary in the public interest” means consistent with the purposes of the Act as set forth in section 6-1101(b) or to allow a project of “special merit.” See D.C. Code Ann., § 6-1102(10).

3. The phrase “consistent with the purposes of the Act” means, with respect to landmarks, “to retain and enhance historic landmarks in the District of Columbia and to encourage their adaptation for current use; and to encourage the restoration of historic landmarks.” D.C. Code Ann. § 6-1101(b)(2).

4. The Mayor’s Agent concludes that Monument has sustained its burden of proof that the granting of the raze permit to demolish the pavilion is consistent with the Historic Landmark and Historic District Protection Act.

ORDER

Accordingly, it is this 14th day of October, 2003,

ORDERED, that H.P.A. Application No. 03-04 and 03-08 for demolition of the Pavilion at 800 4th Street, S.W., be, and the same is hereby, GRANTED; and

FURTHER ORDERED that, pursuant to D.C. Code Ann. § 6-1112(a), this Order shall take effect fifteen (15) days after issuance.

ROHULAMIN QUANDER,
SENIOR ADMINISTRATIVE JUDGE, D.C.,
AND
MAYOR’S AGENT FOR HISTORIC PRESERVATION

In Re Application of Potomac Place LLC, 800 4th Street, S.W., HPA No. 03-xxx
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of October 2003, I mailed by electronic or regular first-class mail, or otherwise caused to be delivered by D.C. Government interoffice mail, the foregoing Decision and Order to the following persons:

Whayne S. Quin, Esq.  Andrew Altman, Director
Carolyn Brown, Esq.  D.C. Office of Planning
Holland & Knight LLP  801 North Capitol Street, N.E., 4th Floor
2099 Pennsylvania Avenue, N.W., Suite 100  Washington, D.C. 20002
Washington, D.C. 20007  andrew.altman@dc.gov
Counsel for Potomac Place II LLC
whayne.quin@hklaw.com

David Maloney, Deputy Program Manager  Bruce Brennan, Esq.
Historic Preservation Office  Office of the Corporation Counsel
D.C. Office of Planning  One Judiciary Square
801 North capitol Street, N.E., 3rd Floor  441 4th Street, N.W. – 1060N
Washington, D.C. 20002  Washington, D.C. 20001
david.maloney@dc.gov  bruce.brennan@dc.gov

Richard W. Boone, Jr., Esq.  Lisa Burcham,
Edwin L. Fountain, Esq.  Historic Preservation Office
Jones Day  D.C. Office of Planning
51 Louisiana Avenue, N.W.  801 North capitol Street, N.E., 3rd Floor
Washington, D.C. 20001-2113  Washington, D.C. 20002
Counsel for D.C. Preservation League  lisa.burcham@dc.gov
elfountain@jonesday.com

F. Russell Hines  D.C. Preservation League
Monument Realty, LLC  401 F Street, N.W., Suite #324
1155 Connecticut Avenue, N.W., 7th Floor  Washington, D.C. 20006
Washington, D.C. 20036  info@dcpreservation.org
rhines@monumentalrealty.com

Janette Anderson  Certifying Officer
Associate Director for Technical Services
Georgetown University Law Center Library
anderjan@law.georgetown.edu

In Re Application of Potomac Place LLC, 800 4th Street, S.W., HPA No. 03-xxx
AGREEMENT

THIS AGREEMENT made this 10th day of October, 2003 by and among Potomac Place II LLC, successor in interest to Potomac Place Land LLC, and an affiliate of Monument Realty LLC (collectively "Monument"), the D.C. Preservation League ("DCPL"), and the District of Columbia Historic Preservation Office ("HPO").

