

AIR RIGHTS LEASE

Montgomery County, Maryland - Lessor

Housing Opportunities Commission of  
Montgomery County - Lessor

June 23, 1995

Binder 1 of 2

AIR RIGHT LEASE

Montgomery County, Maryland - Lessor

Housing Opportunities Commission of Montgomery County - Lessee

June 23, 1995

Binder 1 of 2

1. Right of Entry
2. Air Rights Lease and exhibits



RIGHT OF ENTRY

THIS RIGHT OF ENTRY dated this 14<sup>th</sup> day of JUNE, 1995, by and between the HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY ("HOC") and MONTGOMERY COUNTY, MARYLAND (the "County").

RECITALS

A. The County is the owner of a certain parcel of land in Bethesda, Maryland, bounded by Woodmont Avenue, Old Georgetown Road and Edgemoor Lane on which it has constructed a parking structure containing approximately one thousand one hundred sixty (1,160) spaces together with the basement and support system for the garage and the buildings planned to be constructed in the air rights above (the "Garage Project").

B. The Garage Project was designed and constructed in anticipation of the construction of a mixed use development with residential, retail, office and recreational uses in the air rights above.

C. HOC is a housing authority authorized to construct, operate and maintain a residential facility and certain limited commercial uses and associated open spaces in the air rights above the Garage Project (the "Residential/Retail Building").

D. The County and HOC have negotiated an Air Rights Lease (the "Air Rights Lease") authorizing HOC to commence construction and operate the Residential/Retail Building which is anticipated to



be executed by both parties no later than June 30, 1995.

E. HOC issued its Housing Development Bonds 1995 Issue A, Issue B and Issue C (the "Bonds") guaranteed by the County pursuant to Section 20-37 et seq. of the Montgomery County Code 1984, as amended. The closing for the sale of the Bonds was completed on June 14, 1995. The Bonds provide the funds to make a loan in the amount of Thirty-Three Million Six Hundred Eighty-Four Thousand Dollars (\$33,684,000.00) (the "Loan").

F. HOC has entered into a contract for construction (the "Construction Contract") with OMNI Construction Company (the "Contractor") for the construction of the Residential/Retail Building.

G. Under the terms of the Construction Contract, HOC is required to provide notice to proceed ("Notice to Proceed") to the Contractor no later than June 15, 1995 to avoid certain losses and additional expenses.

H. It is anticipated that HOC will complete the execution of the Notes, Leasehold Deeds of Trust and related financing documents (collectively, the "Loan Documents") no later than July 7, 1995. The completion of the closing on the Loan will be indicated by recordation among the Land Records of Montgomery County, Maryland, of the appropriate Loan Documents.

I. The parties desire to permit HOC to issue the Notice to

Proceed to the Contractor and commence construction of the Residential/Retail Building by June 15, 1995, on the assumption that the Air Rights Lease will be executed and the Loan Documents will be recorded as anticipated. However, the parties further recognize the necessity to protect the County in the event that the Loan Documents are not recorded within the time frame anticipated. Accordingly, the parties have provided for this Right of Entry granting HOC a limited right of access to the Garage Project and the air rights above through June 30, 1995.

NOW, THEREFORE, in consideration of the mutual premises herein stated, the parties agree as follows:

1. Upon execution of this Right of Entry, HOC is granted a right of ingress and egress in, to, upon and over the Garage Project and the Existing Structure for the purposes of commencing construction of the Residential/Retail Building. This Right of Entry shall be construed to include authorization for access by HOC, the Contractor and its subcontractors. Construction shall be limited to that work identified in the Lessee Plans and Specifications and the value of the work to be performed under the Construction Contract pursuant to the terms of this Right of Entry shall not exceed One Million Dollar (\$1,000,000.00). It is anticipated that the general scope of the work to be completed between June 15 and June 30, 1995 (the "Expiration Date") shall

consist of the location of sediment control facilities, construction staging and trailer and storage sites and initial location of connections between the Existing Structure and the Residential/Retail Building as further described on Exhibit A attached hereto.

2. Prior to gaining entry hereunder to commence work on the Residential/Retail Building, HOC shall provide the insurance certificates for the coverages identified in Section 9.01 of the Air Rights Lease to the County. Because of the limited time and scope of work permitted by this Right of Entry, the insurance certificate for the Project Policy as identified in the Air Rights Lease shall not be required.

3. The provisions with respect to indemnifications of the parties and liability of the parties as identified in the Air Rights Lease shall apply during this Right of Entry. ~~Copies of~~ ~~these provisions are attached hereto and made a part hereof.~~ CHH  
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4. In the event that the Air Rights Lease is not executed by the Expiration Date, this Right of Entry shall terminate and HOC, its Contractors, and subcontractors shall terminate their occupancy and possession of those areas of the Garage Project and Existing Structure necessary for construction of the Residential/Retail Building. HOC shall return the Garage Project and Existing Structure to substantially the condition which existed prior to the

commencement of the Right of Entry at its cost. The Expiration Date may be extended by the parties by mutual agreement in writing.

5. This Right of Entry shall not be amended, altered or modified except by an instrument in writing duly executed by the parties hereto.

6. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Air Rights Lease.

7. The rights and obligations of the parties hereto and any claims or disputes relating thereto shall be governed by and construed in accordance with the laws of the State of Maryland.

HOUSING OPPORTUNITIES COMMISSION  
OF MONTGOMERY COUNTY

BY: [Signature]

MONTGOMERY COUNTY, MARYLAND

BY: [Signature]  
Gordon A. Aoyagi, Senior Assistant  
Chief Administrative Officer

Recommended by:

[Signature] 6/14/95  
Graham Norton  
Director, Department of Transportation

APPROVED AS TO FORM AND LEGALITY.

OFFICE OF COUNTY ATTORNEY

BY: [Signature]  
DATE: 6-14-95

EXHIBIT A

ITEMIZATION OF WORK

1. Layout and survey
2. Start concrete work, including drilling of dowels
3. Modification of Crane Pad and installation of Crane
4. Install Temporary Power
5. Install Soil Erosion Control
6. Mobilization including installation of trailers
7. Street work including moving and installing fences and traffic control signage.



AIR RIGHTS LEASE

BY AND BETWEEN MONTGOMERY COUNTY, MARYLAND (LESSOR)

AND

HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY (LESSEE)

DATED: JUNE 22, 1995

METROPOLITAN PLACE  
AIR RIGHTS LEASE

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K	Form of Income and Expense Report
L	Investment Agreement
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N	Open Space System
O	Garage Completion Items
P	List of Construction Drawings and Specifications: Office Project
Q	List of Construction Drawings and Specifications: Bridges
R	Collateral Assignment of Plans and Agreements
S	Office Building MOU
T	PILOT Agreement
U	Development Budget
V	Non-Disturbance and Attornment Agreement
W	Memorandum of Lease

## AIR RIGHTS LEASE

THIS AIR RIGHTS LEASE dated this 23 day of June, 1995, by and between MONTGOMERY COUNTY, MARYLAND, a political subdivision of the State of Maryland (hereinafter, together with its successors and assigns called "Lessor") and the HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY, a housing authority established under the provisions of the Article 44A of the Annotated Code of Maryland (hereinafter, together with its successors and committed assigns called "Lessee")

### RECITALS

(1) WHEREAS, the Lessor is the owner of that certain parcel of land in Bethesda, Maryland, bounded by Woodmont Avenue, Old Georgetown Road and Edgemoor Lane in the central business district of Bethesda, Maryland, known as Lot 16 Block 12 of the Edgemoor Subdivision as shown on Plat 16519 Book 144 of the Land Records of Montgomery County, Maryland, a copy of which is attached hereto as Exhibit A (the "Land");

(2) WHEREAS the Lessor has caused to be constructed on the Land the structure shown on drawings attached hereto as Exhibits B-1 through B-8 (the "Existing Structure") consisting of four (4) parking levels, one (1) above grade parking level (the "Old Georgetown Road Level" as shown on Exhibit B-3) and one (1) partially above grade parking level (the "Edgemoor Lane Level") containing approximately one thousand one hundred sixty (1,160) spaces together with the basement and support system for the garage and the buildings planned to be constructed in the air rights above;

(3) WHEREAS, the Existing Structure was designed and constructed in anticipation of the construction of a mixed use development with residential, retail, office and recreational uses in the air rights above the Existing Structure;

(4) WHEREAS, the Montgomery County Planning Board has issued opinions approving amendments to the project plan (the "Project Plan Opinion") and the detailed site plan (the "Site Plan Opinion") which contemplate the development of a three hundred eight (308) unit residential community, a County office building (with a day care facility including a playground which is to made available for the use of the general public), retail space (including approximately 1,610 gross square feet located in the office day

care building), open space including a plaza and pedestrian walkway system connecting two pedestrian bridges, the upgrading and completion of all of the sidewalks around the Existing Structure, a loading dock serving the entire development, and the modification and completion of the Existing Structure, all as more particularly described herein and in the Project Plan Opinion and Site Plan Opinion, attached hereto as Exhibit C and D respectively;

(5) WHEREAS, the Lessor, or its designee, will retain those portions of the Existing Structure designated "Garage Property" on Exhibits E-1 through E-6 (hereinafter referred to as the "Garage Property" as more particularly described herein) and, in accordance with the terms of this Air Rights Lease, to maintain and operate a public parking garage (the "Garage") therein;

(6) WHEREAS, the Lessor, or its designee, will retain the portions of the air rights above the Existing Structure shown in cross section on Exhibit F-1 consisting of the portions of the Old Georgetown Road level designated "Office Building" on Exhibit F-2 and all of the area above the Plaza level within the areas designated "Office Building" and "Playlot" on Exhibit F-3 (the "Office Property") and, in accordance with the terms of this Air Rights Lease, will construct the office building in the air rights above the Old Georgetown Road level of the Existing Structure, together with the portions of the sidewalk adjacent to the office building and the Playlot on the Plaza level (the "Office Project") as provided in Article IV hereof;

(7) WHEREAS, Lessee, as a housing authority is authorized to construct, operate and maintain the residential facility and limited commercial uses and associated open spaces; and

(8) WHEREAS, the Lessor desires to lease to the Lessee the Old Georgetown Road level of the Existing Structure, portions of the Land, and the portions of the air rights above the Garage Property required to develop and operate the foregoing improvements described in the following paragraph (collectively the "Demised Premises", which term is more specifically defined herein);

(9) WHEREAS, the Lessee desires to lease the Demised Premises for purposes of developing and operating the residential community, the retail space, the open space, except the Playlot, the pedestrian walkway system, except the pedestrian bridges, the portions of the sidewalk around the Existing Structure abutting the residential area and open space, modifying the streets surrounding the Existing Structure; completing portions of the Garage Property;



and completing and operating the Retail Space, the Service Corridor and the Loading Dock located in the office building (collectively the "Lessee Development", as more specifically defined in Article IV;

(10) WHEREAS, simultaneously with the execution of this Air Rights Lease, the parties have executed a Reciprocal Easement Agreement creating easements over the Demised Premises, the Garage Property and the Office Property (as hereinafter defined) to benefit the construction, operation and maintenance of the Lessee Development, the Office Project and the Garage Property and creating certain obligations with respect to the sharing by the Lessee and the Lessor of the cost of maintenance and operation of certain facilities used in common by the Office Project, the Garage Property and the Lessee Improvements (the "Reciprocal Easement Agreement"); and

(11) WHEREAS, to facilitate the coordinated development of the Lessee Development and the Office Project, the Lessee has entered into a memorandum of understanding with the Montgomery County Department of Facilities and Services to, among other things, arrange for the preparation of plans, secure a construction contract for the construction of the Office Project and provide for the coordination of development of the Office Project and the Lessee Development, all as more particularly described herein. (the "Office Building Memorandum of Understanding")

NOW, THEREFORE, for and in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth:

#### ARTICLE I DEFINITIONS

"Affordable Units" shall have the meaning set forth in Section 6.04(b).

"Alteration" shall have the meaning set forth in Section 7.04.

"Additional Parking MOU" shall have the meaning set forth in Section 2.01(c).

"Architect/Engineer" shall have the meaning set forth in Section 4.07.

"Architectural Contract" shall have the meaning set forth in Section 4.07.

"Asset Management Fee" shall have the meaning set forth in Section 3.06(b)(2).

"Bridges" shall have the meaning set forth in Section 4.04(a).

"Business Day" shall have the meaning set forth in Section 26.20.

"Change Order" shall have the meaning set forth in Section 4.09.

"Commencement Date" shall have the meaning set forth in Section 2.03.

"Condominium" shall have the meaning set forth in Section 8.08(a).

"Condominium Documents" shall have the meaning set forth in Section 8.08(a).

"Construction Contract" shall have the meaning set forth in Section 4.07.

"Construction Support Consultant" shall have the meaning set forth in Section 4.07.

"Construction Support Contract" shall have the meaning set forth in Section 4.07.

"Contractor" shall have the meaning set forth in Section 4.07.

"Conveyance Date" shall have the meaning set forth in Section 13.01.

"County" shall mean Montgomery County as a governmental entity.

"Debt Service" shall have the meaning set forth in Section 3.06(b)(7).

"Default" shall have the meaning set forth in Section 18.01.

"Demised Premises" shall have the meaning set forth in Recital (8) and Section 2.01(a).

"Development Budget" shall have the meaning set forth in

Section 8.02(a)(2).

"Development Costs" shall have the meaning set forth in Section 8.01(b).

"Environmental Law" shall have the meaning set forth in Section 22.01(c).

"Existing Structure" shall have the meaning set forth in Recital (2).

"Event of Default" shall have the meaning set forth in Section 18.01.

"Force Majeure" shall have the meaning set forth in Section 18.10.

"Garage Completion Items" shall have the meaning set forth in Section 4.01(e).

"Garage" shall have the meaning set forth in Recital (5) and Section 2.01(b).

"Garage Property" shall have the meaning set forth in Recital (5).

"Hazardous Substance" shall have the meaning set forth in Section 22.01(c).

"HOC Financing Fee" shall have the meaning set forth in Section 8.01(b).

"Housing Opportunities Commission Investment" shall have the meaning set forth in Section 3.06(b)(8).

"Impositions" shall have the meaning set forth in Section 5.01(a).

"Index Rate" shall have the meaning set forth in Section 18.12.

"Investment Agreement" shall have the meaning set forth in Section 3.06(b)(6).

"Land" shall have the meaning set forth in Recital (1).

"Leasehold" shall have the meaning set forth in Section 8.02(a)(2).

"Leasehold Mortgage" shall have the meaning set forth in Section 8.02(a)(2).

"Leasehold Mortgagee" shall have the meaning set forth in Section 8.02(a)(2).

"Lessee" shall have the meaning set forth in the first paragraph of this Lease.

"Lessee Development" shall have the meaning set forth in Recital (9) and Section 4.01.

"Lessee Improvements" shall have the meaning set forth in Section 4.01(f).

"Lessee Parking Area" shall have the meaning set forth in Section 4.01(e).

"Lessee Plans and Specifications" shall have the meaning set forth in Section 4.01.

"Lessor" shall have the meaning set forth in the first paragraph of this Lease.

"Loading Dock" shall have the meaning set forth in Section 4.01(d).

"Major Default" shall have the meaning set forth in Section 18.02.

"MPDU" shall have the meaning set forth in Section 6.04(b).

"Material Deviation" shall have the meaning set forth in Section 4.09.

"Montgomery County" means Montgomery County, Maryland, a political subdivision of the State of Maryland.

"Montgomery County Investment" shall have the meaning set forth in Section 3.06(b)(6).

"Net Operating Income" shall have the meaning set forth in Section 3.06(b)(3).

"Net Parking Revenue" shall mean all income received by Lessee for its operation of the Lessee Parking Area less seventeen percent (17%) subject to adjustment every five (5) years on the anniversary date of the first distribution of Remaining Cash Flow pursuant to §306(c) as necessary to maintain the relationship between parking income and operating expenses.

"Non-Reserved Capital Expenditures" shall have the meaning set forth in Section 3.06(b).

"Office Building Memorandum of Understanding" shall have the meaning set forth in Recital (11) of the Preamble.

"Office Plans and Specifications" shall have the meaning set forth in Section 4.02.

"Office Project" shall have the meaning set forth in Recital (6) of the Preamble.

"Office Property" shall have the meaning set forth in Recital (6) of the Preamble.

"Non-Reserved Capital Expenditures" shall have the meaning set forth in Section 3.06(b)(5).

"Office Plans and Specifications" shall have the meaning set forth in Section 4.02.

"Operating Expenses" shall have the meaning set forth in Section 3.06(b)(2).

"Operating Income" shall have the meaning set forth in Section 3.06(b)(1).

"Partnership" shall have the meaning set forth in Section 8.08(a).

"Pedestrian System" shall have the meaning set forth in Section 4.01(b).

"Permitted Encumbrances" shall have the meaning set forth in Section 2.01(a).

"PILOT Agreement" shall have the meaning set forth in Section 5.01(a).

"Playlot" shall have the meaning set forth in Section 4.02(b).

"Plaza" shall have the meaning set forth in Section 4.01(b).

"Prior Use" shall have the meaning set forth in Section 13.02(a).

"Prime Rate" shall have the meaning set forth in Section 18.12.

"Project Plan Opinion" shall have the meaning set forth in Recital (3).

"Property" shall have the meaning set forth in Section 24.01(e).

"Property Management Agreement" shall have the meaning set forth in Section 4.07.

"Property Manager" shall have the meaning set forth in Section 4.07.

"Reciprocal Easement Agreement" shall have the meaning set forth in Recital (10) and Section 2.04.

"Remaining Cash Flow" shall have the meaning set forth in Sections 3.06(a).

"Rent" shall have the meaning set forth in Section 3.01.

"Reports" shall have the meaning set forth in Section 15.01(i).

"Required Reserve Contributions" shall have the meaning set forth in Section 3.06(b)(4).

"Residential Parking" shall have the meaning set forth in Section 2.01(c).

"Residential/Retail Building" shall have the meaning set forth in Section 4.01(a).

"Restoration" shall have the meaning set forth in Section 12.02.

"Retail Space" shall have the meaning set forth in Section

4.01(d).

"Scheduled Completion Date" shall have the meaning set forth in Section 3.02.

"Service Corridor" shall have the meaning set forth in Section 4.01(d).

"Sidewalks" shall have the meaning set forth in Section 4.01(c).

"Site Plan Opinion" shall have the meaning set for in Recital (4).

"Street Improvements" shall have the meaning set forth in Section 4.01(f).

"Substantial Alteration" shall have the meaning set forth in Section 7.04.

"Substantial Completion" shall have the meaning set forth in Section 4.08(a).

"Substantially Completed" shall have the meaning set forth in Section 4.08(a).

"Water Plaza" shall have the meaning set forth in Section 4.01(b).

"Weighted Average County Yield" shall mean the weighted average rate of return expressed as a percentage on Lessor's investment portfolio during a given one (1) year period.

"Working Capital Reserve Fund" shall have the meaning set forth in Section 3.06(b)(4).

## ARTICLE II GRANT AND PREMISES; HABENDUM AND TERM

Section 2.01(a) Demised Premises. For and in consideration of the rents, covenants and agreements herein contained, Lessor does hereby lease, rent, let and demise to Lessee, and Lessee does hereby take, accept and hire from Lessor, upon and subject to the conditions herein contained, the following (hereinafter collectively referred to as the "Demised Premises": (i) the portion of the Land designated "Demised Premises" on Exhibit G-1 and more

particularly described on Exhibits G-1-A, G-1-B and G-1-C, (ii) the portions of Existing Structure between the floor and ceiling of the Old Georgetown Road level of the Existing Structure within the area designated "Air Rights" and between the elevations shown on the cross-section drawing attached as Exhibit G-2-A and the drawing in plan attached as Exhibit G-2-B and more particularly described on Exhibits G-2-C, G-2-D, and G-2-E, (iii) all of the air rights owned by Lessor above the areas of the Plaza and the Old Georgetown Road levels of the Existing Structure within the areas designated "Demised Premises" and above the elevations shown on the cross-section drawing attached as Exhibits G-3-A and the drawings in plan attached as Exhibits G-3-B, through D and more particularly described on Exhibits G-4-A through G-4-I; and (iv) all of the Existing Structure built within the area shown as the Demised Premises on Exhibit G-3-D including the Edgemoor Lane level floor, the Old Georgetown Road level deck and the columns supporting such deck.

TOGETHER WITH a right to support the Lessee Development as more particularly described in the Reciprocal Easement Agreement;

TOGETHER WITH the right to encroach on the street right-of-way as shown on Exhibits G-5, A & B to permit the construction, maintenance and operation of the balconies, cornices and building walls of the Lessee Development;

SUBJECT, HOWEVER, to liens, if any, for taxes, assessments, and other governmental charges on or affecting the Demised Premises not yet due or payable and those easements, covenants and restrictions shown on Exhibit H attached hereto and made a part hereof to the extent that the same are in force or effect, hereinafter referred to as the "Permitted Encumbrances".

2.01(b) Garage Property. Lessor shall retain those portions of the Edgemoor Lane Level and all of the P-1 through P-5 levels of the Existing Structure with the areas designated "Garage Property" as shown on the cross-section drawing attached as Exhibit E-1 and within the boundaries of the areas shown on the drawings in plan attached as Exhibits E-2 - E-6 (said property collectively being hereinafter referred to as the "Garage Property"). For so long as the lease is in effect, the Lessor shall use the Garage Property to operate a public parking facility (hereinafter referred to as the "Garage") which shall make parking spaces available at all times to the tenants, employees, invitees and visitors to the improvements built on the Demised Premises subject to applicable laws, ordinances and regulations. Such facility shall remain open twenty-



four (24) hours a day, every day of the year subject only to reasonable requirements for maintenance and repair.

2.01(c). Additional Parking. For so long as this Lease is in effect, the Lessor shall make available to Lessee approximately 66 additional parking spaces (the "Residential Parking") on the Edgemoor Lane and P-1, P-2, P-3 and P-4 levels of the Garage pursuant to the terms of an agreement between Lessee and Lessor (the "Additional Parking MOU") attached hereto and made a part hereof as Exhibit I.

2.01(d) Office Project. Lessor shall retain the portion of the air rights above the Edgemoor Lane level of the Existing Structure within the area designated "Office Building" on the cross-section drawing attached as Exhibit F-1 and within the area designated "Office Building" and "Playlot" on the drawings in plan attached as Exhibit F-2 and F-3 and cause to be developed therein an office building containing approximately twenty thousand (20,000) square feet, together with the area designated "Playlot" on Exhibit F-3. The Lessor, or its designee, shall provide occupants of the Lessee Development and their invitees and the general public reasonable access to the Playlot in accordance with the terms of the Reciprocal Easement Agreement to be executed by the parties simultaneously with this Lease as hereinafter provided.

Section 2.02 Marketable Title The leasehold interest in the Demised Premises will be marketable and good of record and in fact insurable by a title company of Lessee's selection free and clear of all liens, encumbrances, leases, tenancies, covenants, conditions, restrictions, rights-of-way, easements and other matters affecting title excepting only the Permitted Encumbrances.

Section 2.03. Habendum and Term. TO HAVE AND TO HOLD the Demised Premises, subject to the Permitted Encumbrances and the provisions hereof, for a term commencing at 12:00 noon on the 23 day of June, 1995, (the "Commencement Date") and expiring at 12:00 noon on the day before the date which is the ninety-ninth (99th) anniversary of the date of Substantial Completion of the Lessee Improvements unless this Lease is sooner terminated.