Recitals

WHEREAS, Monument applied to the District of Columbia Building and Land Regulation Administration ("BLRA") for a raze permit to remove a structure known as the canopy or pavilion at its property located at 800 4th Street, S.W., Washington, D.C. (Square 540, Lot 106) (the "Property"), which is listed as an individual landmark in the District of Columbia Inventory of Historic Sites; and

WHEREAS, the raze permit application is currently pending before the Mayor's Agent for Historic Preservation ("Mayor's Agent") after a hearing held on May 23, 2003, pursuant to the District of Columbia Historic Landmark and Historic District Protection Act, D.C. Code Ann. § 6-1104 (2001 ed.); and

WHEREAS, C100 and DCPL appeared before the Mayor's Agent as parties in opposition to the raze application; and

WHEREAS, the HPO appeared before the Mayor's Agent in opposition to the raze permit application consistent with the recommendation of denial made by the District of Columbia Historic Preservation Review Board ("HPRB");

WHEREAS C100 has subsequently withdrawn its appearance before the Mayor’s Agent as a party in opposition to the application by letter dated October 2, 2003; and

WHEREAS, Monument, DCPL, and HPO wish to settle the contested issues raised before the Mayor's Agent in accordance with the terms of this Agreement.

NOW THEREFORE, for the mutual promises, covenants and agreements set forth herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Monument, DCPL and HPO (the "Parties"), individually and collectively, hereby agree as follows:

Terms of Agreement

1. Relocation of the Mural. Monument shall dismantle, relocate and reinstall, at its own expense, the mural located within the canopy to a location to be determined in consultation with the SHPO, and DCPL (the

In Re Application of Potomac Place LLC, 800 4th Street, S.W., HPA No. 03-xxx
"Preservation Parties"). Monument shall use all reasonable efforts to protect the mural from damage during the dismantling, relocation, and reinstallation process. Monument shall not be under any obligation to save or protect any other portion of the canopy. The Parties shall agree upon a location no later than October 31, 2003, and Monument shall relocate the mural to the new location within 90 days of the substantial completion of the Phase 3 building, currently under construction on the Property, but only in the event the Mayor's Agent issues an order consistent with this Agreement (the "Mayor's Agent Order").

2. **Establishment of Escrow Fund.** Except as provided for herein, Monument shall pay $450,000.00 into an escrow account for the benefit of the Preservation Parties within twenty days after issuance of the Mayor's Agent Order if such order is issued before October 15, 2003, but such amount shall be reduced to $400,000.00 if such order is issued after that date but before October 31, 2003. This Agreement shall terminate if no Mayor's Agent Order is issued before October 31, 2003, unless such date is extended by mutual agreement of the Parties in writing. The Parties shall jointly request that the Mayor's Agent Order shall be delivered to each Party or its attorney by electronic mail, fax or hand delivery by the date prescribed herein to the addresses listed in Paragraph 7 herein. The escrow funds shall be transferred in their entirety either to any special reserve fund created for use by the HPO or to the National Trust upon written notification to the escrow agent by Trust and HPO representatives of the establishment of the accounts at the Trust referenced in this Agreement to effectuate the terms of this Agreement.

3. **Release and Use of Escrow Funds.** The escrow amount and any interest accruing shall be transferred to either a reserve fund within the District of Columbia accounts (but which shall not be a part of the general reserves of the District) or into a separate trust account to be under the administration of the National Trust for Historic Preservation (the "National Trust") and reviewed by the HPO for the benefit of the Preservation Parties and for effectuation of the purposes set out below. The entity receiving the funds shall maintain a record of expenditures using accepted accounting methods, with such records made available for inspection upon reasonable request. The transferred balance shall be used to fund historic preservation projects and/or related historic preservation efforts in the District of Columbia benefiting the public generally, but with a specific priority or preference for the following:

(a) an interpretative presentation of the landmark site at a location or locations accessible to public viewing by District residents;

(b) projects or educational activities in or about Southwest, and/or in or about mid-20th

In Re Application of Potomac Place LLC, 800 4th Street, S.W., HPA No. 03-xxx
century buildings in the District of Columbia;

(c) landscaping improvements or other efforts to enhance or expand public, historic open space in or about Southwest; and/or

(d) costs and fees incurred in conjunction with creating and establishing this reserve fund or administering specific projects from the fund.

4. Demolition of Canopy and Consensus Order. The Parties shall submit to the Mayor’s Agent a Stipulation of Settlement and Proposed Consensus Order, with appropriate findings of fact and conclusions of law, in support of the raze permit application and which incorporates the terms of this Agreement. The Parties shall claim that issuance of the raze permit for the canopy is necessary in the public interest as consistent with the purposes of the Act in light of the relocation of the mural, the circumstances of this case, and the creation of a historic preservation fund for the purposes enumerated in paragraph 3 herein. Should there be any further proceedings on this matter before the Mayor's Agent, the Parties further agree to support a resolution of this matter in compliance with the terms of this Agreement. The Parties agree to waive any defenses that may exist or be asserted based on the timeliness of any final action by the Mayor's Agent with respect to the raze permit application in this matter.

5. Dismissal of Pending Actions. DCPL shall dismiss with prejudice the lawsuit now pending in the Superior Court of the District of Columbia in Civil Action No. 03-3362, and Monument shall dismiss its appeal now pending before the Board of Appeals and Review in Case No. BAR 03-6021BP, upon the following conditions:

(a) issuance of a decision by the Mayor’s Agent ordering issuance of the raze permit or otherwise permitting demolition of the canopy consistent with the terms of this Agreement, either on the grounds that the demolition is consistent with the purposes of the Act or necessary to allow a project of special merit; and

(b) deposit by Monument of the escrow funds as set forth in Paragraph 2 above.

Monument and DCPL shall dismiss their respective pending actions within one business day after the two above-written conditions are met.

6. The HPO agrees to undertake expeditiously the necessary investigation and documentation required for a review and determination of whether it is appropriate or advisable to remove Capitol Park/Potomac Place Apartments from the D.C Inventory of Historic Sites on the basis of a loss of integrity or such other grounds.
as such research and investigation may determine, and to complete such form as may be required for such effort, should it determine such action is appropriate. HPO shall have sole discretion in determining whether to proceed in recommending such removal from the Inventory, and such determination shall be completed in time to present a removal recommendation, if any, to the HPRB for its December 2003 meeting.

7. Notice. Any notice required under this Agreement shall be made as follows:

If to Monument:  F. Russell Hines
Monument Realty LLC
1155 Connecticut Ave., NW
7th Floor
Washington, DC 20036
Telephone: (202) 777-2000
Fax: (202) 777-2020
E-mail: rhines@monumentrealty.com

With Copy to: Whayne S. Quin, Esquire
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, D.C. 20006
Telephone: (202) 955-3000
Fax: (202) 955-5564
E-mail: whayne.quin@hklaw.com

If to DCPL:
D.C. Preservation League
401 F Street, N.W., Suite 324
Washington, D.C. 20001
Attn: President
Telephone: (202) 783-5144
Fax: (202) 783-5596
E-mail: info@dcpreservation.org

With copy to: Edwin L. Fountain, Esquire
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Telephone: (202) 879-3939
Fax: (202) 626-1700
E-mail: elfountain@jonesday.com

If to HPO: Lisa Burcham
Associate Director
D.C. Historic Preservation Office
801 North Capitol St., N.E.
Suite 3000
Washington, D.C. 20001
Telephone: (202) 442-8800
Fax: (202) 535-2497
E-mail: lisa.burcham@dc.gov

With copy to: Bruce Brennan, Esq.
Office of Corporation Counsel
One Judiciary Square
9. **Authorization of Parties.** The undersigned individuals represent and warrant that they are duly authorized to execute this Agreement on behalf of their respective entities.

10. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

11. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the undersigned Parties, and on their respective assigns, successors, affiliates, officers, directors, employees, and agents.

[Signature Pages Follow]
IN WITNESS WHEREOF, Potomac Place II, LLC, has caused this Agreement to be executed, acknowledged and delivered as of the day and year first above written.

POTOMAC PLACE II LLC

By: MR Potomac Place LLC, its Managing Member
By: MR Potomac Holdings LLC, its Administrative Managing Member
By: Monument Residential LLC, its Sole Member
By: F. Russell Hines
    a Managing Member

WITNESS: _____________________________
IN WITNESS WHEREOF, D.C. Preservation League, has caused this Agreement to be executed, acknowledged and delivered as of the day and year first above written.

WITNESS: D.C. PRESERVATION LEAGUE

_______________________   By: _____________________________________
Printed Name: ____________________________
Its: _____________________________________
IN WITNESS WHEREOF, the District of Columbia Historic Preservation Office, has caused this Agreement to be executed, acknowledged and delivered as of the day and year first above written.

WITNESS: D.C. HISTORIC PRESERVATION OFFICE

_______________________   By: _____________________________________
Printed Name: ____________________________
Its: _____________________________________

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