Section 2.04. Reciprocal Easements. Concurrently with the execution and delivery of this Lease, Lessor and Lessee shall enter into the Reciprocal Easement Agreement, in the form of Exhibit J attached hereto, which Reciprocal Easement Agreement shall be duly recorded by Lessor at its expense, if any, among the Land Records

of Montgomery County, Maryland. The easements granted in the Reciprocal Easement Agreement (except for temporary easements granted therein) shall be for terms coextensive with this Lease, except as otherwise provided in the Reciprocal Easement Agreement.

Section 2.05. Memorandum of Lease. Simultaneously with the execution and delivery hereof, Lessor and Lessee have executed, acknowledged and delivered duplicate originals of an instrument, in recordable form, which will constitute a Memorandum of Lease in the form of Exhibit W (the "Memorandum of Lease"), and Lessor shall cause the same to be recorded among the Land Records of Montgomery County, Maryland, at the expense, if any, of Lessee.

### ARTICLE III RENT

Section 3.01. Rent. Rent shall be paid as provided in Section 3.05.

Section 3.02. Scheduled Completion. The "Scheduled Completion Date" shall mean the date which is twenty-four (24) months after the date hereof subject to extension on a day to day basis by reason of Force Majeure but in no event later than three (3) years after the date hereof.

Section 3.03. [deleted]

Section 3.04. Medium and Place of Payment. All installments of Rent and all other payments required hereunder to be made by Lessee to Lessor shall be paid in such United States coin or currency as shall, at the time of payment, be legal tender for the payment of public and private debts. All such payments shall be made at Lessor's offices at Executive Office Building, 101 Monroe Street, Rockville, Maryland 20850, Attention: Director of Department of Transportation, or at such other place as Lessor may from time to time designate by written notice to Lessee.

Section 3.05. Rent Absolutely Net. It is the purpose and intent of Lessor and Lessee that there shall be no minimum payment of Rent. The Rent, and other sums payable to Lessor shall be only be payable from Remaining Cash Flow as provided in Section 3.06 without abatement, set off or deduction. Lessor shall not be expected or required to pay any charge, assessment or Imposition, or be under any obligation or liability hereunder except as herein expressly set forth, and all costs, expenses and obligations of any kind relating to the possession and maintenance of the Demised

Premises and the construction, operation, occupancy, and maintenance of the Lessee Improvements, including all alterations, repairs, reconstruction and replacements as hereinafter provided, which may arise or become due during the term hereof shall be paid by Lessee. Lessor shall pay all such charges, assessments, and Impositions imposed on or against the Garage and Office Project, and its share of any Imposition imposed against the Land in proportion to the relative assessed values of their respective improvements, taking into account the remaining term of this Lease and the value of Lessor's reversionary interest in the Lessee Improvements. Notwithstanding the foregoing, Lessor shall be required to pay for (i) all utilities and services used by the Garage and Office Projects and (ii) except as otherwise set forth herein, the costs of all repairs and other workmanship provided to the Garage and Office Project.

Section 3.06. Distribution of Remaining Cash Flow.

3.06(a) Remaining Cash Flow shall be calculated by applying the following formulas (the terms of which are defined in Section 3.06(b)) with each item listed in the formula being fully paid before the payment of any subsequent item in the respective formulas:

$$OI - OE = NOI$$

Where: OI means Operating Income

OE means Operating Expenses

NOI means Net Operating Income

and

$$NOI - DS - RRC - NRCE - [HOI and MCI] = RCF$$

Where: RRC means Required Reserve Contributions

NRCE means Non-Reserved Capital Expenditures

DS means Debt Service

MCI means Montgomery County Investment

HOI means Housing Opportunities Commission Investment

RCF means Remaining Cash Flow

3.06(b) As used in this Lease, the following terms shall have the meanings ascribed to them below:

(1) "Operating Income" shall mean any and all amounts actually received by Lessee with respect to the Demised Premises from any source whatsoever related to the use, occupancy, management, leasing, or operation of the Demised Premises and the Lessee Development or any component thereof during the period in

question, including, without limitation, (a) rents received with respect to the Demised Premises and the Lessee Development including any parking spaces in the Garage made available to Lessee pursuant to the Additional Parking MOU (b) rent loss, business interruption and other similar insurance proceeds, and (c) any returns or refunds to Lessee of Impositions previously paid by Lessee excluding refunds of Development Costs or of any amount previously deducted as a Non-Reserved Capital Expenditure, (d) proceeds received from insurance recoveries for damages or loss to the Demised Premises and the Lessee Development or awards of condemnation proceeds for taking of any of the Demised Premises and the Lessee Improvements not required to be used to replace or repair damaged property or property taken by condemnation but excluding: (1) all loan proceeds, and all equity or capital contributions to the Lessee to the extent required to pay Development Costs or transferred to reserves authorized by this Lease, and (2) all deposits (and any interest earned thereon) made by tenants, subtenants or others accepting or agreeing to occupy space in the Demised Premises as security for the performance of the provisions of the lease or other agreement pursuant to which such right of occupancy is given, except when and to the extent such deposit or interest is applied as rental or prepayment of rental or is otherwise determined by Lessee to belong to or be forfeited to Lessee.

(2) "Operating Expenses" shall mean any and all amounts actually paid by Lessee with respect to the use, occupancy, management, restoration, repair (unless such repair is reimbursed by insurance proceeds or condemnation proceeds), leasing or operation of the Demised Premises, the Lessee Development, and any parking spaces in the Garage Property made available to Lessee pursuant to the Additional Parking MOU, including, administrative supplies, telephone, utility, water and sewer, Impositions not included in the PILOT Agreement, trash removal, legal, audit, license, advertising, leasing and maintenance costs, payments made to Lessor by Lessee pursuant to the Additional Parking MOU, property management fees, leasing commissions, a fee to Lessee as set forth on Exhibit K to compensate it for (i) the cost of oversight of the property manager, (ii) the cost of preparation of periodic reports to Lessor, (iii) administration of the relationship between the parties, and (iv) overall oversight of the Demised Premises and the Lessee Development and the parties' interests therein not to exceed one percent (1%) of Operating Income (the "Asset Management Fee"), all to the extent they are ordinary and customary for first-class buildings of a similar nature including, without limitation, the categories of expenses

listed under "Operating Expenses" on Exhibit K. The expense of operations of the Plaza, the Water Plaza, Pedestrian System and Loading Dock operated by Lessee as identified in the Reciprocal Easement Agreement are to be accounted for separately by Lessee and any expenses charged to the Lessee under the terms of the Reciprocal Easement Agreement shall also be included in Operating Expenses.

(3) "Net Operating Income" shall mean, for any period, Operating Income for such period minus Operating Expenses for such period.

(4) "Required Reserve Contributions" shall mean any and all amounts paid into any replacement or operating reserve, to the extent that such contributions do not exceed levels which would be customary for first-class buildings of a similar nature in the Bethesda-Chevy Chase market area and any interest accrued thereon to the extent such interest is retained or reinvested in such reserves; provided, however, that the term "Required Reserve Contributions" shall not include (i) any amounts which are included in the Development Budget or any other amount from time to time included in Development Costs, or (ii) any contributions to reserves funded from a transaction described in Section 8.02. It is understood that in the event the funds borrowed pursuant to §8.02 hereof exceed the uses listed in the Development Budget, the excess proceeds shall be used first, to fund up to One Million Dollars (\$1,000,000.00) of the Required Reserve Contributions which the Lessee may establish. Any additional savings in Development Costs shall be used to create a "Working Capital Reserve Fund", not to exceed Two Million Dollars (\$2,000,000.00) to be used to pay operating deficits, capital improvements or for replacements and any balance shall be used in accordance with the Leasehold Mortgage.

(5) "Non-Reserved Capital Expenditures" shall mean any amounts actually paid for capital expenses in the nature of repairs, replacements or restorations (and not in the nature of an Alteration or Substantial Alteration) to the extent such amounts are ordinary and customary for first-class buildings of a similar nature except (i) to the extent such amounts are paid through withdrawal of Required Reserve Contributions, (ii) to the extent such amounts are reimbursed to Lessee through insurance proceeds, recovery from a tenant or a party responsible for the damage, condemnation awards, or other sources (and to the extent any such reimbursement is made after Non-Reserved Capital Expenditures are computed for any period, such reimbursement shall be considered

Operating Income for the period in which it is received), or (iii) to the extent such amounts are paid through withdrawal of contributions to reserves described in clause (ii) of the definition of "Required Reserve Contributions."

(6) "Debt Service" shall mean principal and interest payments on, and any related costs required to be incurred by Lessee in obtaining, (i) loans or other sources of financing (e.g., equity contributions) obtained by Lessee which meet the requirements of Section 8.02 of this Lease, and (ii) other loans made to the Lessee for the purpose of funding project expenses which are not expressly prohibited by this Lease and which are not otherwise excluded by this paragraph. To be included as "Debt Service," the interest rate on any loan shall not exceed a rate which would be arrived at by arm's-length negotiations with independent third parties for loans on reasonable terms similar to the loans at issue. To the extent the interest rate on such loans exceeds these rate limitations, the excess will not be includable in the term "Debt Service" or otherwise deducted from Net Operating Income in determining Remaining Cash Flow.

(7) "Montgomery County Investment" shall mean the amount, if any, not to exceed Two Million Dollars (\$2,000,000.00) which the Lessor agrees to provide to Lessee for the payment of construction overruns, Operating Expenses and Debt Service on the Leasehold Mortgage in accordance with the provisions of the Investment Deposit Agreement (the "Investment Agreement") (Exhibit L). The contribution to payment of construction cost overruns shall be made only after the Lessee advances funds for such purpose in accordance with §3.06(b)(8).

(8) "Housing Opportunities Commission Investment" shall mean the funds utilized by Lessee for construction of the Lessee Development as a result of unanticipated costs all as described herein. As much as fifty percent (50%) of the HOC Financing Fee as defined herein will be made available to pay unanticipated construction costs of the Improvements before application of any of the Montgomery County Investment. Thereafter, any unexpended portion of the aforesaid fifty percent (50%) of the HOC Financing Fee available after payment of any construction costs for the Lessee Development shall be utilized to pay Operating Expenses and Debt Service as needed in an equal proportion to the contribution from the Montgomery County Investment. All funds paid by Lessee pursuant to this §3.06(b)(8) shall be referred to as the Housing Opportunities Commission Investment (the "Housing Opportunities Commission Investment"). Both the Montgomery County Investment and

the Housing Opportunities Commission Investment shall be repaid, with interest at the Weighted Average County Yield, in the proportion each party's contribution is to the total of the funds contributed by both parties (that is, if HOC has contributed \$100 and the County has contributed \$200 the monies shall be distributed one-third (1/3) to HOC and two-third (2/3) to the County until the \$300, with interest, is repaid).

(9) "Remaining Cash Flow" shall be determined by use of the formula in Section 3.06(a).

3.06(c) From and after the Commencement Date, Lessee shall make the following distribution of Remaining Cash Flow First, to Lessor until Lessor has received an amount equal to the payment made pursuant to the PILOT Agreement plus Net Parking Revenue; and Second, fifty percent (50%) to Lessee and fifty percent (50%) to Lessor; provided however in any year in which the foregoing formula would result in the Lessee receiving no distribution or the amount Lessee is to receive pursuant to this second distribution above is less than twenty-five percent (25%) of the amount distributed to Lessor under the first distribution above, the distribution of Remaining Cash Flow shall be distributed eighty percent (80%) to Lessor and twenty percent (20%) to Lessee.

3.06(d) Remaining Cash Flow shall be distributed in accordance with § 3.06(c) no later than the 15th day of September following the close of the fiscal year in which there is Remaining Cash Flow.

3.06(e) The payments to Lessor after application to the PILOT Agreement shall be considered Rent in recognition of i) Lessor's contribution for the Existing Structure necessary to create the Lessee Improvements, (ii) the value of the rights granted to Lessee hereunder.

#### Section 3.07. Financial Reports.

3.07(a) Commencing with the first full month after Substantial Completion, Lessee shall provide to Lessor a monthly financial report detailing income and expenses for the Residential/Retail Building. Reports of Operating Income and Expenses shall be in a form acceptable to the parties and include the items identified on Exhibit K attached hereto.

3.07(b) Commencing in the year after Substantial Completion of the Lessee Development, on or before September 15 of each year,

Lessee shall deliver to Lessor a detailed audited statement for the prior fiscal year, prepared by an independent certified public accounting firm reasonably acceptable to Lessor. The audited statement shall present fairly the Operating Income, Operating Expenses, Net Operating Income and the distributions therefrom and Remaining Cash Flow. Where the audited statement shows positive Remaining Cash Flow, the statement shall also contain a schedule showing the distribution of such items required by §3.06.

Section 3.08. (Deleted)

Section 3.09. Right to Challenge Remaining Cash Flow. Lessor shall have the right to challenge the calculation of Remaining Cash Flow or the calculation thereof within one (1) year following receipt of the certified statements delivered pursuant to Section 3.07(b). Lessee promptly shall pay to Lessor any underpayment discovered as a result of any review and inspection of Lessee's books and records pursuant to Section 26.21 hereof or otherwise, together with interest thereon at the Weighted Average County Yield from the date such underpayment should have been made to the date such underpayment is paid. The Weighted Average County Yield shall be determined as of the date any applicable amount under this Lease begins to accrue interest and thereafter shall be adjusted on the first day of each calendar quarter. Lessor shall bear its costs and expenses in undertaking or having undertaken any such review and inspection unless an underpayment is discovered in the amount of ten percent (10%) or more of any Remaining Cash Flow payment made in which event Lessee also shall reimburse Lessor for all such costs and expenses (and the costs and expenses thereof so reimbursed by Lessee shall not be included in Operating Expenses for purposes of determining Remaining Cash Flow or Net Operating Income), within thirty (30) days after Lessor's written demand therefor delivered to Lessee.

Section 3.10. [Deleted]

Section 3.11. [deleted]

Section 3.12. No Release of Obligations. Except to the extent expressly provided in Articles XII, XIII and XIX, no act, happening, event, occurrence or situation during the term of this Lease, whether foreseen or unforeseen, and however extraordinary (including, without limitation, Lessee's failure, refusal or inability for any reason to construct the Lessee Improvements) shall permit Lessee to quit or surrender the Demised Premises or this Lease or shall relieve Lessee from its liability to pay the



Rent payable hereunder, or shall relieve Lessee from any of its other obligations under this Lease, and Lessee waives all rights now or hereafter conferred upon it by law or otherwise to quit or surrender the Demised Premises or this Lease, or any part thereof, or to any abatement, set off, reduction or suspension of the Rent or additional rent payable hereunder on account of any such act, happening, event, occurrence or situation.

ARTICLE IV  
DESIGN, MAINTENANCE CONSTRUCTION AND RECONSTRUCTION OF  
LESSEE DEVELOPMENT, PEDESTRIAN  
BRIDGES AND OFFICE PROJECT

Section 4.01. Construction Drawings and Specifications;  
Lessee Development. The construction drawings and specifications listed on Exhibit M are consistent with the Project Plan Opinion and Site Plan Opinion, and subject to Section 26.22 hereof, are deemed acceptable by Lessor (the "Lessee Plans and Specifications"). The Lessee Plans and Specifications provide for the development of the following improvements (the "Lessee Development"):

4.01(a) the construction of a first-class high-rise residential community containing three hundred and eight (308) rental units with a promenade for the exclusive use of the residential tenants and their guests, designated new residential structures (the "Residential Building") on the plan drawing attached hereto as Exhibit G-3A, including approximately twelve thousand five hundred (12,500) square feet of retail space on the Old Georgetown Road level of the Residential Building and the area designated tenant storage area ("Tenant Storage Area"); and

4.01(b) the completion of an open space system consisting of: (1) the area above the roof of the Old Georgetown Road level of the Existing Structure in the center of the development designated the "Plaza" on Exhibit N-1 attached hereto; (2) the vest pocket park located at street level, at the southwest corner of Old Georgetown Road and Edgemoor Lane, designated the "Water Plaza" on Exhibit N-1 and N-2 (3) a pedestrian system linking the Residential/Retail Building, as hereinafter defined, the Office Project to the Plaza, the Garage, the elevators and stairtowers at the Plaza level, the street level sidewalks at the intersection of Edgemoor Lane and Woodmont Avenue, the Water Plaza, and the pedestrian bridges over Old Georgetown Road and Edgemoor Lane described in Section 4.04 hereof designated the "Pedestrian System" on Exhibit N-1 and N-2;

4.01(c) the upgrading and completion of all of the sidewalks around the exterior of the Existing Structure with the exception of the area around the Office Project (hereinafter the "Sidewalks");

4.01(d) the completion of the portions of the Old Georgetown Road Level of the Office Building designated "Loading Dock" (hereinafter the "Loading Dock"), Retail Space (hereinafter the "Retail Space") and "Service Corridor" (hereinafter the "Service Corridor") the completion of approximately one thousand six hundred and ten (1,610) gross square feet of retail space (the "Retail Space") located at the Old Georgetown Road level of the building designated "Office Building" on Exhibit F-2. The Retail Space and Residential Building shall hereinafter be referred to as Residential/Retail Building;

4.01(e) the modification and/or completion of the portions of the Garage Property and the installation of the equipment or other work listed on Exhibit O (hereinafter the "Garage Completion Items") and the modification and completion of the Old Georgetown Road Level of the Existing Structure (hereinafter the "Lessee Parking Area"). Nothing herein to the contrary shall require Lessee to replace or repair equipment provided by Lessor or to pay for the installation of missing or defective equipment in the Garage necessary for connection to the Garage Completion Items unless required due to the type and/or character of construction or use of the Residential/Retail Building to be built by Lessee ;

4.01(f) the modification of the streets surrounding the Existing Structure (hereinafter the "Street Improvements").

4.01(g) the Residential/Retail Building, the Plaza, the Water Plaza, the Pedestrian System, the Tenant Storage Area, the Service Corridor, the Retail Space, the Lessee Parking Area collectively and the Sidewalk improvements adjacent thereto shall be referred to as the Lessee Improvements (the "Lessee Improvements").

4.02. Construction Drawings and Specifications: Office Project. The construction drawings and specifications listed on Exhibit P are subject to Section 26.22 hereof and are deemed acceptable by Lessee (the "Office Plans and Specifications"). The Office Plans and Specifications provide for the development of the following:

(a) the construction of the three (3) story first class office building containing approximately 19,040 square feet and the

shell of the Loading Dock, the Service Corridor and approximately 1610 gross square feet of retail area as more particularly described in Section 2.01 hereof;

(b) the completion of a small playground located on top of the Existing Structure in the area designated for the "Playlot" on Exhibit N-1 to be maintained by Lessor which will be available for use by residents of the Residential Building pursuant to the Reciprocal Easement Agreement; and

(c) the upgrading and completion of the sidewalk area on Edgemoor Lane adjacent to the Office Project.

Section 4.03. Changes in Office Project Plans and Specifications.

(a) Lessor shall not approve any modification, alteration or deviation from the Office Plans and Specifications without Lessee's consent which (i) is incompatible with the exterior design of the Lessee Development, (ii) interferes with the completion of the Loading Dock, the Service Corridor or the Retail Space within the Office Project, (iii) interferes with the completion of the Lessee Development, or (iv) adversely affects the ability of Lessee to build the Lessee Development in accordance with the Lessee Plans and Specifications.

(b) In the event that the day care facility intended to be built in the Office Project is not completed or is not operated after having been finished, Lessor may notify Lessee in writing pursuant to §26.01 of this Lease to provide for the inclusion of the Playlot in the Demised Premises. Thereafter, the parties shall meet promptly for the purposes of amending this Lease to include the Playlot in the Demised Premises and arrange for operation of the area in accordance with paragraph 3.10 of the Reciprocal Easement Agreement.

Section 4.04. Pedestrian Bridges.

(a) The Lessor shall construct and maintain, during the term of this Lease (i) a pedestrian bridge over Edgemoor Lane and (ii) a pedestrian bridge over Old Georgetown Road connecting the Lessee Improvements in the locations shown on Exhibit N (hereinafter collectively the "Bridges") and in accordance with the plans listed on Exhibit Q;

(b) Lessee has provided the Lessee Plans and Specifications to Lessor which, in particular, are designed to support the Bridges as they connect to the Lessee Development. Likewise, Lessor will provide the plans for construction of the Bridges to Lessee. Neither party shall modify their respective plans without the written consent of the other.

(c) Lessee shall be given the opportunity by Lessor to review the construction drawings for the Bridges.

(d) Lessor shall commence construction of the pedestrian bridge over Old Georgetown Road in a timely manner and shall proceed and at all times continue diligently to prosecute construction in a good and workmanlike manner. Lessor shall use its best efforts to cause the bridge over Old Georgetown Road to be completed contemporaneously with the Lessee Improvements.

#### Section 4.05. Construction of Existing Structure.

4.05(a) The Existing Structure is built as shown on the drawings referred to in the Reciprocal Easement Agreement on Exhibit B.

4.05(b) Changes in Existing Structure Plans and Specifications. Lessor may issue, agree to, or permit additions to, modifications of, departures from, or change orders with respect to, the Existing Structure Plans and Specifications as shown on Exhibit B to the Reciprocal Easement Agreement without the prior written consent of Lessee; provided, however, that the Lessee's consent shall be required for any change which (i) is incompatible with the exterior design of the Lessee Development, (ii) interferes with the completion of the Lessee Development, the Loading Dock, the Service Corridor or the Retail Space, or (iii) adversely affects the ability of Lessee to build the Lessee Development in accordance with the Lessee Plans and Specifications. Lessor shall provide Lessee with written notice of any proposed addition to, modification of, departure from, or change order with respect to the Existing Structure Plans and Specifications requiring Lessee's consent and shall give Lessee ten (10) Business Days after receipt of (i) written notice thereof and (ii) such additional information as Lessor shall reasonably require in order to make its decision. Provided Lessee has complied with Section 26.01 hereof, if Lessee shall not respond to Lessor within such ten (10) Business Day period, Lessee shall be deemed to have consented to the change.

Section 4.06. Obtaining Licenses, Permits and Approvals.

Lessee warrants to Lessor that it has obtained and from and after the date hereof shall, at its sole cost and expense, maintain or cause to be maintained in full force and effect, after issuance, all licenses, permits and approvals required for the construction of the Lessee Development in accordance with the Lessee Plans and Specifications and all applicable federal, state and municipal laws, regulations and ordinances. Following Substantial Completion of the Lessee Development, Lessee shall, maintain, or cause to be maintained in full force and effect, after issuance, all necessary occupancy permits for the Residential/Retail Building and the Old Georgetown Road level of the Existing Structure and the Tenant Storage Area.

Section 4.07. Lessee Improvements Construction Contracts.

Lessor has been provided copies of (i) the agreement (hereinafter the "Construction Support Contract") entered into between the Lessee and Warner Construction Consultants (hereinafter the "Construction Support Consultant") for oversight of the construction of the Lessee Improvements, (ii) the agreement (hereinafter the "Architectural Contract") between Lessee and the Weihe Partnership (hereinafter the "Architect/Engineer") for architectural and engineering services and landscape architecture in connection with the Lessee Development, and (iii) the agreement entered into between Lessee and Legum & Norman Realty, Inc. (the "Property Manager") (hereinafter the "Property Management Agreement") for management services in connection with the Lessee Development all of which are deemed approved by Lessor and will be provided with all amendments thereto by Lessee. Promptly after the execution thereof, Lessor also shall be provided true and complete executed copies of the Construction Contract (hereinafter the "Construction Contract") with the general contractor (hereinafter the "Contractor") for construction of the Lessee Development, all inspection and consulting contracts, and any other material contracts, plans or agreements related to the construction of the Lessee Development. The Construction Support Contract, the Architectural Contract, the Construction Contract, Property Management Agreement, and each such other contract, shall not be terminated (except upon the default of a party thereto), modified or amended after the date of this Lease in any material respect without Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, that, Lessor's consent shall not be required for changes to any such contract, plan, or agreement to the extent such changes relate solely to a change in the Lessee Development which would not require Lessor's consent under Section 4.09 hereof. All of

Lessee's rights under the Construction Support Contract, the Architectural Contract, the Property Management Agreement, the Lessee Plans and Specifications and each such other contract, plan or agreement entered into before or as of the date hereof shall have been assigned to Lessor pursuant to the Collateral Assignment of Plans and Agreements substantially in the form of Exhibit R attached hereto, and the Construction Support Consultant, the Architect/Engineer, the Contractor, and the Property Manager and each such other contract party or preparing party shall have consented in writing to such assignment prior to the execution of this Lease. The Collateral Assignment of Plans and Agreements shall further assign to Lessor Lessee's rights in each other material contract, plan or agreement hereafter entered into or created and related to the construction of the Lessee Development and each such other contract, plan or agreement shall include the consent of the other contract party or the preparing party to such assignment. The Lessor agrees that, so long as no Event of Default exists under this Lease, the rights of Lessor in and to the Construction Support Contract, the Architectural Contract, the Construction Contract, and each such other contract, plan and agreement shall be subordinate to the rights of any Leasehold Mortgagee therein and, in the event any such Leasehold Mortgagee elects to exercise the rights of Lessee in and to such contracts, plans or agreements in connection with a default under any Leasehold Mortgage, Lessor will not assert any conflicting right to exercise such rights so long as no Major Default has occurred and is continuing beyond any cure period provided to any Leasehold Mortgagee hereunder. Lessee hereby assigns to Lessor the right to make a claim on any materials, workmanship, or construction warranty in effect from time to time, and Lessee agrees to execute any instruments reasonably requested by Lessor in furtherance of such assignment; provided, however, that Lessor hereby grants to Lessee an irrevocable non-exclusive license to make a claim on any such warranty so long as no Major Default has occurred and is continuing hereunder. Promptly upon Lessor's request, Lessee will inform Lessor of the time period within which any such warranty claim must be made.

#### Section 4.08. Construction of Lessee Development.

4.08(a) Promptly after execution and recordation of the first Leasehold Mortgage as defined in Section 8.02(a)(2), Lessee, at its sole cost and expense, shall commence construction of the Lessee Development. Lessee shall proceed and at all times continue diligently to prosecute construction and to complete construction of the Lessee Development, the Loading Dock and Retail Space in a

good and workmanlike manner in accordance with the Lessee Plans and Specifications on or before the Scheduled Completion Date. As used in this Agreement, the terms "Substantial Completion" and "Substantially Completed" mean that certificates of occupancy have been issued for at least eighty percent (80%) of the apartment units in the Residential/Retail Building.

4.08(b) Except as otherwise specifically provided in Section 7.01 hereof, Lessee shall promptly correct or repair, or cause to be corrected or repaired, any material deviations from the Lessee Plans and Specifications not waived by Lessor and any defects (latent or patent) in the development, construction, equipping or improvement of the Lessee Development upon learning thereof or upon the written request of Lessor, whichever shall first occur.

Section 4.09 Changes in Lessee Plans and Specifications. Lessee may issue, agree to, or permit additions to, modifications of, departures from, or change orders with respect to, the Lessee Plans and Specifications without the prior written consent of Lessor; provided, however, that the Lessor's consent shall be required for changes constituting material deviations which (a) decrease the number of residential units in the Residential/Retail Building, or (b) decrease the retail space in the Residential/Retail Building by fifteen percent (15%) or more, or (c) adversely affect the easements set forth in the Reciprocal Easement Agreement, (d) are incompatible with the exterior design of the Office Project, interfere with the completion of the Loading Dock, Retail Space or Service Corridor or adversely affect the ability of Lessor to build the County Project in accordance with the County Plans and Specifications, or (e) result in a change in the construction cost portion of the Development Budget in excess of One Hundred Fifty Thousand Dollars (\$150,000.00) for any one item of change (or a series of similar items) or Seven Hundred Fifty Thousand Dollars (\$750,000.00) in the aggregate (the "Material Deviations"). Lessee shall provide Lessor with written notice of any proposed addition to, modification of, departure from, or change order with respect to the Lessee Plans and Specifications requiring Lessor's consent (each a "Change Order"), which notice shall contain a copy of the Change Order, and Lessor shall give Lessee written notice of its granting or withholding of consent thereto within ten (10) Business Days after receipt of (i) written notice thereof and (ii) such additional information as Lessor shall reasonably require in order to make its decision. Provided Lessee has complied with Section 26.01 hereof, if Lessor shall not respond to Lessee within such ten (10) Business Day

period, Lessor shall be deemed to have consented to the Change Order. Lessor's decision shall be based solely upon a review for conformity with the Project Plan Opinion and Site Plan Opinion. Lessor shall have the right at reasonable times and upon reasonable notice to Lessee to review and inspect, at Lessor's own expense, the Demised Premises, the Lessee Improvements, and all records, books and other documentation pertaining to Change Orders. If, as a result of such review and inspection, Lessor determines that the actual change made pursuant to any such Change Order is not consistent with the Change Order consented to (or deemed to have been consented to) by Lessor, one of the following courses of action shall be taken: (i) if the inconsistency is determined to have been caused by the Contractor, Lessee will make all reasonable efforts to have changes made to conform to the Change Order as consented to (or deemed to have been consented to) or obtain another remedy deemed appropriate by the parties or (ii) if the inconsistency or failure to obtain approval is due to a failure by Lessee, the parties shall mutually agree on a suitable remedy and Lessee shall pay any of Lessor's administrative costs associated with any such work.

Section 4.10. Construction of Office Project.

4.10(a) Within a reasonable time after the commencement of construction of the Lessee Development, Lessor, or its designee, shall commence construction of the Office Project and shall proceed and at all times continue diligently to prosecute construction and to complete construction of the Office Project in a good and workmanlike manner in accordance with the Office Project Plans and Specifications

4.10(b) Except as otherwise specifically provided in Section 7.01 hereof, Lessor shall promptly correct or repair, or cause to be corrected or repaired, any material deviations from the Office Project Plans and Specifications not waived by Lessee and any defects (latent or patent) in the development, construction, equipping or improvement of the Office Project upon learning thereof or upon the written request of Lessee, whichever shall first occur.

Section 4.11. Construction Meetings. Lessor will be advised of and be requested to attend all construction meetings, to maintain knowledge of construction status and to assure its input into the work progress.



Section 4.12. Inspection of Existing Structure. Prior to the commencement of construction of the Lessee Development, the parties will cause the Existing Structure to be visually inspected by an engineering firm mutually agreeable to the Lessor and the Lessee to determine any existing visible defects. The cost of the inspection shall be paid equally by the parties hereto. Thereafter, either party shall have the right to perform a similar visual inspection and recording of the Existing Structure the Office Project and/or the Residential/Retail Building after notice to the other.

Section 4.13. Memorandum of Understanding. To facilitate the construction of the Office Project and the coordination of the development of the Office Project and the Lessee Development, the Lessor, through the Montgomery County Department of Facilities and Services, and the Lessee shall execute a Memorandum of Understanding (hereinafter the "Office Building Memorandum of Understanding") attached hereto as Exhibit S.

ARTICLE V  
PAYMENT OF TAXES, ASSESSMENTS,  
UTILITY CHARGES, ETC.

Section 5.01. Impositions.

5.01(a) Pursuant to Article 44A of the Annotated Code of Maryland, as a governmental agency, Lessee is exempt from real estate taxation. Lessee shall promptly enter into an Agreement for Payment in Lieu of Taxes ("PILOT Agreement") (Exhibit T) with Montgomery County as is provided in law providing for subordination of the payment in lieu of taxes to the payment of Operating Expenses, Debt Service, Reserve Contributions, Non-Reserved Capital Expenditures and repayment of both the Montgomery County Investment and Housing Opportunities Commission Investment. The PILOT Agreement shall apply only so long as Lessee is not exempt from real estate taxation. Subject to this exemption, Lessee shall, during the term of this Lease, pay and discharge or cause to be paid and discharged without notice, deduction, set-off or abatement as additional rent, the following items if, as and when the same shall become due and payable: all taxes (including, without limitation, personal property taxes and taxes on rents, leases, or occupancy, if any), general and special assessments, water and sewer rents, rates and charges, charges for utilities, and all other governmental or quasi-governmental charges of any kind or nature whatsoever which shall or may at any time during the term of this Lease be charged, levied, laid, assessed, imposed or otherwise become due and payable in respect of, or become a lien on, any part

of the Demised Premises or the Lessee Improvements, or any appurtenance thereto (all of which items are hereinafter collectively referred to as "Impositions"). In the event that Lessee or its successors and assigns becomes a private taxpaying entity and such Imposition shall include in the basis therefor, without separation, the Garage or Office Property or the Garage or Office Project or any part thereof, then Lessee shall be obligated hereunder to pay only that portion of such Imposition attributable to the Demised Premises or the Lessee Improvements and all appurtenances thereto, such portion to be determined by subtracting from the amount of such Imposition the product obtained by multiplying the amount of such Imposition by a fraction, the numerator of which is the assessed value of the portion of the Garage Property, the Office Property, the Garage or the Office Project included in the basis for such Imposition and the denominator of which is the aggregate assessed value of such portion of the Garage Property, the Office Property, the Garage, the Office Project, the Demised Premises, and the Lessee Improvements and all appurtenances thereto. Lessee shall pay all Impositions directly to the taxing or assessing authority and shall, promptly after receipt of a written request from Lessor therefor, exhibit and deliver to Lessor photocopies of the receipted bills or other evidence reasonably satisfactory to Lessor, establishing that such payments have been made. Lessor shall be responsible for the payment of all Impositions, if any, imposed with respect to the Garage Property, the Office Property, the Garage, the Office Project and, the portion thereof attributable to Lessor's interest in the Land, if any.

5.01(b) If, by law, any Imposition based upon special benefits may, at the option of the taxpayer or ratepayer, be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same (and any accrued interest on the unpaid balance thereof) in installments, and in such event, Lessee shall pay and discharge or cause to be paid and discharged each such installment (including any accrued interest) as and when the same shall become due and payable.

5.01(c) Any Imposition relating to a fiscal period of the relevant taxing authority a part of which period is included within the term of this Lease and a part of which period precedes or follows the term of this Lease, shall (whether or not such Imposition shall be charged, levied, laid, assessed or imposed or otherwise become due and payable in respect of or become a lien upon the Demised Premises, the Lessee Improvements or any

appurtenance thereto during the term of this Lease) be adjusted between Lessor and Lessee as of the inception and/or expiration of such term, so that Lessee shall pay that portion of such Imposition which corresponds to the portion of such fiscal period included in such term, and Lessor shall pay the remainder of such Imposition. Lessee's obligation to pay any portion of any Imposition relating to any time period included in the term of this Lease shall survive the expiration or earlier termination of this Lease. If any Imposition is not clearly allocable to any particular time period within or outside the term of this Lease, such Imposition shall be equitably apportioned between Lessee and Lessor.

Section 5.02. Items Excluded from Impositions. Nothing herein contained shall require Lessee to pay any municipal, county, state, federal or foreign income taxes now or in the future assessed, levied or imposed against Lessor or any municipal, county, state, federal or foreign capital levy, excess profits or corporation franchise or income taxes now or in the future assessed, levied or imposed upon Lessor, or to pay any income, profits or revenue tax, assessment or charge now or in the future imposed upon the rent payable hereunder.

Section 5.03. Lessee's Right to Contest Impositions. With respect to Impositions to which it is not exempt pursuant to Article 44A of the Tax-Property Article of the Annotated Code of Maryland, Lessee may, at its sole cost and expense and by appropriate proceedings brought in good faith and diligently prosecuted, (a) contest the amount or validity, in whole or in part, of any Imposition, (b) contest the allocation of any Imposition among the Land, the Office Project and the Demised Premises or Lessee Improvements, and/or (c) seek a reduction in the valuation of the Lessee Improvements or the Demised Premises as assessed for tax purposes. If Lessee exercises such option, Lessee may defer payment of the applicable amount of the subject Imposition, provided that Lessee (i) deposits with Lessor an amount adequate for the payment of the amount in question, (ii) posts such bond(s) or other collateral as may be required by law, regulation or court order and which shall be effective to stay the effect of any possible tax lien, or (iii) provides to Lessor other security satisfactory to Lessor for the payment thereof.

Section 5.04. Lessor's Right to Contest Certain Impositions. Lessor shall have the right, at its sole cost and expense, to seek a reduction in the valuation of the Demised Premises and/or the Lessee Improvements as assessed for tax purposes if such assessed valuation or valuations shall or may relate or pertain, in whole or

in part, to any period of time subsequent to the termination of this Lease. Lessor shall have the right, at any time and from time to time, at its sole cost and expense, to (a) contest the amount or validity, in whole or in part, of any Imposition, (b) contest the allocation of any Imposition among the Land, the Garage Property, the County Project and the Demised Premises or Lessee Improvements, and/or (c) seek a reduction in the valuation of the Garage Property, the Garage, Office Property and Office Project as assessed for tax purposes (whether or not included in the basis for the valuation of the Demised Premises and/or the Lessee Improvements).

Section 5.05. Lessor's Participation in Contests Initiated by Lessee; Indemnification by Lessee. To the extent permitted by applicable laws, rules and regulations, and provided Lessor shall not be exposed to any liability as a consequence thereof, Lessor shall, if reasonably requested by Lessee, join in any action or proceeding referred to in Section 5.03 (provided Lessor shall not be required to cooperate with Lessee in any effort to reapportion any Imposition among the Land, the Garage Property, the Office Project, and the Demised Premises and/or Lessee Improvements), and Lessee shall indemnify Lessor and save Lessor harmless from and against any and all costs, expenses, claims, losses or damages incurred by Lessor in its capacity as Lessor (and not in its capacity as a governmental entity) arising from or in connection with any such action or proceeding; provided, however, that if the action brought by Lessee challenges the allocation of assessed valuation among the Land, the Garage Property, the Office Project and the Demised Premises or the Lessee Improvements and results in a higher allocation to the Land or the Office Project, Lessee's indemnity obligations shall not require Lessee to pay any higher Imposition payable by Lessor as a result of such reallocation.

Section 5.06. Authority to Make Payments. In the event that any person or entity to whom any sum is directly payable by Lessee under any of the provisions of this Lease shall refuse to accept payment of any such sum from Lessee on the grounds that it can only be accepted from Lessor, Lessee shall thereupon give prompt written notice of such fact to Lessor, and the parties thereafter shall cooperate and use reasonable efforts to assure that the sum payable is paid by Lessee either directly, by reimbursing Lessor, or by some other method with like economic effect.

Section 5.07. Disposition of Refunds. Lessee shall be entitled to receive any refund (whether arising from an action or proceeding under Section 5.03 or otherwise) of any Imposition paid,

directly or indirectly, by Lessee; provided, however, that if any such refund is made with respect to an Imposition subject to proration in accordance with Section 5.01, then such refund shall be prorated between Lessor and Lessee in the same fashion as the Imposition to which such refund relates.

ARTICLE VI  
OWNERSHIP, USE, MAINTENANCE  
AND OPERATION OF GARAGE PROPERTY AND DEMISED PREMISES

Section 6.01. Use of Garage Property. As long as this Lease is in effect, the parking facilities in the Garage Property will be operated as a public parking garage to provide services to its customers including those persons who are tenants, visitors, invitees, customers, and employees of the tenants of the Lessee.

Section 6.02. Ownership of Lessee Improvements. Except as provided in Article VIII during the term of this Lease, the Lessee shall be the owner of the Lessee Improvements.

Section 6.03. Use of Demised Premises in General. During the period of construction of the Lessee Development and until Substantial Completion thereof, Lessee shall use the Demised Premises only for the construction and operation (as permitted by law) of the Lessee Development as set forth in Article IV. As the Lessee Improvements are completed, Lessee shall use, occupy and maintain the Demised Premises and the Lessee Improvements, or cause them to be used, occupied and maintained, in accordance with their original purpose as more particularly hereinafter described, and for no other purpose. The provisions of this Section 6.03 are intended to constitute a covenant not to abandon the Lessee Improvements or the Demised Premises and continuously to operate them in accordance with Sections 6.04, 6.05 and 6.06, subject to vacancies and closings for repairs or renovations which are consistent with market conditions applicable from time to time to first-class building operations in the Bethesda-Chevy Chase market area. Lessee shall in no event use, occupy or maintain, nor shall Lessee knowingly (which term shall include those things which a prudent landlord reasonably should know) allow the Demised Premises or the Lessee Improvements to be used, occupied or maintained, for any unlawful purpose or in violation of any certificate of occupancy covering or affecting the use of the Demised Premises or the Lessee Improvements or any part thereof, or for any purpose which, in law, constitutes a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto. Lessee shall not change the uses hereinafter proscribed

for the Demised Premises or the Lessee Improvements without Lessor's prior written consent which consent may be withheld in Lessor's sole and absolute discretion, including, without limitation, in the event any proposed use is a higher and better use than the use of the Demised Premises permitted herein, a requirement that the Rent be increased to reflect such higher and better use.

Section 6.04(a) Use of Residential/Retail Building. Lessee shall use, operate, occupy and maintain and permit to be used, operated, occupied and maintained the Residential/Retail Building and the remainder of the Lessee Improvements in a manner consistent with the operation of first-class buildings of similar type in the Bethesda-Chevy Chase area, and Lessee shall select sublessees to occupy such components of the Lessee Improvements accordingly.

6.04(b) Up to thirty percent (30%), but no less than twenty percent (20%) of the residential units in the Residential/Retail Building (hereinafter the "Affordable Units") may be leased to households whose incomes average thirty percent (30%) of the median income for the Washington Standard Metropolitan Statistical Area as adjusted for household size as determined by the U.S. Department of Housing and Urban Development at rents, including an allowance for utility costs, which do not exceed thirty percent (30%) of the occupant's annual household income. Included in this portion of the units are those units reserved for moderate-income tenants in compliance with Montgomery County's Moderately Priced Dwelling Unit (hereinafter "MPDU") laws and regulations as in effect from time to time. Units leased under the § 8 Housing Certificate or Voucher Program are excluded from this calculation unless they are leased at rents lower than the market rent currently being charged by Lessee for comparable units and, therefore, will have an adverse affect on Net Operating Income.

Section 6.05. Compliance by Lessee. Throughout the term of this Lease, Lessee shall, at no cost to Lessor, comply with and cause its sublessees and other occupants to comply with all applicable laws, ordinances, orders, rules, regulations and other requirements of all federal, state, county, municipal and other governmental authorities and with all requirements of any organization of insurance underwriters responsible for establishing standards applicable to any insurance coverage required to be maintained under Article IX, except to the extent Lessee can demonstrate to Lessor's satisfaction that its insurance policies will not be jeopardized by any particular activity not in

*Amend*

compliance with the requirements of such organization of insurance underwriters.

Section 6.06. No Waste. Lessee shall not commit or suffer to occur any waste to all or any part of the Demised Premises or to the Lessee Improvements or to any other improvements situated on the Demised Premises or any part thereof, but this shall not be deemed to prevent construction, maintenance, repair, reconstruction, demolition, or alterations within the Demised Premises or the Lessee Improvements in the manner permitted in this Lease.

Section 6.07. Non-Interference. Except as otherwise provided in this Lease, neither party shall unreasonably interfere or obstruct the operation or use of the Office Project, Garage Property, Garage Project, the Demised Premises or the Lessee Improvements.

#### ARTICLE VII Repairs, Maintenance and Alterations

##### Section 7.01. Obligations of Lessor and Lessee.

7.01(a) Except as otherwise provided in the Reciprocal Easement Agreement (the terms of which are incorporated herein by reference) or in this Section 7.01, the Lessor will, at the Lessor's sole cost and expense, operate, maintain and keep in good repair the Existing Structure, not included in the Demised Premises, the Garage, the Office Project, and the Bridges (except the facade of the Garage Property constructed by the Lessee as part of the Lessee Improvements), and the Lessee, throughout the term of this Lease, will operate, maintain, and keep in good repair the Lessee Improvements, the facade of the Garage Property (constructed by Lessee as part of the Lessee Development), the portions of the Existing Structure within the Demised Premises, such other improvements as may hereafter be situated within the Demised Premises, and all sidewalks, stairs, curbs and gutters within the Demised Premises), and shall keep the same in first class order and condition consistent with the standards of first class buildings of similar type in the Bethesda-Chevy Chase area; provided, however, that if the repair work to the facade of the Garage Property is conducted by Lessee, Lessor shall first approve the scope and cost of repair (such approval not to be unreasonably withheld). All repairs or replacements required to be made or furnished by Lessor and Lessee shall be at least equal in quality and workmanship to the original work. However, the foregoing is

not meant to relieve the applicable urban maintenance district or any other governmental or quasi-governmental agency or unit from any maintenance responsibility it might otherwise have with respect to such facilities. Lessee shall maintain the Lessee Improvements in a clean and orderly condition, free of dirt, rubbish, ice, snow and obstructions in accordance with the Reciprocal Easement Agreement. Except as otherwise provided in the Reciprocal Easement Agreement or in this Section 7.01, Lessee shall promptly correct or repair, or cause to be corrected or repaired, any defects (latent or patent) in the development, construction, equipping or improvement of the Lessee Improvements upon learning thereof or upon the written request of Lessor, whichever shall first occur. In making any repairs or replacements or in taking any other actions in connection with the operation, repair or maintenance of the Lessee Improvements, Lessee shall take all reasonable actions required to minimize any necessary disruption of the operations in the Garage and the Office Project, and Lessee and Lessor agree to cooperate in the scheduling and staging of repair and maintenance activities in order to minimize any such disruption. Other than as expressly set forth in Section 7.01(b) or the Reciprocal Easement Agreement, nothing contained in this Lease shall in any way obligate Lessee to perform any repairs or maintenance to any portion of the Garage Property, the Garage, or the Office Project.

7.01(b) The Lessee Improvements have been designed under the Architectural Contract so that the building loads generated by the Lessee Improvements will not exceed the load bearing capacity of the Existing Structure as represented by the architects and engineers hired by Lessor to design the Existing Structure, as confirmed by Lessor's consulting structural engineer or, if the originally designed load bearing capacity of any individual element of the Existing Structure has been exceeded, the Lessee Plans and Specifications provide for the a modification to the Existing Structure in a manner which will assure that the construction will not overload any element of the Existing Structure as modified.

7.01(c) Notwithstanding the provisions of Section 7.01(a), if a condition exists within the Garage, Office Project, Lessee Improvements or the Existing Structure which affects the structural integrity of the Existing Structure, Lessee Improvements or Office Project, such condition shall be repaired as follows:

(i) If the condition is solely the result of the actions or inactions of either party or such party's agents, contractors, representatives, tenants, invitee, licensees, or predecessors in title, such party shall be responsible for



repairing that condition at its sole cost. For example, the Lessor would be responsible for the repair of a column in the Garage Property or Existing Structure if it were damaged solely because a person for whom the Lessor is responsible hereunder crashed his or her car into it. As a further example, Lessee would be responsible for the repair of a column in the Garage Property or Existing Structure if it were damaged solely as a result of Lessee's overloading the column beyond its design capabilities or Lessee's failure to properly maintain a waterproof membrane over the Existing Structure.

(ii) If the condition is caused solely by a defect in the original design or construction of the Existing Structure, Lessor will be responsible for the repair.

(iii) If the cause of the condition cannot be determined, each party shall be responsible for the cost of correcting the condition on its respective property.

(iv) If the condition has more than one contributing cause, the parties shall bear the responsibility for correcting the condition in proportion to the likelihood that the causes attributable to each party, or its agents and assigns contributed to the condition. In the event the parties cannot agree on the proportional allocation of the cost of correcting the condition the parties shall agree on a consulting engineering firm that shall be retained by the parties to make such a determination and paid by the parties in proportion to same proportion as ultimately determined by that consultant for the allocation of the cost of correcting the condition.

7.01(d) All repairs or alterations required by this Air Rights Lease shall be made with reasonable dispatch and in a good and workmanlike manner consistent with the quality of a first-class building of similar type in the Bethesda-Chevy Chase area and in compliance with all permits, approvals, zoning laws and all other applicable laws, rules, regulations and ordinances, and in accordance with the plans and specifications applicable thereto. All such Alterations and Substantial Alterations (except to the extent necessitated by condemnation, catastrophe, acts of God, change in law, or other matters outside the reasonable control of Lessee, any of its subtenants, or any of their respective agents, employees, contractors or invitee) shall be effected in a manner which will not materially interfere with the use or operation of the Garage, Office Project or the Lessee Improvements. To the

extent any repair or alteration is necessitated by any of the events described in the parenthetical clause in the immediately preceding sentence, the party responsible for the repair or alteration shall use its best efforts not to materially interfere with the use or operation of the Garage, Office Project or Lessee Improvements. The party making the repair or replacement shall, at its own cost and expense, provide and maintain, all safety measures which may be required by any governmental authority or which the owner of the Garage, Office Project or the Lessee Improvements may reasonably deem necessary during the making of any repair or alteration. Lessee and Lessor agree to cooperate in the scheduling and staging of activities in connection with any repair or alteration in order to minimize any disruption of the operations in the Garage, Office Project or Lessee Improvements.

Section 7.02. Lessor Not Obligated. Except as otherwise specifically set forth in Section 7.01 or in the Reciprocal Easement Agreement, (i) Lessor shall have no liability whatsoever, now or in the future, to Lessee or any other person or entity for any damage to the Lessee Improvements, the facade of the Garage Property constructed by Lessee, or any portion of the Existing Structure within the Demised Premises, and (ii) Lessor shall not be required to make any repairs, alterations, replacements, changes, additions or improvements on or to the Lessee Improvements, the facade of the Garage Property constructed by Lessee, or the portion of the Existing Structure within the Demised Premises. Except as otherwise specifically set forth in Section 7.01 hereof or in the Reciprocal Easement Agreement, Lessee hereby assumes the full and sole responsibility for the replacement and management of the Lessee Improvements, the portion of the Existing Structure within the Demised Premises, and the facade of the Garage Property it constructed.

Section 7.03. Lessee Not Obligated. Except as otherwise specifically set forth in Section 7.01 or in the Reciprocal Easement Agreement, (i) Lessee shall have no liability whatsoever, now or in the future, to Lessor or any other person or entity for any damage to the Existing Structure, Garage, Office Project or the Bridges, and (ii) Lessee shall not be required to make any repairs, alterations, replacements, changes, additions or improvements on or to the Garage, Office Project, the Bridges or the portion of the Existing Structure within the Garage or the Office Property. Lessor hereby assumes the full and sole responsibility for the replacement and management of the Garage Property, the portion of the Existing Structure not within the Demised Premises, (except as otherwise specifically set forth in Section 7.01 hereof or in the

Reciprocal Easement Agreement).

Section 7.04. Alterations. Provided that no Default or Event of Default has occurred and is continuing, Lessee shall have the right from time to time after completion of the Lessee Development and at its sole cost and expense to make additions, alterations and changes to the Lessee Improvements but no repair or replacement of pursuant to Articles XII and XIII (any such addition, alteration or change involving an estimated cost of less than \$200,000 being hereinafter referred to as an "Alteration", and any such addition, alteration or change involving an estimated cost of \$200,000 or more being hereinafter referred to as a "Substantial Alteration"), subject however, to the following conditions:

7.04(a) No Alteration or Substantial Alteration shall be commenced nor which gives any owner, lessee or occupant or other person any easement, right of way or other right over or with respect to the Demised Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld; provided, however, that the Lessor's consent will not be required for any Alterations (excluding Substantial Alterations) which (a) are not visible from the exterior of the Lessee Improvements, (b) do not change the number of residential units to be included in the Lessee Improvements, (c) do not materially reduce the rentable area of any of the residential units or otherwise impair the rental value of the Lessee Improvements, (d) do not materially reduce the proposed rentable floor area of the retail space within the Lessee Improvements, (e) do not eliminate any of the elements of the open space system described in Section 4.01(b) hereof, or materially change the entrances or means of access to the Garage, the Office Project, or the Lessee Improvements, (f) do not adversely affect the easements set forth in the Reciprocal Easement Agreement, (g) do not materially change the use made of the Lessee Improvements, and (h) are not incompatible with the exterior design of the Office Project.

7.04(b) No Alteration or Substantial Alteration shall be undertaken unless Lessee shall have obtained all permits and approvals as may be required by all governmental authorities or applicable law.

7.04(c) All Substantial Alterations shall be supervised by an architect or engineer selected by Lessee and approved in writing by Lessor and shall be performed in accordance with plans and specifications prepared by such architect or engineer and approved in writing by Lessor. Provided Lessee shall have complied with

Section 26.01(b), Lessor's failure to object to any such plans and specifications in a written notice to Lessee stating the basis for any such objection within thirty (30) days of Lessor's receipt of the proposed plans and specifications (and such other information as Lessor shall have reasonably requested in writing to make its decision) shall be deemed to be Lessor's approval thereof.

7.04(d) Nothing in this Section 7.04 shall restrict Lessee's right to repair or maintain the Demised Premises in accordance with the requirements of Article IV and this Article VII, as applicable. Lessee shall have the right, in an emergency, to make temporary repairs to the Lessee Improvements without Lessor's consent if such repairs are necessary to protect public health and safety or to safeguard the Lessee Improvements and if the time required to secure Lessor's consent would pose a threat thereto. Lessee shall notify Lessor promptly after making such repairs and shall, as soon as reasonably practicable, make such changes to such repairs as may be reasonably requested by Lessor to comply with the intent of Sections 7.04(a) through (e).

7.04(e) Lessee shall notify Lessor of all Alterations made without the requirement of Lessor's consent and shall, at Lessor's request, deliver to Lessor as-built construction drawings of all elements thereof promptly upon completion thereof.

#### ARTICLE VIII

##### Mortgage, Subleasing, Sale and Refinancing

##### Section 8.01. Limitation on Encumbrances; Definition of "Development Costs"

8.01(a). Lessee shall not sell, assign, mortgage, pledge or otherwise transfer, convey or encumber this Lease or all or any part of Lessee's interest herein, in the Leasehold or in the Demised Premises or the Lessee Improvements or any part thereof, nor shall Lessee enter into any sublease with respect to all or any portion of the Demised Premises or the Lessee Improvements, except in accordance with the provisions of this Article VIII.

8.01(b). For the purposes of this Air Rights Lease "Development Costs" shall mean all hard and soft costs associated with the planning, financing, construction and lease-up of the Lessee Improvements including, architect and engineering fees and expenses, permits, licenses, insurance premiums, construction costs, financing fees and expenses, bond issuance costs, leasing commissions, marketing expenses, property management fees, direct

overhead expenses charged to the Lessee Improvements and Lessee's financing fee (hereinafter the "HOC Financing Fee") and reserve funds identified on the Development Budget approved by Lessor defined in § 8.02(a). Any amount of savings from Development Costs shall be applied as described in §3.06(b).

Section 8.02. Mortgaging.

8.02(a)(1) Lessee shall not encumber or otherwise permit any lien or charge to arise on the Garage Property or the Office Property or any part thereof. In the event that any such lien, encumbrance or charge shall be filed against the Garage Property or the Office Property or any part thereof resulting from claims or liabilities due or alleged to be due from Lessee, within thirty (30) days after notice of the filing thereof, Lessee shall cause the same to be stayed or discharged of record by payment, deposit, bond, order of court or otherwise provide security satisfactory to Lessor for the payment thereof.

8.02(a)(2) From time to time during the term of this Lease, Lessee may mortgage or otherwise encumber its estate and interest in, to and under this Lease, including Lessee's interest in any permitted sublease hereunder and any rentals or other payments due under any such sublease and its interest in the Demised Premises and the Lessee Improvements (the foregoing estate and interests of Lessee being hereinafter referred to collectively as the "Leasehold"), to any lender (or group of lenders) and may assign this Lease as security for such mortgage or encumbrance provided that at the time of such mortgage or encumbrance there exists no Default or Event of Default, and further provided that the conditions of this Section 8.02 are fulfilled. In no event, however, shall Lessee encumber the Land or the County Project. The Lessor has approved the Development Budget attached hereto and made a part hereof as Exhibit U (hereinafter the "Development Budget"). Any Leasehold Mortgage shall be submitted to Lessor for its review for compliance with this Lease. The loan amount secured by such Leasehold Mortgage, when added to all other proposed outstanding Leasehold Mortgages (subject to Section 8.02(c)) will be in an aggregate secured amount not greater than one hundred percent (100%) of the costs shown on the Development Budget as amended from time to time with the written consent of the parties, if the loan is to provide construction financing for the initial construction of the Lessee Development or is the first refinancing of the construction loan. Thereafter, the total amount of loans secured by a Leasehold Mortgage or Leasehold Mortgages shall not exceed one hundred percent (100%) of the fair market value of the Demised

Premises and the Lessee Improvements as determined by an appraiser approved by Lessor; provided, however, that the foregoing shall not be deemed to limit Lessor's right in its sole discretion to refuse to consent to any Leasehold Mortgage which would cause any of the requirements of this Section 8.02 to be violated. Provided Lessee has complied with Section 26.01(b) hereof, Lessor's failure to give a written detailed objection to any proposed Leasehold Mortgage which requires its consent within fifteen (15) Business Days after Lessee's delivery to Lessor of (a) Lessee's written notice and (b) such information about the Leasehold Mortgage as Lessor may reasonably request shall be deemed approval. Any mortgage or other encumbrance (other than a sublease) effected pursuant to this Article VIII shall be known hereinafter as a "Leasehold Mortgage." Any Leasehold Mortgage and all rights acquired under any Leasehold Mortgage by any holder or any mortgage insurer (hereinafter a "Leasehold Mortgagee") shall be subject to the covenants, conditions and restrictions contained in this Lease and to all rights and interests of Lessor hereunder, except as otherwise expressly provided herein.

8.02(a)(3) In the event that Lessee creates a Condominium on the Demised Premises as provided in Section 8.08, it is intended that Leasehold Mortgages will be recorded encumbering separate groups of individual condominium units each with first lien priority, one such Leasehold Mortgage equivalent to the loan to be made to or assumed by the Partnership and the other equivalent to the loan to be made to Lessee. In no event shall the total of the outstanding Leasehold Mortgages subject to Section 8.02(c) exceed, in the aggregate, one hundred percent (100%) of the Development Costs shown on the Development Budget as amended from time to time with the written consent of the parties if the loans represent the initial permanent financing or the first refinancing of the construction loan. Thereafter the total amount of loans secured by a Leasehold Mortgage or Leasehold Mortgages shall not exceed one hundred percent (100%) of the fair market value of the Demised Premises and the Lessee Improvements as determined by an appraiser approved by Lessor.

8.02(b) No Leasehold Mortgage shall cover any interest in any real property other than the Lessee Improvements and the Leasehold. Any security interest purportedly granted in such Leasehold Mortgage with respect to property other than the Lessee Improvements and the Leasehold shall be unenforceable with respect to property other than the Leasehold and the Lessee Improvements.

8.02(c) Lessee shall not cause or permit to exist more than four (4) Leasehold Mortgages at any one time, and the lien of any purported Leasehold Mortgage in excess of that number is hereby rendered null and void as against the Demised Premises, the Lessee Improvements, and/or the Leasehold.

8.02(d) Each Leasehold Mortgage shall contain provisions satisfactory to Lessor authorizing the disposition and application of insurance proceeds, condemnation awards and proceeds of sales or other dispositions (including foreclosures) in accordance with the provisions of this Lease, including, without limitation, provisions expressly subordinating the Leasehold Mortgage to this Lease and expressly subordinating the Leasehold Mortgagee's right to receive any payments under the Leasehold Mortgage to the prior payment of all amounts payable hereunder including Lessor's share of Remaining Cash Flow (except to the extent that Lessee's payments to any such Leasehold Mortgagee have priority under Section 3.06). In addition, each Leasehold Mortgagee shall agree to provide copies to Lessor of any notices of default given by such Leasehold Mortgagee to Lessee contemporaneously with giving such notices to Lessee.

8.02(e) If Lessor consents (or is deemed to have consented pursuant to the provisions of this Lease) to any proposed Leasehold Mortgage, then the following provisions of this Section 8.02(e) shall apply:

(i) If not previously delivered, Lessee shall deliver to Lessor a copy of the Leasehold Mortgage and promissory note or other debt instrument secured thereby promptly after such Leasehold Mortgage and promissory note are fully executed and delivered.

(ii) Lessor shall acknowledge its acceptance to any Leasehold Mortgage by instrument in recordable form, the execution of which instrument shall not be unreasonably withheld or delayed by Lessor.

(iii) Lessee and the Leasehold Mortgagee shall not enter into any amendment or other modification of or supplement to the Leasehold Mortgage, the promissory note or the debt instrument secured thereby, or any other document relating thereto, which increases the principal sum due or modifies the terms approved pursuant to Section 8.02(a) without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Provided Lessee has complied with Section 26.01(b) hereof, if Lessor shall not, within ten (10) Business Days after

Lessee's delivery to Lessor of (A) Lessee's written request for such consent and (B) such other information as Lessor may reasonably request to make its decision, notify Lessee that it is withholding Lessor's consent to such amendment, modification or supplement, such amendment, modification or supplement shall be deemed to be approved.

(iv) Upon giving any notice to Lessee of a Default under this Lease or of the termination of this Lease, Lessor shall furnish a copy of such notice to each Leasehold Mortgagee at the address of each Leasehold Mortgagee last furnished in writing to Lessor; provided, however, that Lessor shall not be responsible for any failure to notify any Leasehold Mortgagee as a result of not having been furnished a proper address; and provided, further, that failure to give such notice to each such Leasehold Mortgagee shall not affect the validity of any notice given to Lessee hereunder or the time such notice shall be deemed to have been given to Lessee. Any Leasehold Mortgagee may remedy any such Default or cause the same to be remedied within the time period for cure granted to Lessee hereunder, plus, in the case of any Major Default as defined in §18.02 an additional thirty (30) days, so long as a cure is being diligently prosecuted during such time, and if the cure of any such Default under Sections 18.01(b) through 18.01(f) requires that the Leasehold Mortgagee have foreclosed on the lien of the applicable Leasehold Mortgage or to have become a mortgagee in possession, then such thirty (30) day period shall be extended so long as the Leasehold Mortgagee is diligently and in good faith pursuing its enforcement remedies under the applicable Leasehold Mortgage; provided, however, that Lessor shall not terminate this Lease without first having complied with the provisions of Section 8.02(e)(v) hereof. Lessor agrees to accept performance by a Leasehold Mortgagee as performance by Lessee.

(v) Contemporaneous with any notice requested by (iv) above in connection with a Major Default by Lessee, Lessor shall notify each permitted Leasehold Mortgagee in writing (delivered to the last address for such Leasehold Mortgagee delivered to Lessor in writing pursuant to Section 26.01) of its intent to terminate this Lease, together with a statement identifying all sums which would, at the time of such notice, be due under this Lease (disregarding the termination) and describing all other Defaults, if any, then known to Lessor. Lessor hereby agrees to permit a Leasehold Mortgagee or its approved designee (as provided in §8.02(v)(D)) to assume Lessee's rights and obligations under this Lease with the provision that the PILOT Agreement shall be terminated and the Leasehold Mortgagee shall be required to pay



real estate taxes in the ordinary course which shall not be subordinated as now provided in paragraph 3.06, provided:

(A) Such Leasehold Mortgagee shall notify Lessor in writing of its decision to assume this Lease within ninety (90) days after the date such Leasehold Mortgagee receives Lessor's notice of election pursuant to this Section 8.02(e)(v) to terminate this Lease and to allow the Leasehold Mortgagee to assume this Lease (and, if no Leasehold Mortgagee shall not have so notified Lessor within such ninety (90) day period, Lessor may terminate this Lease without permitting the Leasehold Mortgagee to assume this Lease).

(B) Such Leasehold Mortgagee or its designee shall pay or cause to be paid to Lessor, at the time the Lease is assumed, any and all sums which are due or would at the time of such execution and delivery be due pursuant to this Lease but for such termination and, in addition thereto, all expenses, including reasonable attorneys' fees and disbursements, which Lessor shall have incurred by reason of such termination.

(C) Such Leasehold Mortgagee or its designee shall agree to remedy Lessee's monetary Defaults and all other Defaults existing at the time the Lease is assumed to the extent such Defaults are capable of cure with due diligence.

(D) With respect to any proposed designee, such Leasehold Mortgagee promptly shall furnish to Lessor, as a condition precedent to Lessor's obligation to accept the assumption of this Lease, such information relating to such proposed designee (including, without limitation, information relating to such designee's financial condition, financial and business prospects, experience, expertise and reputation) as Lessor may request, and such designee's designation by such Leasehold Mortgagee hereunder shall be subject to the prior written approval of Lessor, which approval shall not be unreasonably withheld.

(vi) In the event that more than one Leasehold Mortgagee shall request assumption of this Lease pursuant to Section 8.02(e)(v), Lessor shall allow assumption with the Leasehold Mortgagee whose Leasehold Mortgage is prior in lien, or with the designee of such Leasehold Mortgagee, provided that the conditions set forth in this Section 8.02(e) shall have been satisfied. Lessor, without liability to Lessee or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued by a responsible title insurance company

doing business within the State of Maryland as the basis for determining the appropriate Leasehold Mortgagee who is entitled to assume the Lease.

(vii) Any new Leasehold Mortgage entered into by a Leasehold Mortgagee or its designee shall have priority over the Lease provided it meets the requirements of this Section 8.02(a), (c) and (d). and (e) and Lessor shall execute any and all documents reasonably required to confirm such status.

Section 8.03. No Liability of Leasehold Mortgagee Prior to Foreclosure Until such time as any Leasehold Mortgagee shall acquire by conveyance from Lessee the Demised Premises and the Lessee Improvements by foreclosure, or by deed in lieu of foreclosure or other proceedings provided by law or the terms of the Leasehold Mortgage such Leasehold Mortgagee shall have no liability to Lessor for payment of rent or the performance of any covenants, terms or conditions under the Lease.

Section 8.04. Subleasing and Other Arrangements. At any time and from time to time, Lessee may sublease all or any part of the space in the Demised Premises, provided that each such sublease complies with the following conditions and limitations:

8.04(a) Each such sublease shall be subject and subordinate to this Lease, to the rights of Lessor hereunder, and to the rights of any Leasehold Mortgagee as provided for under this Lease. Each such sublease shall contain a statement to the effect that the sublessee's rights thereunder in the Leasehold shall be no greater than those of Lessee.

8.04(b) Any Major Default of this Lease by reason of any act or omission of any sublessee under any such sublease shall be deemed to be a Major Default by Lessee under Section 18.02 (and shall be subject to the notice and cure periods provided therein), it being the intention of the parties that Lessee shall assume and be liable to Lessor under this Lease for any and all acts and omissions of any and all such sublessees.

8.04(c) Each such sublease shall provide that in the event that this Lease is terminated, the sublessee thereunder will attorn to Lessor. Lessor agrees that it will, upon the written request of Lessee or any approved nonresidential tenant, in the Residential/Retail Building enter into a non-disturbance and attornment agreement for the benefit of such nonresidential tenant

substantially in the form attached hereto as Exhibit V. Any such non-residential lease which is on Lessee's standard form of commercial lease (which standard form must be reasonably acceptable to Lessor) without material alteration, which has a term of not more than ten (10) years (but in no event beyond the term of this Lease) and which is for a base rental amount which, with other concessions, generates a net effective rent of not less than seventy-five (75%) percent of the then-current market level for similarly situated space in the Bethesda Central Business District, shall be deemed automatically approved and shall be subject to the operation of this Section 8.04(c). Each such non-residential sublessee shall agree to execute one or more estoppel certificates from time to time at Lessor's request in form and content reasonably requested by Lessor.

8.04(d) Except with the prior written consent of Lessor, Lessee shall not (i) enter into any such sublease for a term (including any renewal term) extending beyond the term of this Lease (the provisions of any such sublease allowing a term beyond the term of this Lease being hereby rendered null and void) or (ii) accept from any such sublessee, directly or indirectly, more than three (3) months' pre-paid rent (and in the event of the termination of this Lease pursuant to the terms hereof, Lessor shall not be bound by any such prepayment of rent in excess thereof).

8.04(e) Each such sublease or any other arrangement for the use of one or more of the parking spaces in the parking area included in the Demised Premises shall provide for a payment for the use of each such parking space at least equal to the fair market rental value thereof, as adjusted annually.

8.04(f) Each such sublease shall contain the statement required pursuant to Section 23.02.

8.04(g) Except with respect to subleases of residential units of the Residential/Retail Building, promptly upon execution of any sublease or any amendment or modification of any such sublease, Lessee shall provide to Lessor a true and complete photocopy of each such sublease or amendment or modification. Promptly after preparation thereof, Lessee shall provide to Lessor a copy of its standard forms of residential leases, and shall annually, within thirty (30) days after each anniversary of the Commencement Date, provide Lessor with a rent roll, dated as of (or after) such anniversary date, and relating to the Residential/Retail Building and the parking areas within the

Demised Premises, together with a certificate of Lessee that there have been no material adverse changes to the information contained in such rent roll between the date thereof and the date it is delivered to Lessor. The rent roll shall contain at least the following information: (i) the tenant under each sublease of a portion of the Residential/Retail Building; (ii) the unit(s) occupied by such tenant; (iii) the monthly rent payable thereunder; (iv) the utilities and services, if any, included in the sublease; (v) the amount of any deposits held under such sublease; (vi) the interest, if any, payable with respect to any such deposit; (vii) the remaining term of each such sublease; (viii) any arrearages in rent or other material defaults under any such sublease, (ix) the number of parking spaces rented within the parking area included in the Demised Premises, (x) the aggregate monthly parking rental receipts to be received under the rental arrangements with respect thereto, (xi) whether Lessee holds a security deposit with respect to any such parking spaces and the amount of each such security deposit (and whether or not it bears interest), and (xii) any arrearages or other material defaults under any such parking arrangements. From time to time at Lessor's reasonable request, Lessee shall promptly deliver to Lessor a rent roll relating to all or any portion of the Residential/Retail Building designated by Lessor containing such information as Lessor shall reasonably require.

Section 8.05. General Provisions Applicable to Mortgaging, Assignment and Subleasing.

8.05(a) Lessor shall in no event subordinate (or be deemed to have agreed to subordinate) its fee interest in the Demised Premises to any Leasehold Mortgage or other mortgage, deed of trust, or other encumbrance placed by Lessee on the Leasehold or on Lessee's interest in this Lease.

8.05(b) In the event that both the Leasehold and the fee title to the Demised Premises become vested in the same owner, such interests shall not merge but shall remain separate and distinct (and this Lease shall not be destroyed by application of the doctrine of merger), except with the express written consent of such owner and each Leasehold Mortgagee.

8.05(c) Effective upon the occurrence of any Major Default and subsequent to any period during which Lessee or any Leasehold Mortgagee may cure such Major Default as provided in paragraph 8.02 and having failed to make such cure and for so long as such Major Default remains uncured, Lessee hereby assigns to Lessor, as

collateral security for the performance of all obligations of Lessee under this Lease, all of Lessee's right, title and interest in each and every sublease entered into by Lessee and each and every amendment, modification or extension of any such sublease. In no event shall such assignment impose upon Lessor any duty or obligation to perform any of the obligations of Lessee as the sublessor under any such sublease. After the occurrence of any Major Default and for so long as such Major Default remains uncured, Lessor may collect the rents and subrents from any and all sublessees or occupants of space in the Demised Premises and apply the net amounts collected in accordance with Section 3.06 of this Lease. No such collection or application by Lessor shall be deemed to be a waiver by Lessor of any agreement, term, covenant or condition of this Lease or an acceptance by Lessor of any sublessee or occupant as a successor or assignee of Lessee. Notwithstanding anything contained herein to the contrary, this Lease shall not be construed to prohibit Lessee's assignment to any Leasehold Mortgagee of any sublease for any portion of the Demised Premises and the rents payable thereunder provided that all rights of such Leasehold Mortgagee pursuant to such assignment expressly shall be subject and subordinate to this Lease and the rights of Lessor hereunder.

8.05(d) Any consent by Lessor contained in this Article VIII or hereafter given to any mortgage, encumbrance, assignment or sublease shall apply only to the specific transaction hereby or thereby approved.

8.05(e) Notwithstanding any provision of this Article to the contrary, prior to (i) Lessee entering any sublease of the Demised Premises, other than (A) a sublease of any residential unit for residential purposes, (B) a sublease of any portion of the Retail Space, or (C) a sublease of any parking space in the Demised Premises to a resident of a residential unit, or (ii) any transfer, sale or assignment of this Lease by Lessee, other than a transfer of not more than ninety-two (92) condominium units to the Partnership, Lessor shall be provided with an opinion of nationally recognized bond counsel selected by Lessor to the effect that such sublease, transfer, sale or assignment will not adversely affect the tax exempt status of interest payable on any of Lessor's outstanding bonds.

Section 8.06. Encumbrances on Lessor's Title Subordinate. As of the Commencement Date, the Demised Premises shall be free and clear of all mortgage liens and other encumbrances except for Permitted Encumbrances. Any mortgage or other encumbrance placed

on the Demised Premises (or Lessor's fee interest therein) shall be subject and subordinate to this Lease.

Section 8.07. Distribution of Refinancing Proceeds and Sale Proceeds and Assignment of Lease by Lessee.

8.07(a) In the event of a refinancing of any Leasehold Mortgage, Lessor and Lessee shall divide equally the proceeds of any such refinancing after satisfaction of such refinanced Leasehold Mortgage, the cost of issuance of tax exempt bonds if utilized for such refinancing and all other costs of closing and recordation and after deduction of funds which are to be applied for improvement or replacement or repair to the Demises Premises or Lessee Improvements and any financing fees. Lessee shall not transfer, assign, convey or sell the Demised Premises or any portion thereof without the prior written consent of Lessor.

8.07(b) In the event Lessee desires to transfer, sell or assign this Lease, Lessee shall provide thirty (30) days notice of the proposed assignment with information relating to the assignee, (including, without limitation, information relating to such assignee's financial condition, financial and business prospects, experience, expertise and reputation as Lessor may request). Lessor shall have thirty (30) days within which to approve such assignment which approval shall not be unreasonably withheld. In the event of such assignment, Lessor shall not be entitled to payment of any portion of the consideration paid to Lessee for such transfer by the assignee. Other than as required in §8.08 no approval shall be required to create the Condominium or to assign this Lease to the Condominium or for the transfer or assignment of individual Condominium Units to the Partnership.

Section 8.08. Establishment of Condominium and Transfer of Individual Condominium Units.

8.08(a). Lessee reserves the right to create a condominium (hereinafter the "Condominium") of the Demised Premises pursuant to the provisions of Subtitle 11 of the Real Property Article of the Annotated Code of Maryland by division of the residential and retail facilities into individual units and related common elements by recordation of the appropriate documents in the Land Records. The Condominium Declaration, Bylaws and Plats (hereinafter collectively the "Condominium Documents") will be submitted to Lessor for review and execution to indicate acknowledgement by Lessor no less than thirty (30) days prior to the date on which it is intended that the Condominium Documents be recorded. The

Condominium will be subordinate to the Lease and any Leasehold Mortgage will be subordinated to the Condominium Documents. The Condominium is intended to provide three hundred eight (308) individual residential units, retail areas and associated common elements to be utilized by and for the benefit of all occupants. Lessee will retain ownership of 216 residential units and the retail units and transfer the remaining 92 residential units to a partnership in which it is the general partner (hereinafter the "Partnership"). The Partnership will be created under the provisions of Section 42 of the Internal Revenue Code of 1986 which provides a tax credit for investors in low income housing.

8.08(b) Individual condominium units will not be sold to the general public and no offering of such will be made by Lessor or the Partnership without Lessor's written consent; provided, however, the right to sell individual condominium units subject to the Lease is reserved to any Leasehold Mortgagee or any successor thereto in the event of a foreclosure or the transfer of the Condominium by deed in lieu thereof. Promptly after recordation of the Condominium, the Council of Unit Owners of the Condominium will execute an agreement assuming the obligations, responsibilities and duties hereunder as the Lessee and Lessor shall consent to the assignment of the rights of Lessee in and to this Lease.

#### ARTICLE IX Insurance

Section 9.01. Lessee's Insurance Obligations During Construction. Lessee or its Contractor shall, from the date of commencement of construction until completion of construction of the Lessee Development, at its sole cost and expense, maintain or cause to be maintained in full force and effect, with financially sound and reputable insurers licensed to do business in the State of Maryland, the following insurance coverages:

9.01(a) Commercial general liability insurance against claims for bodily injury, death or property damage occurring upon, in or about the Demised Premises or the Lessee Development and against claims for bodily injury, death or property damage occurring upon, in or about the Garage Property (including, without limitation, coverage against contractual liability, premises and operations, personal injury, product and completed operations, broad form property damage, owner's and contractor's protective liability (including coverage of subcontractors), fire legal liability and excavation, explosion and collapse hazardous liability) in an amount (including umbrella coverage) of at least

Twenty Million Dollars (\$20,000,000.00) combined single limit of bodily injury and property damage per occurrence.

9.01(b) Heavy equipment and automobile insurance against claims for bodily injury, death or property damage occurring to or from owned, hired and non-owned heavy equipment and to or from automobiles owned by Lessee or by any contractor involved in the construction of the Lessee Development in an amount of at least Five Hundred Thousand Dollars (\$500,000.00) for injury to any one individual, Five Million Dollars (\$5,000,000.00) for each occurrence and Five Million Dollars (\$5,000,000.00) for damage to property.

9.01(c) Workers' compensation insurance in respect of any work on or about the Demised Premises or the facade of the Existing Structure in such amounts as may be required by law and Employers Liability in the amount of Five Hundred Thousand Dollars (\$500,000.00) for bodily injury by accident for each accident, Fifty Thousand Dollars (\$50,000.00) for bodily injury by disease for each employee and Two Million Dollars (\$2,000,000.00) for bodily injury by disease in the aggregate.

9.01(d) Builder's All Risk Property Insurance including, fire and extended coverage insurance covering Lessee, all contractors and all subcontractors against loss caused by perils insured in the amount of one hundred percent (100%) of the replacement cost of the Lessee Development, which policy will endorse a completed value form and contain a demolition and clearing clause, extra expense and loss of use coverages with a sub-limit of \$500,000 per occurrence.

9.01(e) Architect's and Engineer's Professional Liability (Project Insurance Policy) in the amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) per claim and in the aggregate in the case of the architect/engineers and other entities providing design engineering or structural inspection services or surveying. Each such policy shall have a deductible of not more than Fifty Thousand Dollars (\$50,000.00) and a five (5) year discovery period shall be provided in the event of cancellation for any reason.

9.01(f) Such other insurance coverages and in such amounts as may from time to time be reasonably required by Lessor to insure against such other insurable hazards as may, at the time of Lessor's request, be customarily insured against in the case of similar premises situated in the same general area as the Demised



Premises.

Section 9.02. Lessee's Insurance Obligations After Substantial Completion of Construction. Lessee shall, from the date of Substantial Completion of construction of the Lessee Development through the remainder of the term of this Lease, at its sole cost and expense, maintain or cause to be maintained in full force and effect, with financially sound and reputable insurers licensed to do business in the State of Maryland, the following insurance coverages:

9.02(a) Commercial general liability insurance for claims for bodily injury, death or property damage occurring upon, in or about the Demised Premises or the Improvements including, without limitation, coverage against contractual liability, premises and operations, personal injury, product and completed operations, broad form property damage, owner's and contractor's protective liability (including coverage of subcontractors) and fire legal liability in an amount (including umbrella coverage) of at least Ten Million Dollars (\$10,000,000.00) combined single limit of bodily injury and property damage per occurrence.

9.02(b) Heavy equipment and automobile insurance for claims for bodily injury, death or property damage occurring to or from owned, hired and non-owned heavy equipment and to or from automobiles owned by Lessee in an amount in each case of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) for injury to any one individual, Five Hundred Thousand Dollars (\$500,000.00) for each occurrence and Five Hundred Thousand Dollars (\$500,000.00) for damage to property.

9.02(c) Workers' compensation insurance covering all employees of Lessee or its agents or contractors in respect of any work on or about the Demised Premises or the facade of the Existing Structure in such amounts as may be required by law and, with respect to employers' liability, \$200,000 for bodily injury by accident for each accident, \$200,000 for bodily injury by disease for each employee and \$500,000 for bodily injury by disease in the aggregate.

9.02(d) Rental value, business interruption or comparable insurance against loss of rental or other income due to fire or any other insured perils generally within the scope of the insurance to be maintained pursuant to Section 9.02(f), in an amount sufficient to prevent Lessee from becoming a co-insurer within the terms of the policy or policies in question but not less than twelve (12)

months rent potential. Such insurance coverage may be contained in a business interruption endorsement to the policy required by Section 9.02(f). Lessor shall be named as Loss Payee for this coverage.

9.02(e) Boiler and machinery insurance in the amount of one hundred percent (100%) of the value of the boiler and machinery objects and vessels (including the contents thereof) within the Improvements, with expediting coverage and a minimum limit of Five Hundred Thousand Dollars (\$500,000.00).

9.02(f) Blanket property damage insurance, including, without limitation, damage from earthquake, in the amount of one hundred percent (100%) of the replacement cost of the Improvements, including the contents thereof, insuring against all "all risks" perils, including expense of removal of debris from property damaged by an insured peril, which policy shall contain a one hundred percent (100%) replacement cost endorsement, a demolition and clearing clause, extra expense coverage and plate glass coverage.

9.02(g) Such other insurance coverages and in such amounts as may from time to time be reasonably required by Lessor to insure against such other insurable hazards as may, at the time of Lessor's request, be customarily insured against in the case of similar premises situated in the same general area as the Demised Premises.

9.02(h) Notwithstanding the foregoing provisions establishing minimum limits of coverage, Lessor shall have the right from time to time (but no more often than once every three years) to require higher limits of coverage under any policy of insurance required under this Section 9.02 to the extent necessary (a) to reflect the effects of inflation or (b) to be consistent with the limits of coverage customarily maintained with respect to other similar premises situated in the same general area as the Demised Premises.

Section 9.03. Nature of Policies; Evidence of Coverage. All insurance provided for in this Article IX shall be effected under valid and enforceable policies issued by insurers of recognized responsibility licensed to do business in the State of Maryland and reasonably acceptable to Lessor. All such policies shall, to the extent reasonably available, contain a provision that no act or omission of Lessee, any sublessee, or any other occupant of the Demised Premises shall affect or limit the obligation of the

insurer to pay the amount of any loss sustained. All such policies also shall (i) provide that any losses thereunder shall be adjusted and paid as provided in this Lease and the Leasehold Mortgages, and (ii) provide for waiver of subrogation. Prior to the Commencement Date, and thereafter not less than sixty (60) days prior to the expiration dates of the various policies obtained pursuant to this Article IX, Lessee shall deliver or cause to be delivered to Lessor certified copies of such policies and certificates of the insurers bearing notations evidencing the payment of premiums thereof for the ensuing year or accompanied by other evidence satisfactory to Lessor of such payment; provided, however, that if actual policies are not available prior to the effective date thereof, Lessee shall deliver specimen policies to Lessor by the date which is sixty (60) days before the expiration of the prior policies and shall furnish Lessor with certified copies of the policies as soon as practicable thereafter but in no event later than thirty (30) days after the effective date of such policies. Insurance coverages obtained by Lessee through the Montgomery County Self Insurance Program pursuant to § 20-37 of the Montgomery County Code, 1984 as amended, shall be acceptable to Lessor.

Section 9.04. Adjustment of Losses. The policies of insurance required under Sections 9.01(a) and 9.01(b) and under Sections 9.02(a) and 9.02(b) shall name Lessor as an additional insured, and the policies of insurance required under Sections 9.01(d), 9.02(e) and 9.02(f) shall name Lessor as loss payee. The policies of insurance required under Section 9.01(d) shall name Lessor as an additional insured as its interest may appear and shall provide that, in the event of any damage to the Garage Property as a result of an insured event thereunder, proceeds of such policies shall be made available first to Lessor in satisfaction of all rights of Lessor as an insured thereunder (subject to the limits of such policies) before any such proceeds are applied to claims of Lessee thereunder, and Lessee shall be responsible for the payment of any deductible amount, which amount shall be considered additional rent hereunder. The policies of insurance required under Sections 9.01(f) or 9.02(g) shall name Lessor as additional insured or loss payee as Lessor may reasonably require. All such policies shall also name any Leasehold Mortgagee or fee mortgagee as additional insured or loss payee, as any such mortgagee's interest may appear, by standard mortgagee clause, if reasonably obtainable. Any loss under such policies shall be adjusted in accordance with the Leasehold Mortgage.

Section 9.05. Notice of Cancellation. Each insurance policy obtained pursuant to this Article IX and each certificate of

insurance for any such policy issued by the insurer shall contain an agreement by the insurer that such policy shall not be cancelled or modified for any reason (including, without limitation, for non-payment of premium) except upon not less than sixty (60) days' prior written notice to Lessor and to any Leasehold Mortgagee named as an insured therein. Each such insurance policy shall also contain an agreement of the insurer to provide Lessor not less than sixty (60) days prior written notice that such policy will not be renewed, and if such notice is not given shall provide that the policy will remain in effect until the date which is sixty (60) days after Lessor receives such notice.

Section 9.06. Transferable Policies; Apportionment. Upon termination of this Lease, any unearned premiums upon any transferrable insurance policies obtained pursuant to this Article IX and actually transferred to Lessor shall be apportioned between Lessor and Lessee.

Section 9.07. Separate Insurance. Except for the umbrella policies permitted under Sections 9.01(a) and 9.02(a), all policies of insurance required under this Article IX shall be primary in nature over any other valid and enforceable insurance, and the insurance required by Section 9.02(f) shall be provided on a blanket limit basis. Lessee shall promptly notify Lessor of the existence of any separate insurance covering the Improvements or Lessee's operations with respect thereto and shall deliver to Lessor certified copies of all such policies as provided in Section 9.03.

Section 9.08. Certificate of Insurer. In the event Lessee does not obtain its insurance through the Montgomery County Self Insurance Program pursuant to §20-37 of the Montgomery County Code, 1984, as amended, in addition to the evidence of insurance required by Section 9.03 hereof, on the Commencement Date, and each year within thirty (30) days of the anniversary of the Commencement Date the Lessee shall deliver to Lessor a certificate of the Lessee's insurer or independent insurance broker stating the following:

9.08(a) The insurance policies carried by the Lessee conform in all material respects with the requirements of this Article IX;

9.08(b) Such policies have been duly authorized, executed and delivered by the issuers thereof and are in full force and effect;

9.08(c) Such issuers are qualified to transact business and

are licensed to issue insurance policies in the State of Maryland;

9.08(d) The A.M. Best or other applicable rating of each issuer;

9.08(e) Insofar as the certifying party has delivered copies of the Lessee's insurance policies to the Lessor, such copies are in all material respects complete and correct copies of the original policies, as the same may have been amended or endorsed;

9.08(f) Insofar as the certifying party has performed any investigations, inspections, or due diligence in connection with the issuance of the policies, such party is not aware of any act or omission on the part of the Lessee or any condition of the Improvements that would limit the effectiveness of such policies;

9.08(g) Except for the exceptions set forth and explained in the certificate, the policies will remain in full force and effect for the benefit of the Lessor and Lessee notwithstanding any act or omission of the Lessee, whether negligent or non-negligent, or the condition of the Improvements; and

9.08(h) The Lessor is entitled to rely upon the certificate delivered. Lessor agrees that Lessee shall not be held liable for damages resulting from any inaccuracy in any such certificate, unless Lessee knows of such inaccuracy and fails to disclose such inaccuracy to Lessor. The immediately preceding sentence shall not be deemed in any way to limit or affect the Lessee's obligations set forth in Sections 9.01 through 9.07.

Section 9.09. Lessor's Insurance Obligation.

9.09(a) Lessor shall provide, from the commencement of this Lease, at its sole cost and expense, and maintain or cause to be maintained in full force and effect with financially sound and reputable insurers licensed to do business in the State of Maryland or through self-insurance or any combination thereof the following insurance coverages:

(i) Commercial general liability insurance against claims for bodily injury, death or property damage occurring upon, in or about the Demised Premises or the Lessee Improvements, including, without limitation coverage for contractual liability, premises and operations, personal injury, product and completed operations, broad form property damage, and fire legal liability in an amount

(including liability coverage) of Two Hundred Thousand Dollars (\$200,000.00) per claim and Five Hundred Thousand Dollars (\$500,000.00) per occurrence, single limit for bodily injury and property damage. The Lessor will provide, via the Montgomery County Self-Insurance Program, limits of liability of Five Million Dollars (\$5,000,000.00) per claim and Ten Million Dollars (\$10,000,000.00) per occurrence for claims for which immunity under the Local Government Tort Claims Act is denied or in actions arising under Federal laws.

(ii) automobile liability insurance against claims for bodily injury, death or property damage occurring from owned, hired and non-owned automobiles of Lessor in amounts under the minimum mandatory limits established in accordance with Section 17-103 of the Transportation Article or under Maryland governmental or sovereign immunity laws or common law.

(iii) Blanket property damage insurance, including real and personal property, including without limitation, damage from flood and earthquake, insuring against all "all risks" perils, including expense of removal of debris from property damaged by an insured peril, which policy shall contain a replacement cost endorsement, a demolition and clearing clause, extra expense coverage and plate glass coverage.

(iv) Worker's compensation coverage as is required by statute under the laws of the State of Maryland.

9.09(c) In the event that Montgomery County, Maryland, transfers its fee simple title to the Land and Existing Structure, pursuant to Section 23.01 of this Lease, Montgomery County, Maryland, shall have no further obligation to provide any insurance coverage relating to the Demised Premises, nor to guarantee the obligation of any successor in interest thereafter. Any successor in interest to Montgomery County, Maryland, as Lessor shall maintain the following insurance coverage:

(i) Commercial general liability insurance against claims for bodily injury, death or property damage occurring upon, in or about the Demised Premises or the Lessee Improvements including, without limitation, coverage against contractual liability, premises and operations, personal injury, product and completed operations, broad form property damage, owner's and contractor's protective liability (including coverage of subcontractors) and fire legal liability in an amount (including umbrella coverage) of at least Ten Million Dollars (\$10,000,000.00) combined single limit of

bodily injury and property damage per occurrence.

(ii) Heavy equipment and automobile insurance against claims for bodily injury, death or property damage occurring to or from owned, hired and non-owned heavy equipment and to or from automobiles owned by Lessee in an amount in each case of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) for injury to any one individual, Five Hundred Thousand Dollars (\$500,000.00) for each occurrence and Five Hundred Thousand Dollars (\$500,000.00) for damage to property.

(iii) Blanket property damage insurance, including, without limitation, damage from earthquake, in the amount of one hundred percent (100%) of the replacement cost of the Lessee Improvements, including the contents thereof, insuring against all "all risks" perils, including expense of removal of debris from property damaged by an insured peril, which policy shall contain a one hundred percent (100%) replacement cost endorsement, a demolition and clearing clause, extra expense coverage and plate glass coverage.

(iv) Such other insurance coverages and in such amounts as may from time to time be reasonably required by Lessee to insure against such other insurable hazards as may, at the time of Lessee's request, be customarily insured against in the case of similar premises situated in the same general area as the Demised Premises.

(v) Notwithstanding the foregoing provisions establishing minimum limits of coverage, Lessee shall have the right from time to time (but no more often than once every three years) to require higher limits of coverage under any policy of insurance required under this Section 9.09 to the extent necessary (a) to reflect the effects of inflation or (b) to be consistent with the limits of coverage customarily maintained with respect to other similar premises situated in the same general area as the Demised Premises.

9.09(d) All insurance provided for in this Article IX shall be effected under valid and enforceable policies issued by insurers of recognized responsibility, financially sound and reputable and licensed to do business in the State of Maryland and reasonably acceptable to Lessee. All such policies shall, to the extent reasonably available, contain a provision that no act or omission of Lessor, any sublessee, or any other occupant of the Demised Premises shall affect or limit the obligation of the insurer to pay the amount of any loss sustained. All such policies also shall

(i) provide that any losses thereunder shall be adjusted and paid as provided in this Lease and the Leasehold Mortgages, and  
(ii) provide for waiver of subrogation.

9.09(e) The policies of insurance required under Sections 9.09(a) (i) and (ii), as the case may be, shall name Lessee as an additional insured. The policies of insurance required under Section 9.09(a)(iii) shall name Lessee as loss payee as its interest may appear and shall provide that, in the event of any damage to the County Project as a result of an insured event thereunder, proceeds of such policies shall be made available first to Lessee in satisfaction of all rights of Lessee as an insured thereunder (subject to the limits of such policies) before any such proceeds are applied to claims of Lessor thereunder, and Lessor shall be responsible for the payment of any deductible amount, which amount shall be considered additional rent hereunder. All such policies shall also name any Leasehold Mortgagee or fee mortgagee as additional insured or loss payee, as any such mortgagee's interest may appear, by standard mortgagee clause, if reasonably obtainable. Any loss under such policies shall be adjusted in accordance with the Leasehold Mortgage.

9.09(f) Each insurance policy obtained pursuant to this Article IX and each certificate for any such policy issued by the insurer shall contain an agreement by the insurer that such policy shall not be cancelled or modified for any reason (including, without limitation, for non-payment of premium) except upon not less than thirty (30) days' prior written notice to Lessee and to any Leasehold Mortgagee named as an insured therein. Each such insurance policy shall also contain an agreement of the insurer to provide Lessee not less than thirty (30) days prior written notice that such policy will not be renewed, and if such notice is not given shall provide that the policy will remain in effect until the date which is thirty (30) days after Lessee receives such notice.

9.09(g) On the Commencement Date, and each year within thirty (30) days of the anniversary of the Commencement Date the Lessor shall deliver to Lessee a certificate of the Lessor's insurer or independent insurance broker stating the insurance policies carried by the Lessor conform in all material respects with the requirements of this Article IX.



ARTICLE X  
Discharge of Liens; No  
Impairment of Lessor's Interest

Section 10.01. Prohibition Against Liens. Construction of the Lessee Improvements shall only be performed with performance and payment bonds sufficient to comply with Section 17-101 et seq. of the State Finance and Procurement Article of the Annotated Code of Maryland. As a governmental agency, Lessee's property is not subject to mechanic's lien nor execution pursuant to Section 1-106 of Article 44A of the Annotated Code of Maryland. Lessee will not suffer any other matter or thing arising out of Lessee's use and occupancy of the Demised Premises and the Lessee Improvements whereby the estate, rights and interests of Lessor in the Demised Premises, the Lessee Improvements, or any part thereof might be impaired (other than Leasehold Mortgages entered into in accordance with Section 8.02).

Section 10.02. Removal of Liens. In the event that any lien, encumbrance or charge referred to in Section 10.01 shall at any time be filed against the Demised Premises, the facade of the Existing Structure constructed by Lessee, the Lessee Improvements or any part thereof, Lessee, within thirty (30) days after notice of the filing thereof, shall cause the same to be stayed or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise or shall provide other security satisfactory to Lessor for the payment thereof. If Lessee shall fail to cause such lien to be so stayed or discharged within such thirty (30) day period, then, in addition to any other right or remedy available to Lessor, Lessor may (but shall be under no obligation to) discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien, charge or encumbrance by deposit or by bonding proceedings. Any amount so paid by Lessor and all reasonable costs and expenses incurred by Lessor in connection therewith, together with interest on such sums at the Index Rate from the respective dates of Lessor's making of the payment or incurring of the cost or expense to the date of repayment to Lessor by Lessee, shall constitute additional rent due and payable by Lessee under this Lease and shall be paid by Lessee to Lessor on demand. The filing of an action pursuant to Section 17-101 et seq. of the State Finance and Procurement Article of the Annotated Code of Maryland shall not be construed to trigger the provisions of this Section.

ARTICLE XI  
Lessor's Right to Inspect and Enter

Lessor shall have the right to enter upon the Demised Premises and the Lessee Improvements at any reasonable time during regular business hours after reasonable notice pursuant to § 26.01 during the term of this Lease to show the Demised Premises to any prospective purchasers and mortgagees, and may enter upon the Demised Premises and the Lessee Improvements, or any part thereof, for the purpose of ascertaining their condition or whether Lessee is observing and performing its obligations hereunder, or for any other reasonable purpose, including, without limitation, the performance of repairs and maintenance which are required to be performed by Lessee in accordance with this Lease or the Reciprocal Easement Agreement and which shall not have been performed by Lessee, without hindrance or molestation from Lessee or any sublessee. Such right of entry shall be exercised by Lessor at reasonable times and upon reasonable notice, except in the case of emergency, and shall be conducted in a manner which will minimize, to the extent reasonably practicable, the interruption to the operations of Lessee or its sublessees thereon. If Lessee fails to make the repairs or perform the maintenance to the portions of the Existing Structure contained in the Demised Premises as required hereby, or by the Reciprocal Easement Agreement, Lessor may effect such repairs or perform such maintenance, and the cost thereof shall be paid by Lessee to Lessor on demand as additional rent hereunder. If, in the reasonable opinion of Lessor, the performance of any such repair or maintenance requires the closing of such portion of the Demised Premises, Lessor, upon reasonable notice to Lessee (or without notice in the case of emergency), shall be entitled to close such portion of the Demised Premises for the time required to complete such repairs or maintenance subject to the rights of tenants in possession and exclude all third parties therefrom during such time. The Lessor will pursue all such repairs diligently and on a reasonable schedule.

ARTICLE XII  
Damage or Destruction

Section 12.01. Restoration of Premises. If, at any time during the term of this Lease, the Lessee Improvements or any part thereof shall be damaged or destroyed by fire or other occurrence of any kind or nature (including any occurrence for which insurance coverage was not obtained or obtainable), Lessee shall give prompt written notice thereof to Lessor, and, except as otherwise provided in this Article XII, Lessee shall, provided there are sufficient

insurance proceeds available, restore, repair, replace, rebuild or otherwise alter the remaining Lessee Improvements so as to return them as nearly as practicable to their character immediately prior to such damage or destruction (subject, however, to such changes or alterations as may be required by any change in code or regulation and changes Lessee may determine appropriate subject to the review process of Article IV hereof all in general conformity with the Lessee Plans and Specifications and subject to the terms and conditions pertaining to the original construction of the Lessee Improvements set forth herein. Such restoration (which shall include all necessary design and permitting activities) shall be commenced reasonably promptly from the date of the occurrence of such damage or destruction, which time shall, however, be extended by a time commensurate with any delays attributable to adjustment or payment of insurance claims and other unavoidable delays, and shall thereafter be prosecuted with reasonable diligence in accordance with the provisions of Article IV hereof; provided, however, that Lessee shall promptly upon the occurrence of any such damage or destruction take all actions which a prudent landowner would reasonably expect to be necessary to secure and make safe the Demised Premises. Shall Lessee determine not to restore or rebuild, it shall notify Lessor in writing pursuant to § 26.01 hereof. Lessor shall provide one hundred eighty (180) days notice to any Leasehold Mortgagee of the decision of Lessee not to restore or rebuild. If the Lessor and any Leasehold Mortgagee do not agree on a method of repair or restoration within said one hundred eighty (180) day period, this Lease shall terminate.

Section 12.02. Application of Insurance Proceeds. Except as otherwise provided in this Article XII, all insurance proceeds paid on account of damage or destruction as referred to in Section 12.01, less costs and expenses, if any, incurred in connection with adjustment of the loss and collection thereof, shall be applied to the payment of the costs of the aforesaid restoration, repairs, replacement, rebuilding or alterations, including the cost of temporary repairs or for the protection of property pending the completion of permanent restoration, repairs, replacements, rebuilding or alterations (all of which temporary repairs, protection of property and permanent restoration, repairs, replacements, rebuilding or alterations are hereinafter collectively referred to as the "Restoration"), and shall be paid out to, or at the direction of, Lessee from time to time as such Restoration progresses, in accordance with the terms of the Leasehold Mortgage which terms shall be satisfactory in all respects to Lessor.

Section 12.03. Certificates. Any Leasehold Mortgage shall provide that any written request submitted by Lessee for payment of insurance proceeds pursuant to Section 12.02 shall include a verified certificate signed by Lessee and by the supervising architect or engineer in charge of the Restoration, dated not more than ten (10) days prior to such request, (a) setting forth that the sum then requested either has been paid by Lessee or is due to construction managers, contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or have furnished materials for the Restoration therein specified, and giving a brief description of such services and materials and the several amounts so paid or due to each of said persons in respect thereof, (b) stating that no part of such expenditures has been the basis for any previous draw, or is being made the basis for any pending request, for the withdrawal of insurance proceeds or has been paid out of any insurance proceeds received by Lessee, and (c) setting forth a good faith estimate of the cost of completing the Restoration.

Section 12.04. No Outstanding Liens. Any Leasehold Mortgage shall provide that any written request submitted by Lessee for payment of insurance proceeds pursuant to Section 12.02 shall include, in addition to the certificate required under Section 12.03, documentation reasonably satisfactory showing that there has not been filed with respect to the Demised Premises, the facade of the Existing Structure constructed by Lessee, or any part thereof any vendor's, mechanic's, materialman's or other similar statutory or common law lien for work done by or at the request of Lessee or Lessee's contractors or subcontractors, which has not been stayed or discharged of record, except such as will be discharged by payment of the amount then requested. Nothing in this Section 12.04 shall be deemed to be a waiver or limitation of Lessee's obligation to keep the Demised Premises free of liens in accordance with Section 10.01 hereof regardless of whether arising out of work done by or at the request of Lessee or Lessee's contractors or subcontractors.

Section 12.05. Insufficient Insurance Proceeds. In the event that the insurance proceeds shall at any time be insufficient to pay the entire cost of completing the Restoration as reasonably estimated by Lessee, Lessee shall only be required to finish the Restoration if it is financially feasible to do so; i.e., that the cost of the Restoration can be paid for through the cash flow from the Demised Premises in the form of Debt Service under the formula established in § 3.06 after completion of such Restoration and that a source of Leasehold Mortgage financing is

available to provide the funds necessary to perform the Restoration reasonably promptly.

Section 12.06. Failure to Commence Repairs. If Restoration shall not have commenced within one hundred eighty (180) days from the date of the occurrence of such damage or destruction, which time shall, however, be extended by a time commensurate with any delays attributable to adjustment or payment of insurance claims and other unavoidable delays, Lessor may give Lessee and any Leasehold Mortgagee written notice of its intention to terminate this Lease, and if Restoration is not commenced within sixty (60) days after such notice is given, Lessor may terminate this Lease and the insurance proceeds shall be distributed to the Lessor after payment to the Leasehold Mortgages.

Section 12.07. Lessee's Option to Demolish and Reconstruct. Subject to the provisions of this Article XII, in case of damage to or destruction of the Lessee Improvements, whether by fire or otherwise, which shall amount to substantial destruction thereof of the kind referred to in clauses (i) and (ii) of Section 12.09 or shall otherwise be of such character as to make demolition of the remainder thereof necessary or desirable, Lessee shall have the right, at its option, either to restore or reconstruct the same as provided in this Article XII, or to demolish the remainder of the same and, subject to Section 12.05 hereof, to construct, in replacement thereof, a new building or buildings, subject to the Leasehold Mortgages and in all respects to the terms and conditions pertaining to the original construction of the Lessee Improvements set forth herein, and in connection therewith, Lessee shall comply with all provisions hereof.

Section 12.08. Lessee's Continuing Liability. Except as set forth in §12.09, no damage to or destruction of the Lessee Improvements, whether by fire or otherwise, shall permit Lessee to surrender this Lease or shall relieve Lessee from its liability to pay the Rent, additional rent, and other charges payable under this Lease. In no event shall Lessee be entitled thereby to any abatement, allowance, reduction or suspension of Rent, additional rent or any such other charges.

Section 12.09. Destruction or Substantial Destruction. If, the Lessee Improvements shall be so damaged or destroyed by fire or otherwise that (i) the cost of Restoration thereof shall exceed fifty percent (50%) of the then replacement cost of the Lessee Improvements so damaged or destroyed or (ii) the Lessee Improvements so damaged or destroyed cannot reasonably be restored,

repaired, replaced or rebuilt within one (1) year after the occurrence of such damage or destruction or it is not financially feasible to do so as provided in Section 12.05 hereof, then Lessee may elect, after obtaining the written consent of the Leasehold Mortgagee provided in any Leasehold Mortgage, to terminate this Lease on not less than sixty (60) days' written notice to Lessor, given by Lessee within ninety (90) days after such damage or destruction.

Section 12.10 Obligation to Demolish and Distribute Proceeds In the Event of Destruction or Substantial Destruction. In the event of termination of this Lease pursuant to Section 12.06 or Section 12.09 Lessee shall not be obligated to perform any Restoration but shall be required, as soon as practicable, to demolish the Lessee Improvements and to return the Demised Premises as nearly as practicable to their condition as of the date hereof (it being understood that Lessee shall not be obligated, for purposes of this Section (a) to restore any portion of the Existing Structure which was part of the Demised Premises on the date hereof but shall be required to turn over to Lessor any insurance proceeds attributable thereto), (b) this Lease shall terminate as of the effective date specified in the notice of termination, and (c) all insurance proceeds (less the amount of such proceeds reasonably estimated to be required to demolish the Lessee Improvements and to return the Demised Premises as nearly as practicable to their condition as of the date hereof as required above, shall be allocated between Lessor and Lessee (or the Leasehold Mortgagee, as may be provided in any Leasehold Mortgage) upon termination of this Lease; provided, however, that Lessor shall first be paid any portion of such proceeds allocable to the portion of the Existing Structure within the Demised Premises. Lessee shall work diligently and expeditiously to obtain all permits and approvals necessary for the demolition of the Lessee Improvements and thereafter shall diligently complete such demolition in accordance with applicable laws and regulations. No such termination shall release Lessee from any obligation hereunder for additional rent or other charges payable by Lessee hereunder which were excluded from the calculation of the payment made in connection with the notice of termination. This Section 12.10 shall survive any termination of this Lease.

#### ARTICLE XIII Condemnation

Section 13.01. Condemnation of All or Substantially All of Demised Premises. If, at any time during the term of this Lease,

the whole or substantially all of the Demised Premises shall be taken in condemnation proceedings or by agreement in lieu of such proceedings or by any right of eminent domain (each a "taking"), subject the Leasehold Mortgage, this Lease shall terminate and expire on the date of conveyance of the Demised Premises to the condemning authority (the "Conveyance Date"), and the Rent, and all other charges accrued and payable hereunder shall be prorated and paid as of the Conveyance Date.

Section 13.02. Condemnation of Less Than All of Demised Premises. If, at any time during the term of this Lease, there is taken by condemnation proceedings or by agreement in lieu of such proceedings or by any right of eminent domain, less than the whole or less than substantially all of the Demised Premises and if such taking is not of the character described in Section 13.01, the term of this Lease shall not be reduced or affected in any manner (except as provided in Section 13.03), and the following terms and conditions shall govern:

13.02(a) If the remaining part of the Demised Premises and the Lessee Improvements can be feasibly restored, used and operated for the same purpose for which they were used prior to the Conveyance Date (the "Prior Use"), then Lessee shall, subject to the provisions of the Leasehold Mortgage and Force Majeure, at its sole cost and expense, proceed with diligence to repair, alter and restore (including any necessary demolition and reconstruction) such remaining Lessee Improvements insofar as practicable substantially to their former condition for use and operation for the Prior Use in accordance with Section 13.02(d). For purposes of this Article XIII, restoration of the Lessee Improvements shall not be deemed to be "feasible" if, as a result of the applicable taking, the remainder of the Demised Premises and the Lessee Improvements cannot be restored to a complete rental structure capable of producing a proportionately fair and reasonable gross annual income.

13.02(b) Any condemnation award received by Lessee shall be applied to the costs of the Restoration, in accordance with the provisions of the Leasehold Mortgage provided, however, if the cost of effecting such repair, alteration and restoration is reasonably anticipated to exceed the condemnation award expected to be received by Lessee in connection with such taking, Lessee shall not be required to effect such repair, alteration or restoration unless Lessor, subject to any Leasehold Mortgage, first agrees to pay the reasonably anticipated excess of the cost thereof over such condemnation award. Lessor may agree or disagree in its sole and

absolute discretion to pay such excess costs. In the event that Lessor agrees to pay such excess costs, Lessor's payment obligations will arise only after completion of the repair, alteration or restoration and will be satisfied through such abatements of the sums due to Lessor pursuant to Section 3.06 payable hereunder as shall be necessary to reimburse Lessee for such excess costs; provided, however, that Lessee shall first have certified to Lessor the actual total cost of completion of the repair, alteration, or restoration and the amount of the excess costs of same over the condemnation award received or expected to be received by Lessee. Lessor shall have the right to audit the Lessee's books and records related to the repair, alteration, or restoration in accordance with Section 26.21, and if Lessee's certificate of cost overstated the amount due and payable by Lessor with respect to the repair, alteration, or restoration, Lessor shall be entitled to the amount of the overstatement actually credited towards abatement of sums due pursuant to Section 3.06, together with interest thereon at the Weighted Average County Yield from the date on which said abatement began to the date of the amount of the overstatement is paid. In the event the amount of the overstatement exceeds five percent (5%) of the amount which Lessor is required to contribute to the repair, alteration, or restoration pursuant to this Section 13.02(b), Lessee shall bear the costs and expenses of Lessor's audit, together with interest thereon at the Weighted Average County Yield (and such amount shall not be included in Operating Expenses for purposes of determining Remaining Cash Flow). Lessee agrees to use its best efforts to maximize the condemnation award received in connection with the taking described by this Section 13.02. In the event that the condemnation award received by Lessee after any abatement pursuant to this Section 13.02(b), when added to any portion thereof received before the abatement, is greater than the estimated condemnation award used to calculate the portion of the costs of the repair, alteration, or restoration to be borne by Lessor under this Section 13.02(b), such excess shall be immediately paid to Lessor under this Lease subject to the provisions of the Leasehold Mortgage.

13.02(c) If, in the event of a taking described by this Section 13.02, the remaining part of the Demised Premises and the Lessee Improvements cannot be feasibly restored, used and operated for the Prior Use as provided in Section 13.02(a), or if the anticipated condemnation award shall not be sufficient to effect the necessary repair, alteration or restoration to such Prior Use and the Lessor shall not agree to pay the excess cost as provided in Section 13.02(b), Lessee may request permission from Lessor to



repair, alter and restore (including any necessary demolition and reconstruction) the remaining Lessee Improvements so as to constitute a building capable of being used and operated for any alternative purpose consented to by Lessor as hereinafter provided in this Section 13.02(c); provided, however, that not more than one hundred and eighty (180) days after the Conveyance Date (or such later date as Lessee has obtained or should have obtained through the exercise of due diligence all information reasonably necessary to make its decision), Lessee shall have given written notice to Lessor (a) certifying that the remaining Lessee Improvements cannot be feasibly restored, used and operated for the Prior Use for a cost less than or equal to the expected condemnation award, (b) setting forth the proposed new use of the Lessee Improvements and schematic drawings for the repair, alteration or restoration of same, and (c) requesting Lessor's consent to the use of such remaining Lessee Improvements (and the remaining part of the Demised Premises) for the specified purpose. Such certification by Lessee shall be accompanied by the written consent of each Leasehold Mortgagee. Lessor shall not unreasonably withhold its consent to the use proposed by Lessee or to such construction plans. Provided Lessee has complied with Section 26.01(b) hereof, if within sixty (60) days after Lessee has delivered to Lessor (a) Lessee's written request for Lessor's consent to such use or such construction plans and (b) such other information as Lessor shall reasonably request in order to make its decision, Lessor shall not have objected to such proposed use or such construction plans and stated its reasons for objecting, Lessor shall be deemed to have given its consent thereto. Lessee shall, promptly after such consent, commence and proceed with diligence to repair, alter and restore the remaining Lessee Improvements in accordance with (a) the schematic drawings approved by Lessor and (b) Section 13.02(d) hereof. In the event Lessor declines to consent to such proposed alternative use, Lessee shall have the rights specified in Section 13.03 hereof.

13.02(d) The restoration of the Lessee Improvements pursuant to this Section 13.02 shall be carried out with due diligence and shall be completed as soon as reasonably practicable in accordance with the terms and conditions pertaining to the original construction of the Lessee Improvements set forth herein, including, without limitation, (i) the quality of materials, finishes, and design concepts of the original Lessee Improvements, and (ii) the provisions of Article IV. The term "Lessee Improvements" as used herein shall, from and after the date Lessor consents to Lessee's schematic drawings for the restored Lessee Improvements pursuant to this Section 13.02(d) (or, in the case of

a proposed new use pursuant to Section 13.02(c) the date on which Lessor consents to such new use and the schematic drawings therefor), be deemed to refer to the use and the Lessee Improvements indicated by the schematic drawings. The term "Lessee Plans and Specifications," from and after such date shall be deemed to be modified to refer to the final site plan and design development and working drawings and the specifications for site and buildings approved by Lessor in writing for such Lessee Improvements, as the same may be amended from time to time with Lessor's approval. The terms "Architect/Engineer," "Architectural Contract," "Construction Support Contract," "Contract Support Consultant," and "Property Management Agreement," shall, as necessary, be amended as of such date to refer to any new agreements with new parties reasonably acceptable to Lessor for the provision of services comparable to those described in Section 4.07. The other provisions of Article IV shall be amended as necessary to give effect to such provisions in light of the change in circumstances resulting from the occurrence described in this Section 13.02.

13.02(e) Effective as of the Conveyance Date, the Rent payable under Section 3.01 shall be calculated based upon the uncondemned portion of the Demised Premises pursuant to the formula stated in §3.06.

13.02(f) Lessee shall not be obligated to repair or reconstruct the Lessee Improvements if the condemnation does not materially damage the Lessee Improvements or does not practically interfere with the operations of the Demises Premises.

Section 13.03. Condemnation of Less Than All of Demised Premises Leaving Remainder Unsited for Prior Use or Approved Alternative Use. If, at any time during the term of this Lease, less than all or substantially all of the Demised Premises shall be taken in condemnation proceedings or by agreement in lieu of such proceedings or by any right of eminent domain, and if (a) the remaining part of the Demised Premises cannot be feasibly restored, used and operated by Lessee for the Prior Use as provided in Section 13.02(a), or if (b) Lessor does not agree in its sole and absolute discretion to pay the excess, if any, of the anticipated repair, alteration or restoration costs over the expected condemnation award as provided by Section 13.02(b), or if (c) Lessor does not give its consent to an alternative use pursuant to Section 13.02(c), Lessee may, at its option, and subject to the Leasehold Mortgage terminate this Lease, effective upon sixty (60) days' prior written notice to Lessor, given by Lessee within ninety

(90) days prior to the Conveyance Date (or such later date or time as Lessee has obtained or should have obtained through the exercise of due diligence all information reasonably necessary to make its decision). Such notice of Lessee's election to terminate this Lease shall be accompanied by a certificate of Lessee to the effect that the remaining part of the Demised Premises cannot be feasibly restored, used and operated for the Prior Use as provided in Section 13.02(a). Following service of the aforementioned notice and certificate, and provided that Lessor concurs with the Lessee's determination of unfeasibility, this Lease shall terminate and expire on the date specified in such notice, and the Rent, additional rent and all other charges accrued and payable hereunder shall be prorated and paid to the date specified in such notice.

Section 13.04. Temporary Taking. If the whole or any part of the Demised Premises or of Lessee's interest in this Lease shall be taken in condemnation proceedings or by agreement in lieu of such proceedings or by any right of eminent domain, for a temporary use or occupancy, the term of this Lease shall not be reduced or affected in any way, and Lessee shall continue to pay in full the Rent and additional rent provided herein, without reduction or abatement, in the manner and at the times herein specified, and except to the extent that Lessee is prevented from so doing pursuant to the terms of any order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such taking had not occurred.

Section 13.05. Condemnation Awards. Lessor and Lessee shall each pursue separately an award from the condemning authority by way of compensation, damages, rent, costs of demolition, removal, Restoration, or otherwise, and neither shall have any obligation to the other with respect to any such award except for Lessee's obligations under this Article XIII. In the event that Lessee terminates this Lease pursuant to Section 13.03, the parties agree that Lessee's award shall include, without limitation, the value of Lessee's interest in the Lessee Improvements and the economic value of the Leasehold, and Lessor's condemnation award shall include the value of Lessor's reversionary interest in the Lessee Improvements and the present value of the Rent and other amounts Lessor would have received under this Lease but for such termination. Any award for severance damages to any portion of the Demised Premises or the Lessee Improvements remaining after the taking, and any award for the demolition or restoration thereof, shall be, if Lessee elects to terminate this Lease, the exclusive property of Lessor, and Lessor shall be responsible for taking any actions necessary to

secure or make safe such remaining portion of the Demised Premises and Lessee Improvements. If Lessee does not elect to terminate this Lease, Lessee shall be entitled to any such award of severance damages or any such award for demolition or restoration due to the condemnation of any portion of the Lessee Improvements, and Lessee shall be responsible for taking any actions necessary to secure or make safe the remaining portion of the Demised Premises and Lessee Improvements.

Section 13.06. Notice of Proceedings. In the event that Lessor or Lessee shall receive notice of any proposed or pending condemnation proceeding or similar proceeding affecting the Demised Premises, the Lessee Improvements, or Lessee's interest in this Lease, the party receiving such notice shall promptly notify the other party thereof.

ARTICLE XIV  
INTENTIONALLY DELETED

ARTICLE XV  
Representations, Warranties and Covenants

Section 15.01. Lessor's Representations and Warranties. Lessor hereby represents and warrants to Lessee, as of the Commencement Date, as follows:

15.01(a) Lessor is a political subdivision of the State of Maryland, and has the full and unrestricted lawful power and authority to enter into and carry out the terms of this Lease. The execution, delivery and performance of this Lease and the consummation of the transactions contemplated hereby have been duly authorized and approved by all requisite action of Lessor, and this Lease, and all other agreements, documents and instruments contemplated hereby, when executed and delivered by Lessor, will each constitute a valid and binding obligation of Lessor, enforceable in accordance with its terms.

15.01(b) Lessor specially warrants that Lessor has good and marketable fee simple title to the Demised Premises and any improvements now existing thereon (other than any portion of the Existing Structure within the Demised Premises, as to which Lessee has leasehold title by virtue of this Lease), free and clear of all mortgages, liens, restrictions and encumbrances, other than the Permitted Encumbrances.

15.01(c) Lessor is not aware of any condemnation or eminent domain proceedings pending against the Demised Premises or any part thereof, and Lessor has received no notice, oral or written, of the desire of any public authority or other entity to take or use the Demised Premises or any part thereof.

15.01(d) Lessor has no knowledge of any material adverse condition of the Existing Structure other than as disclosed in any of the inspectors' reports dated prior to the date of this Lease.

15.01(e) Neither the execution or delivery of this Lease, nor the consummation of the transactions contemplated hereby, will: (i) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, Lessor's charter, enabling legislation or other formation and authorization documents, or any agreement or instrument to which Lessor is a party or is subject; (ii) violate any agreement, restriction, easement, restrictive covenant, or instrument to which Lessor is a party or to which it or any of its assets are subject; or (iii) constitute a violation of any applicable code, resolution, law, statute, regulation, ordinance, rule, judgment, decree or order.

15.01(f) At the request of Lessee, Lessor shall assign to Lessee its rights and claims with respect to any contract for construction of the Existing Structure.

15.01(g) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Lessor, threatened against or affecting Lessor, or which question the validity of this Lease or any agreement, instrument or document delivered or to be delivered pursuant hereto, or any action taken in, under or in connection with any of the provisions hereof, or thereof, at law or in equity, before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality; and Lessor has no reason to believe that any such action, suit, proceeding or investigation may be brought or threatened against it.

15.01(h) Lessor shall operate the Garage Property as a public parking garage at regular hours in accordance with its obligations to serve the public including those persons who are tenants, visitors, invitees, employees and customers of tenants of Lessee.

15.01(i) Lessor has provided Lessee with a copy of an

Environmental Site Assessment dated October 17, 1990, prepared by ATEC Associates and a Preliminary Contamination Assessment dated June, 1991 prepared by Law Engineering (collectively hereinafter referred to as the "Reports") for the Land. Lessor has no knowledge of any violation of any county, state or federal environmental law as it applies to the Land or the Existing Structure other than that provided in the Reports. Lessor will continue to operate the Garage Project in conformity with all county, state and federal environmental laws.

Section 15.02. Lessee's Representations and Warranties.  
Lessee hereby represents and warrants to Lessor, as of the Commencement Date as follows:

15.02(a) Lessee is a governmental agency validly existing under the laws of the State of Maryland and is duly qualified and authorized to transact business in, and is in good standing in, the State of Maryland. Lessee has the full and unrestricted lawful power and authority to enter into and carry out the terms of this Lease. The execution, delivery and performance of this Lease and the consummation of the transactions contemplated hereby have been duly authorized and approved by all requisite action, and this Lease and all other agreements, documents and instruments contemplated hereby, when duly executed and delivered, will each constitute a valid and binding agreement of Lessee, enforceable in accordance with its terms.

15.02(b) [deleted].

15.02(c) Except for the permits and approvals required for the development, construction and equipping of the Lessee Improvements, no consent, approval or authorization of any governmental authority is required to be obtained by Lessee other than approval by Lessee itself in connection with the execution, delivery or performance of this Lease or any other agreement, document or instrument contemplated hereby or thereby.

15.02(d) Neither the execution or delivery of this Lease, nor the consummation of the transactions contemplated hereby, will: (i) conflict with, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, any agreement or instrument to which it is a party or is subject; (ii) violate any agreement, restriction, easement, restrictive covenant, or instrument to which it is a party or to which it or any of its assets is subject; or (iii) constitute a violation of any applicable code, resolution, law, statute, regulation, ordinance,

rule, judgment, decree or order.

15.02(e) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Lessee, threatened against or affecting Lessee, or which question the validity of this Lease or any agreement, instrument or document delivered or to be delivered pursuant hereto, or any action taken in, under or in connection with any of the provisions hereof or thereof, at law or in equity, before or by any federal, state, municipal or other governmental court, department, commission, board, bureau, agency or instrumentality; and Lessee has no reason to believe that any such action, suit, proceeding or investigation may be brought or threatened against it.

15.02(g) All of the insurance policies required to be obtained pursuant to Article IX hereof by Lessee have been obtained and are in full force and effect and copies or certificates thereof have been delivered to Lessor.

Section 15.03. Lessee's Covenants. In addition to agreeing to comply with all the other terms and conditions which the Lessee is required to comply with hereunder, Lessee covenants as follows:

15.03(a) The financial statements of Lessee submitted to Lessor for the 1994-95 fiscal year are true, complete and correct, fairly present its financial condition and the results of its operations as of the date and for the period of such statements, fairly state its assets and liabilities and have been prepared in accordance with generally accepted accounting principles applied on a basis consistent with prior periods. To the best knowledge of Lessee there are no liabilities of Lessee of the date of the statement affecting its ability to perform its obligations hereunder which are not reflected therein.

15.03(b) In the event Lessee determines that the Development Costs of the initial Lessee Development are likely to exceed those stated in the Development Budget (as it may be amended from time to time with the approval of the Lessor), Lessee shall notify Lessor promptly in writing of such anticipated increase and shall specify the reason(s) for or cause(s) of such anticipated increase. At the Commencement Date, the costs for the initial Lessee Development will be as shown on the Development Budget.

Section 15.04 Full Disclosure Neither Lessee nor Lessor has failed to disclose any material fact to Lessor necessary to make the statements herein or in any other instruments delivered in

connection herewith not misleading. Neither Lessee nor Lessor has material knowledge or information of any facts, circumstances or conditions which are not known to the other or are not matters of general knowledge and which either knows or should know would in any way materially and adversely affect the development and construction of the Lessee Development. All materials submitted by the parties to each other in connection herewith are true and correct in all material respects to the best of the knowledge of the party submitting same.

ARTICLE XVI  
ESTOPPEL CERTIFICATES

At any time and from time to time, within fifteen (15) days after written request therefor from the other party, each party shall execute, acknowledge and deliver to the requesting party or to such other recipient (including, without limitation, any Leasehold Mortgagee or proposed Leasehold Mortgagee, any purchaser or proposed purchaser of the Leasehold or of Lessor's fee interest in the Demised Premises, and any fee mortgagee) as may be specified in the request, a statement certifying: (a) whether this Lease has been supplemented or amended and, if so, the nature of each supplement or amendment; (b) whether this Lease is in full force and effect in accordance with its terms; (c) whether the certifying party has notice or knowledge of the existence of any default hereunder by the other party or any offsets, counterclaims or defenses hereunder on the part of the other party, and, if so, the nature of each such default, offset, counterclaim or defense; (d) the date to which the Rent has been paid in advance; (e) the Commencement Date and the expiration date of the term of this Lease; and (f) such other similar matters as may reasonably be requested. Any such certificate shall be binding upon the party issuing the same and may be relied upon by the requesting party and any other person or entity to whom such certificate may be delivered or exhibited.

ARTICLE XVII  
LESSOR'S RIGHT TO PERFORM  
LESSEE'S COVENANTS

Section 17.01. Performance by Lessor. If Lessee shall at any time fail to pay any Imposition in accordance with the provisions of Article V hereof, or to obtain, pay for, maintain or deliver any of the insurance policies or certificates therefor as provided in Article IX, or shall fail to make any other payment or perform any other act on its part required to be made or performed by Lessee



hereunder, then Lessor may (but shall be under no obligation to), if Lessee shall not have paid or performed (or commenced to perform) within ten (10) days after Lessor's written notice to Lessee thereof (or without prior notice in case of any emergency; provided that Lessor hereby agrees to give notice promptly thereafter), without waiving or releasing Lessee from any obligation of Lessee contained in this Lease or from any default by Lessee and without waiving Lessor's right to take such other action as may be permissible under this Lease as a result of such default: (a) pay any Imposition payable by Lessee pursuant to the provisions of Article V; (b) obtain, pay for and maintain any of the insurance policies provided for in Article IX; or (c) make any other payment or perform any other act on Lessee's part required to be made or performed by Lessee hereunder. For purposes of any of the foregoing, Lessor may enter upon the Demised Premises and take all such actions thereon as may reasonably be necessary in connection therewith after written notice to Lessee where required as aforesaid.

Section 17.02. Reimbursement by Lessee. All sums paid by Lessor in accordance with Section 17.01 and all costs and expenses incurred by Lessor, including reasonable attorneys' fees and expenses, in connection with the performance of any act performed by Lessor in accordance with Section 17.01, together with interest on the foregoing sums at the Index Rate from the date of such payment or incurrence by Lessor of such cost or expense until the date of payment by Lessee, shall constitute additional rent payable by Lessee under this Lease and shall be paid by Lessee to Lessor on demand.

#### ARTICLE XVIII DEFAULT

Section 18.01. Events of Default. It shall be an Event of Default ("Event of Default") hereunder if any one or more of the following shall occur (it being understood that the occurrence of any one or more of the following events shall constitute a "Default" hereunder, whether or not any requirement for the giving of notice, the lapse of time, or both, has been satisfied):

18.01(a) Lessee shall fail to pay any Rent, additional rent, Imposition or other amount payable under this Lease, when and as the same shall become due and payable, and such Default shall continue for a period of fifteen (15) days after receipt of notice from Lessor to Lessee pursuant to § 26.01.

18.01(b) Lessee shall fail to perform or comply with any of the agreements, terms, covenants, conditions or limitations provided in this Lease to be performed or complied with by Lessee (excepting payment obligations referred to in Section 18.01(a)) and such failure shall continue for a period of thirty (30) days after receipt of notice thereof from Lessor to Lessee pursuant to § 26.01; provided, however, that if such failure cannot be cured within such thirty (30) day period, then such thirty (30) day period shall automatically be extended for an additional period reasonably necessary to effect such cure, so long as Lessee is diligently and in good faith attempting to effect such cure.

18.01(c) Any representation or warranty of Lessee made under this Lease shall prove to have been incorrect in any material respect.

18.01(d) Any default by Lessee shall occur and continue beyond any notice and grace period applicable thereto under the Reciprocal Easement Agreement or any Leasehold Mortgage, and the other party to any such contract, instrument or agreement shall not have waived or consented to such default.

18.01(e) Lessee shall abandon the Demised Premises or any substantial part thereof.

18.01(f) Any persistent and continuous failure by Lessee to complete the Lessee Development and proceed diligently therewith in accordance with this Agreement.

Section 18.02. Major Defaults, Default Interest; Termination of Lease.

(a) Any of the following Events of Default shall constitute a Major Default ("Major Default"):

(1) Failure to pay Rent as provided in Section 3.06;

(2) Material and substantial physical endangerment to the Existing Structure or the Lessee Improvements by Lessee;

(3) Change in the principal use of the Lessee Improvements without Lessor's written consent;

(4) Failure to commence construction of the Lessee Development in a timely manner or failure to complete the Lessee

Development timely except for delays permitted hereunder; or

(5) Failure to maintain the insurance provided in Article IX.

(b) Upon the occurrence and during the continuation of any Default involving Lessee's failure to pay Lessor any amounts owed hereunder when due, all such amounts shall bear interest, unless otherwise specifically set forth herein, at the Index Rate from the date such amounts became due to the date paid in full.

(c) Upon the occurrence and during the continuation of any Major Default, Lessor may give written notice to Lessee pursuant to Section 26.01 and (pursuant to Section 8.02(e)(iv)) to any Leasehold Mortgagee, specifying such Major Default and stating that this Lease and the term hereby demised shall expire and terminate on the date specified in such notice, which date shall be not less than thirty (30) days after the giving of such notice. If such Major Default shall be continuing on the date specified for termination in such notice of termination, then, subject to the rights of all Leasehold Mortgagees under Section 8.02(e), this Lease and the term hereby demised and all rights of Lessee under this Lease shall automatically expire and terminate, and Lessee shall remain liable as hereinafter provided. In the event Lessee has begun efforts to rectify the Major Default within said thirty (30) day period but the Major Default cannot be rectified within such time period, Lessee's right to continue to cure the Major Default shall continue until cured, provided Lessee is making good faith efforts to effect such cure. Upon the termination of this Lease due to a Major Default, all insurance proceeds or condemnation awards thereafter received with respect to the Demised Premises or the Lessee Improvements, shall be the exclusive property of Lessor (subject to the rights of any Leasehold Mortgagee under Section 8.02(e)(v)).

Section 18.03. Surrender of Demised Premises. Upon termination of this Lease pursuant to Section 18.02 for a Major Default, Lessee shall quit and peacefully surrender the Demised Premises and the Lessee Improvements to Lessor subject to the rights of any Leasehold Mortgagee. Upon the termination of this Lease, Lessor shall have the right to take possession of the Demised Premises and the Lessee Improvements or any part thereof by force, summary proceedings, ejectment or otherwise and to remove Lessee and its agents, employees and independent contractors therefrom. Upon every such taking of possession, Lessor shall have the right to hold, store, use, operate, manage, control and

maintain the Demised Premises and the Lessee Improvements and all materials, equipment and other property used in connection therewith or incorporated therein and conduct the business thereof, including, without limitation, the right to (a) complete the Lessee Development, if not at the time completed, with such additions, changes and corrections as may, in the sole discretion of Lessor, be necessary or desirable; (b) make all necessary and proper repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase and otherwise acquire additional fixtures, personalty and other property; (c) insure or keep the Demised Premises and the Lessee Improvements insured; (d) manage and operate the Demised Premises and the Lessee Improvements and exercise all rights and powers of Lessee, in its name or otherwise, with respect to the Demised Premises and the Lessee Improvements; and (e) enter into any agreements with respect to the exercise by others of any of the rights and powers herein granted to Lessor, all as Lessor may from time to time determine, in its sole discretion, to be necessary or desirable. Lessor shall not be liable to Lessee, its employees, agents or independent contractors for or by reason or any such entry, taking of possession or removal, or holding, operation or management. Lessee shall be obligated to reimburse Lessor for any and all reasonable sums expended in connection with the exercise of any of its rights and powers under this Lease, including, without limitation, reasonable attorneys' fees and expenses.

Section 18.04. Attorney-In-Fact. For the purpose of carrying out the provisions of Section 18.03, Lessee hereby irrevocably constitutes Lessor and each of its representatives, with full power of substitution, as its true and lawful attorney-in-fact to do and perform any and all actions permitted hereunder.

Section 18.05. Reletting. At any time or from time to time after termination of this Lease pursuant to Section 18.02 for a Major Default and subject to the rights of any Leasehold Mortgagee, Lessor shall use commercially reasonable good faith efforts to (but shall not be obligated to) relet the Demised Premises and the Lessee Improvements, or any part of the Demised Premises or the Lessee Improvements, for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the term of this Lease) and on such other conditions (which may include concessions or free rent and alterations of the Lessee Improvements) as Lessor may determine, in its sole discretion, and Lessor may collect and receive the rents therefor.

Section 18.06. Continuing Liability of Lessee. Termination of this Lease pursuant to Section 18.02 for a Major Default shall in no event relieve Lessee of its liability and obligations under this Lease, and such liability and obligations shall survive any such termination. In the event of any such termination, whether or not all or any part of the Demised Premises or the Lessee Improvements shall have been relet, Lessee shall pay to Lessor the Rent and the Impositions and other additional rent required hereunder to be paid by Lessee up to the time of such termination, and thereafter Lessee, until the end of what would have been the term of this Lease in the absence of such termination, shall be liable to Lessor for, and shall pay to Lessor, as and for liquidated and agreed damages for Lessee's default, the equivalent of the amount of Rent and Impositions and other additional rent and charges which would be payable under this Lease by Lessee if this Lease were still in effect, less the net proceeds of reletting, if any, effected by Lessor pursuant to Section 18.05, after deduction of all of Lessor's reasonable expenses incurred in connection with such reletting (including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, attorneys' fees and disbursements, rent concessions, alteration costs and other expenses of preparing for such reletting). Lessee shall pay such damages to Lessor monthly on the days on which the Rent would have been payable under this Lease if this Lease were still in effect, and, Lessor shall be entitled to recover from Lessee each monthly deficiency as the same shall arise.

Section 18.07. No Waiver by Lessor. No failure by Lessor to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with or observed by Lessee, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Lessor. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

Section 18.08. Lessor's Legal and Equitable Remedies Preserved. In the event of any breach by Lessee of any of the agreements, terms, covenants or conditions contained in this Lease, Lessor shall be entitled to enjoin such breach and shall have the

right to invoke any right or remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

Section 18.09. Remedies Cumulative. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or commencement of the exercise by Lessor of any one or more of the rights and remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Lessor of any and all other rights and remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 18.10. Force Majeure. If Lessee is actually delayed in the performance of its obligations hereunder as a result of causes beyond its control and without Lessee's fault or negligence, including, but not limited to, by reason of acts of God or of the public enemy, any defect in the construction of the Existing Structure, acts or neglect of Lessor, acts or neglect of any governmental authority, fire, flood, epidemic, quarantine restrictions, freight embargoes, unusually severe weather, strikes or work stoppages (each an event of "Force Majeure"), the time for performance of said obligations shall be extended by one day for each day of delay attributable to any such event of Force Majeure (subject to any limitations on such extension set forth herein); provided, however, that Lessee shall, within ten (10) days after Lessee learns of or reasonably should have learned of such delay in the ordinary course of its business, first have notified Lessor in writing of the causes thereof and requested an extension for the period of the enforced delay; and provided, further, that if a day of delay is attributable to two or more events of Force Majeure, the time for performance shall only be extended by one day, it being understood by the parties that it is not the intent of this Section 18.10 to compound the Force Majeure extensions. Lessee shall use all reasonable efforts to mitigate the effects of Force Majeure.

Section 18.11. Intentionally Deleted

Section 18.12. Index Rate. The Index Rate shall be equal to one percent (1%) over the index called the prime rate (the "Prime Rate") which is published from time to time in the Wall Street Journal's listing of "Money Rates" or the average of such rates in

effect at any one time if more than one such rate is published on the date such underpayment should have been made to the date payment is made. The Index Rate shall be determined as of the date any applicable amount under this Lease begins to accrue interest at the Index Rate and thereafter shall be adjusted on the first day of each calendar quarter, if necessary, to equal the rate which is one percent (1%) over the Prime Rate published on the first day of such calendar quarter (or the nearest date prior to the first day of such calendar quarter as the Prime Rate shall have been published). If the Prime Rate ceases to be published in the Wall Street Journal, or the Wall Street Journal ceases to be published, the parties will agree in good faith on an alternate index of a similar nature; provided, however, that if the parties cannot so agree within thirty (30) days after the written request of either party, either party may submit the matter to the American Arbitration Association in effect from time to time, to determine which index the arbitrators consider equivalent to the Index Rate.

#### ARTICLE XIX SURRENDER ON TERMINATION

Section 19.01. Surrender; Abandonment of Removable Property. Upon the expiration of the term of this Lease or any earlier termination hereof, Lessee shall peaceably and quietly leave, surrender and yield up to Lessor the Demised Premises and the Lessee Improvements, together with all carpeting, flooring, draperies, blinds, mechanical, electrical and plumbing equipment, HVAC facilities, security and fire safety systems, and other fixtures to the extent the foregoing are owned by Lessee and located within or affixed to the Lessee Improvements, all of which shall be broom-clean and, except to the extent that Lessor has consented to a continuing sublease (as provided in Section 8.04(d)) or has accepted attornment by a sublessee (as contemplated under Section 8.04(c)), shall be free of sublessees, occupants and all other users; provided, however, that if the termination of this Lease is due to the occurrence of a Major Default and subject to the rights of any Leasehold Mortgagee and Lessor determines that the Lessee Improvements are not economically viable in their current state, Lessor shall have the right in its sole discretion (which right must be exercised within six (6) months after termination) to order Lessee to demolish and clear away all or any portion of the Lessee Improvements or to elect to cause the Lessee Improvements to be demolished and cleared away, in either event at Lessee's sole cost and expense, provided, nothing herein contained shall require the Lessee to disturb any sublessee lawfully in possession of any portion of the Demised Premises. Unless Lessor

shall have ordered the demolition of the Lessee Improvements pursuant to the preceding sentence, Lessee shall repair all damage to the Lessee Improvements caused by or resulting from the removal of any removable property of Lessee or any sublessee or other occupant or user. Any removable property of Lessee or any sublessee or other occupant or user which shall remain in or on the Lessee Improvements or the Demised Premises after Lessee's removal shall, at Lessor's option, be deemed to have been abandoned and either may be retained by Lessor as its property or may be disposed of, at Lessee's expense, in such manner as Lessor may see fit.

Section 19.02. Title to Lessee Improvements. Upon expiration of the term of this Lease or upon the earlier termination hereof in accordance with this Lease, title to the Lessee Improvements shall automatically vest in Lessor without requirement of any deed, conveyance, or bill of sale to evidence the same. Notwithstanding the foregoing, Lessee shall, promptly upon written request by Lessor, execute, acknowledge and deliver such deeds or other instruments of conveyance as Lessor reasonably may request in order to evidence such transfer of title.

Section 19.03. Voluntary Surrender. Lessee shall not voluntarily surrender, yield up, or otherwise voluntarily terminate this Lease nor shall Lessor accept such surrender without the written consent of the Leasehold Mortgagees.

Section 19.04. Survival of Provisions. The provisions of this Article XIX shall survive the expiration or earlier termination of this Lease.

#### ARTICLE XX COVENANT OF QUIET ENJOYMENT

Subject to the conditions, terms, and provisions contained in this Lease, Lessor covenants that Lessee shall quietly have and enjoy the Demised Premises during the term hereof, without hindrance or molestation by Lessor.

#### ARTICLE XXI INDEMNIFICATION

Section 21.01 Events Giving Rise to Indemnity Obligations of Lessee. Provided that Lessee is provided with prompt written notice of demands, claims, actions or causes of action, assessments, expenses, costs, damages, losses and liabilities subject to this Section 21.01, Lessee shall indemnify and hold



Lessor harmless from and against any and all demands, claims, actions or causes of action, assessments, expenses, costs, damages, losses and liabilities (including, without limitation, reasonable attorneys' fees and disbursements and other reasonable costs incurred by Lessor in defending itself against same) which may at any time be asserted against, imposed upon, or suffered by Lessor, its successors or assigns, the Garage Property or any part hereof, by reason of, on account of or arising from Lessee's ownership, design, operation, repair or maintenance of the Demised Premises during the term of this Lease, only to the extent that any such demands, claims, actions or causes of action, assessments, expenses, costs damages, losses and liabilities are caused by, result from, or arise out of the negligence of Lessee or any of its agents in connection with the ownership, operation, repair or maintenance of the Demised Premises or the Lessee Improvements except to the extent that such occurrences result from the negligence of Lessor or its agents or from Lessor's failure to meet its obligations hereunder.

Section 21.02. Events Giving Rise to Indemnity Obligation of Lessor. Provided that Lessor is provided with prompt written notice of any demands, claims, actions or causes of action, assessments, expenses, costs, damages, losses and liabilities subject to this Section 21.02, Lessor shall indemnify and hold Lessee harmless from and against any and all demands, claims, actions or causes of action, assessments, expenses, costs, damages, losses and liabilities (including, without limitation, reasonable attorneys' fees and disbursements and other reasonable costs incurred by Lessee in defending itself against same) which may at any time be asserted against, imposed upon, or suffered by Lessee, its successors or assigns, the Demised Premises or the Lessee Improvements or any part thereof, only to the extent that any such demands, claims, actions or causes of action, assessments, expenses, costs damages, losses and liabilities are caused by, result from, or arise out of the negligence of Lessor or any of its agents in connection with the ownership, operation, repair or maintenance of the Garage Property except to the extent that such occurrences result from the negligence of Lessee or its agents or from Lessee's failure to meet its obligations hereunder.

## ARTICLE XXII ENVIRONMENTAL MATTERS

Section 22.01. Representation. Lessor and Lessee each represent and warrant to the other that: (a) to the best of their knowledge except as stated in the Reports there are no, nor have

there been any, nor will either cause there to be Hazardous Substances (as hereinafter defined) generated, released, stored, disposed of, buried or deposited over, beneath, in or upon, the Land, Existing Structure or Lessee Improvements or any part thereof or into the atmosphere or any watercourse, body of water or wetlands surrounding the same; or which have been or will be used in the construction of the Lessee Improvements of any nature in violation of any laws, ordinances, codes, rules or regulations or Environmental Law (as hereinafter defined); (b) no permits are held or required to be held nor are any registrations or notices required to be made with respect to the Land, Existing Structure or Lessee Improvements under any Environmental Law except for normal and customary permits; and (c) Lessor has not received any notice of any violations of (and they are not aware of any existing violations) of any Environmental Law and, to the best of Lessor's knowledge, there have been no actions commenced or threatened by any party for noncompliance with any Environmental Law.

22.01(a). Lessee and Lessor agree to keep and maintain the Land, Existing Structure and Lessee Improvements in compliance with, and shall not cause or permit such to be in violation of, any Environmental Law. The party on whose property it is determined that a Hazardous Substance is located shall at its own cost, take all actions which are necessary or desirable to clean up any Hazardous Substances or other environmental problems affecting the Land, Existing Structure and Lessee Improvements, including removal, containment or any other remedial action required by any applicable governmental authorities.

22.01(b). Lessor and Lessee shall give prompt written notice to the other of (a) any proceeding, investigation or inquiry commenced by any governmental authority with respect to the presence of any Hazardous Substances on, under or about the Land, Existing Structure or Lessee Improvements as the case may be or the migration thereof to or from adjoining property; (b) any notice of a violation of an Environmental Law and any claims made or threatened by any individual or entity against the Land, Existing Structure or Lessee Improvements as the case may be relating to any loss or injury allegedly resulting from any Hazardous Substances; and (c) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Land, Existing Structure or Lessee Improvements as the case may be which might cause the Land, Existing Structure or Lessee Improvements as the case may be or any part thereof to be subject to any restriction on the ownership, occupancy, transferability or use thereof under any Environmental Law.

22.01(c). For purposes of this Lease

(i) the term "Environmental Law" means and includes, without limitation, any federal, state or local law, statute, regulation or ordinance pertaining to health, industrial hygiene or the environmental or ecological conditions on, under or about the Land, Existing Structure or Lessee Improvements, including without limitation each of the following: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 USC §§ 9601 et seq.; the Resource Conservation and Recovery Act of 1976 (RCRA), 42 USC §§ 6901 et seq.; the Toxic Substance Control Act, as amended, 15 USC §§ 2601 et seq.; the Clean Air Act, as amended, 33 USC §§ 1251 et seq.; the Federal Hazardous Materials Transportation Act 49 USC §§ 1801 et seq.; the National Environmental Policy Act of 1975, as amended, 42 USC §§ 4321 et seq.; and the rules, regulations and ordinances of the U.S. Environmental Protection Agency and of all other agencies, boards, commissions and other governmental bodies and officers having jurisdiction over the Land, Existing Structures or Lessee Improvements as the case may be or the use or operation thereof.

(ii) The term "Hazardous Substance" means and includes, without limitation:

(a) Those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances" or "solid waste" in any Environmental Law;

(b) Those substances listed in the U.S. Department of Transportation Table or amendments thereto (49 CFR 172.01) or by the U.S. Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and any amendments thereto);

(c) Those other substances, materials and wastes which are or become regulated under any applicable federal, state or local law, regulation or ordinance or by any federal, state or local governmental agency, board, commission or other governmental body, or which are or become classified as hazardous or toxic by any such law, regulation or ordinance; and

(d) Any material, waste or substance which is any of the following: (1) asbestos or any material composed of or containing asbestos; (2) polychlorinated biphenyls; (3) designated or listed as a "hazardous substance" pursuant to 33 U.S.C. § 1251

et seq.); (4) highly flammable or explosive; or (5) radioactive.

ARTICLE XXIII  
LIMITATION OF LIABILITY

Section 23.01. Meaning of Term "Lessor". The term "Lessor," as used herein, so far as Lessor's covenants and agreements hereunder are concerned, shall be limited to mean and include only the owner or owners at the time in question of the fee title to the Demised Premises acting in their capacity as such. So long as Montgomery County is Lessor hereunder, the term "Lessor" shall mean Montgomery County only in its capacity as owner of the Demised Premises and not in its capacity as a governmental entity. This Lease is intended as a contract between landlord and tenant and is not intended to affect the rights and obligations of the parties hereto independent of this Lease as sovereign and subject. In the event of any conveyance of such fee title, the Lessor herein named and each subsequent grantor shall be automatically relieved, from and after the date of such conveyance, of all personal liability as respects the performance of any of Lessor's covenants and agreements thereafter to be performed, and such grantee shall be bound by all such covenants and agreements, it being intended that Lessor's covenants and agreements shall be binding on the Lessor named herein and such Lessor's successors and assigns only during and in respect of their successive periods of ownership.

Section 23.02. Limited Liability to Lessee and Third Parties. Except as otherwise specifically stated in this Lease or in the Reciprocal Easement Agreement, Lessor shall have no liability whatsoever (in its capacity as Lessor hereunder, it being recognized, however, that nothing herein shall be construed as a waiver or limitation of any defenses the County may have as a governmental entity) now or in the future to Lessee, to any of Lessee's agents, contractors, servants, employees, sublessees or invitees hereunder, or to any other person or entity whatsoever, at law or in equity, for any damage or injury to any of the personal property of Lessee or any such person or entity, or for loss, death, or personal injury to Lessee or any such person or entity regardless of cause, including without limitation, any of the foregoing arising out of or related to the design, construction, engineering or condition of the Existing Structure, except to the extent any such damage, loss, death or personal injury arises as a result of the negligence of the Lessor; provided, however that such liability with respect to Lessee's subtenants in the Residential/Retail Building shall be limited to Lessor's gross negligence or willful misconduct. All subleases entered into by

Lessee of the Demised Premises or the Improvements by tenants shall include a provision substantially similar to the following:

[tenant] recognizes that the Residential/Retail Building is constructed within air space leased from Montgomery County, Maryland, or its successors or assigns under an Air Rights Lease. The Air Rights Lease provides that Montgomery County, Maryland, or its successors or assigns under the Air Rights Lease shall have no liability to any tenant of for personal injury, property damage or other damages except to the extent that they result from the gross negligence or willful misconduct of Montgomery County, Maryland, or its successors or assigns under the Air Rights Lease. Accordingly, [tenant] agrees that it shall assert no claim for personal injury or property damage arising in connection with its presents against Montgomery County, Maryland, its successors or assigns, under the Air Rights Lease as a result of Montgomery County, Maryland's, or any successors or assigns as landlord under the Air Rights Lease except as may arise solely as a result of gross negligence or willful misconduct of Montgomery County, Maryland, or its successors or assigns under the Air Rights Lease.

Section 23.03. [deleted]

#### ARTICLE XXIV

#### RIGHT TO PURCHASE GARAGE PROPERTY OR DEMISED PREMISES

Section 24.01. Lessee's Rights to Purchase Garage Property and/or Demised Premises.

So long as the Lessee or any Leasehold Mortgagee is the Lessee of the Leasehold hereunder, Lessee shall, subject to the limitation set forth in Section 24.02, have the following rights with respect to the Garage Property and/or Demised Premises:

(a) If, at any time, (i) Lessor wishes to sell, exchange, transfer or otherwise dispose of the Garage Property and/or all or any part of the Demised Premises or any interest therein to any person or entity other than another governmental agency or authority, subject to Lessor's real property disposition regulations then Lessor shall so notify Lessee pursuant to Section 26.01, or (ii) Lessee wishes to purchase the Garage Property and/or the Demised Premises or any interest therein, then Lessee shall so

notify Lessor pursuant to Section 26.01.

(b) Until the expiration of thirty (30) days from receipt of such notice, or until such earlier time as the party receiving notice may waive its rights under this Section, the parties shall, subject to statutes, rules and regulations applicable to the County, negotiate exclusively with the other in a good faith effort to reach agreement for such sale, exchange, transfer or other disposition for a price and on other terms and conditions mutually acceptable to Lessor and Lessee, such sale to be consummated within ninety (90) days after receipt of such notice.

(c) In the event that the Lessor and Lessee shall fail to consummate a contract for purchase thereof within ninety (90) days after Lessee's receipt of notice, pursuant to Section 24.01(a)(i) Lessor shall give the Leasehold Mortgagees thirty (30) days written notice at the address provided by the Leasehold Mortgagees and thereafter negotiate for the purchase in the same manner as provided hereinabove with Lessee.

(d) In the event Lessor and Lessee or Lessor and Leasehold Mortgagees, as the case may be, are unable to consummate a contract of sale for the Garage Property and/or Demised Premises and Lessor is unable to sell the Garage Property and/or Demised Premises, as the case may be, within one (1) year from issuance of the notice to Lessee, pursuant to Section 24.01(a)(i), Lessor shall again offer the Garage Property or Demised Premises prior to any subsequent effort to sell.

(e) In the event that Lessee shall give notice to Lessor pursuant to paragraph 24.01(a)(ii) and the parties shall be unable to consummate a contract within ninety (90) days after receipt of the notice, the following procedures for establishment of a purchase price and the following terms of purchase shall be applicable.

(i) Each party shall promptly appoint a real estate appraiser familiar with commercial real estate in Montgomery County, Maryland, with the MAI designation to determine the fair market value of the Garage Property or Demised Premises or both as the case may be (hereinafter known as the "Property" for the purposes of this Section). In appraising the Property it is specifically agreed by Lessor and Lessee, the appraiser shall take into consideration the terms of this Lease and its effect, if any, on the Property to be transferred.

(ii) If the two appraisers so appointed agree upon a fair market value of the Property, they shall jointly render a written report of their opinion which shall be the purchase price for the purposes of this Article. If the two appraisers cannot agree upon fair market value of the Property, they shall appoint a third appraiser who shall appraise the real property using the same criteria. Each of the three appraisers shall render a separate written report of his opinion. The appointment of all appraisers as well as the rendition of all reports by the appraisers shall be accomplished without unreasonable delay.

(iii) If the appraisal as rendered by the appraiser chosen by the two appraisers shall fall between the appraisals as submitted by the two appraisers appointed by Lessor and Lessee, then its appraisal shall be binding as to the fair market value of the Property to be purchased by Lessee from Lessor. If its appraisal shall be lower than either appraisal submitted by the first two appraisers, then the fair market value of the Property shall be the lower of the two appraisals submitted by the appraisers appointed by the parties. If its appraisal shall be higher than any appraisal submitted by the first two appraisers, then the fair market value of the real property shall be the higher of the two appraisals submitted by the appraisers appointed by the parties.

(iv) Settlement, subject to the disposition of real property regulations of Lessor, shall be made by Lessee within one hundred twenty (120) days from the date of the receipt of the joint written report or all three appraisals, as the case may be, at a location determined by Lessee. The purchase price shall be payable in cash at settlement and the Property shall be sold by fee simple warranty deed, free and clear of all liens, encumbrances, except the Permitted Encumbrances.

#### Section 24.02. Limitations.

(a) The right of first opportunity to purchase provided in paragraph 24.01 shall not be applicable at any time when a Major Default has occurred and is continuing. The right granted herein is assignable to any Leasehold Mortgagee after a foreclosure or deed in lieu thereof.

(b) Notwithstanding any provision of this Article to the contrary, Lessor shall not be required to sell, exchange, transfer or otherwise dispose of the Garage Property or the Demised Premises or negotiate with Lessee or any Leasehold Mortgagee regarding any

such sale, exchange, transfer or other disposition (i) until Lessor has received an opinion of nationally recognized bond counsel selected by Lessor to the effect that such sale, exchange, transfer or other disposition will not adversely affect the tax exempt status of interest payable on Lessor's outstanding bonds, or (ii) if such sale, exchange, transfer or other disposition would (A) violate any law, rule or regulation, or (B) cause Lessor to violate any covenant made by Lessor in connection with its outstanding bonds.

ARTICLE XXV - INTENTIONALLY DELETED

ARTICLE XXVI  
MISCELLANEOUS

Section 26.01. Notices.

26.01(a) All notices, demands, certificates, requests or other communications which may be or are required to be given, served or sent by either party to the other party pursuant to this Lease (whether or not the provision providing for such notice specifically refers to this Section 26.01) shall be in writing and shall be mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery, addressed as follows:

**If to Lessor:**

Department of Transportation  
Montgomery County Government  
101 Monroe Street  
Rockville, Maryland 20850  
Attention: Director

With a copy (which shall not constitute notice) to:

Office of the County Attorney  
Montgomery County Government  
101 Monroe Street  
Rockville, Maryland 20850  
Attention: County Attorney

and except that copies of all notices under Article IX hereof also shall be sent to:



Montgomery County Division of Risk Management  
Montgomery County Government  
101 Monroe Street  
Rockville, Maryland 20850  
Attention: Chief

**If to Lessee:**

Executive Director  
Housing Opportunities Commission  
of Montgomery County  
10400 Detrick Avenue  
Kensington, Maryland 20895

With a copy (which shall not constitute notice) to:

Kenneth B. Tecler, Esquire  
Chen, Walsh, Tecler & McCabe  
200A Monroe St., Suite 300  
Rockville, Md. 20850

Each party may designate by notice in writing a new address to which any notice, demand, certificate, request or other communication may thereafter be so given, served or sent. Each notice or other communication which shall be mailed, delivered or transmitted in the manner described above shall be deemed sufficiently given, served, sent and received for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, or the affidavit of messenger being deemed conclusive (but not exclusive) evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

26.01(b) Wherever in this Lease it is provided that an event of any kind (e.g., the giving of consent or approval) will be deemed to have occurred if the party receiving any notice or delivery does not respond within a certain time period, the notice triggering such response period shall not be effective unless it bears the following legend in bold faced (or similarly highlighted) capital letters prominently displayed on the first page of the notice or accompanying cover letter, as applicable, with all blank spaces accurately completed:

THIS NOTICE IS BEING DELIVERED PURSUANT TO SECTION \_\_\_\_ OF THAT CERTAIN AIR RIGHTS LEASE DATED \_\_\_\_\_, 19\_\_, BY AND BETWEEN THE HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY, MARYLAND, AS LESSEE, AND MONTGOMERY COUNTY, MARYLAND, AS LESSOR. FAILURE TO RESPOND TO THIS LETTER WILL HAVE IMPORTANT LEGAL CONSEQUENCES. THIS LETTER SHOULD BE FORWARDED IMMEDIATELY TO SOMEONE WITH AUTHORITY TO ACT ON IT.

Section 26.02. No Brokers. Lessor and Lessee each represents and warrants to the other that it has engaged no broker, finder or agent in connection with this transaction and that it has not incurred any unpaid liability to any broker, finder or agent for any brokerage fee, finder's fee or commission with respect to the transactions contemplated under this Lease; and each agrees to indemnify the other and hold the other harmless from and against any claims asserted against the other for any such fees or commissions by any person purporting to act or to have acted in such capacity for or on behalf of the indemnifying party.

Section 26.03. Expenses. Except for costs and expenses specifically assumed by one of the parties under this Lease, each party hereto shall pay its own expenses incident to this Lease and the transactions contemplated herein, including all legal, consulting, accounting, architectural, and engineering fees and disbursements.

Section 26.04. Severability. In the event that any provision of this Lease or the application thereof to any party or circumstance shall be finally determined by a court of proper jurisdiction to be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provision to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each other provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

Section 26.05. Waivers. No delay or failure on the part of either party in exercising any right, power or privilege under this Lease shall impair any such right, power or privilege or be construed as a waiver of or acquiescence in any default hereunder. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or the exercise of any other right, power or privilege. No waiver shall be valid unless made in a written instrument duly executed by the party against whom enforcement of such waiver is sought, and then only to the extent expressly specified therein.

Section 26.06. Binding Effect. Subject to the provisions hereof restricting assignment, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 26.07. Amendment. This Lease shall not be amended, altered or modified except by an instrument in writing duly executed by the parties hereto with the same formalities as this Lease.

Section 26.08. Pronouns. All pronouns and any variations thereof shall, in this Lease, be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or entity may require.

Section 26.09. Headings. The Article and Section headings contained in this Lease are inserted for convenience of reference only, shall not be deemed to be a part of this Lease for any purpose and shall not in any way define or affect the meaning, construction, or scope of any of the provisions hereof.

Section 26.10. Governing Law. This Lease, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of Maryland (but not including the choice-of-law rules thereof).

Section 26.11. Time of Essence. TIME IS OF THE ESSENCE IN THIS LEASE.

Section 26.12. Construction. Each party hereto hereby acknowledges that both parties hereto participated actively in the negotiation and drafting of this Lease and that, accordingly, no court construing this Lease shall construe it more stringently against one party than against the other.

Section 26.13. Ethics. Pursuant to the requirements of Montgomery County Code 1984, Chapter 11B, notice is hereby given as follows:

Any public employee who has or obtains any benefit from any contract with any person transacting business with Montgomery County, Maryland (the "County") in which the public employee has an interest, financial or otherwise, must report such benefit to the Ethics Commission of the County. In the event that such public employee knows or should have known of

such benefit, and fails to report such benefit to the Ethics Commission, he or she shall be in violation of the ethical standards of this Article. However, this provision shall not apply to a contract with a business entity where the employee's interest in the business has been placed in an independently managed trust.

It is unlawful for any person to offer, give or agree to give to any public or former public employee to solicit, demand, accept or agree to accept from another person, gifts for or because of:

(a) an official public action taken, or to be taken, or which could be taken;

(b) a legal duty performed or to be performed, or which could be performed; or

(c) a legal duty violated or to be violated, or which could be violated by such public or former public employee. It is unlawful for any payment, gift or benefit to be made by or on behalf of a subcontractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

Unless authorized under Section 11B-52, it is unlawful for any person transacting business with the County to employ a public employee for employment contemporaneous with his or her public employment.

Section 26.14. No Partnership. Nothing contained in this Lease shall be deemed (or be construed) to constitute a partnership or joint venture between Lessor and Lessee, nor shall Lessee, its employees or agents be considered agents or subagents of Lessor, respectively.

Section 26.15. Non-Discrimination. Lessee shall comply with the non-discrimination in employment policies of Lessor as required by Sections 11B-3 and 27-19 of the Montgomery County Code 1984, as amended, and all Federal and State laws and regulations pertaining to non-discrimination in employment.

Section 26.16. Cooperation Between Parties. Lessor and Lessee shall meet annually to discuss matters relating to this Lease, the Demised Premises and the Lessee Improvements.

Section 26.17. [Intentionally deleted]

Section 26.18. No Merger. Any acquisition by Lessor of this Lease and Lessee's Leasehold interest in the Demised Premises, whether by purchase upon a foreclosure of any Leasehold Mortgage or otherwise, shall not effect a merger of this Lease and Lessor's fee interest in the Land, the Garage Property and the Lessee Improvements.

Section 26.19 Consents. Unless otherwise specifically set forth herein, all consents and approvals required of Lessor under this Lease shall be granted in the sole and absolute discretion of Lessor, and shall not be subject to any standard of reasonableness.

Section 26.20. Business Days. As used in this Lease, the term "Business Day" shall mean any day other than a Saturday, Sunday or legal holiday in Montgomery County, Maryland.

Section 26.21. Books and Records. Lessor shall have the right, at any reasonable time upon ten (10) Business Day's prior notice to Lessee and for any reasonable purpose, including, without limitation, to verify the statements delivered pursuant to Sections 3.06(c) and 3.07 or to determine the Lessee's financial condition, to review and inspect, or cause to be reviewed and inspected, Lessee's books and records and to make and retain copies of same.

Section 26.22. Lessor's Acceptance Limited. Wherever pursuant to this Lease Lessor's acceptance or approval is given to any schematic drawing, design development or working drawing, any of the Lessee Plans and Specifications, or any assignment, contract, party or other matter, Lessor's acceptance shall be deemed only to evidence the consistency of the matter or party accepted to the Site Plan Opinion, the Project Plan Opinion, or Lessor's general rights or interests as landlord hereunder and shall not be deemed to be an approval of the soundness or sufficiency of the design, engineering or construction of the Lessee Development, or the legality, validity, qualification, suitability, or fitness of the matter accepted other than as being consistent with the general purposes of this Lease, nor shall such acceptance or approval be deemed to limit any of Lessor's rights under this Lease or under applicable law other than to object to the specific matter accepted or approved (absent fraud or material misrepresentation), it being understood that Lessor's acceptance is given solely as a property owner and not as an expert in matters of design, engineering, construction, law, licensing qualifications or

any other matter requiring particular expertise. Lessor's acceptance of any of the foregoing shall not be deemed to be an agreement to assume or perform any of Lessee's obligations under any matter accepted.

Section 26.23. [deleted]

Section 26.24. Rent Obligations Unconditional. All payments of Rent and additional rent due and payable by Lessee hereunder pursuant to Section 3.06 and all other costs, expenses and charges which Lessee in any of the provisions of this Lease assumes, agrees or becomes obligated to pay, shall be paid when due without notice (except as otherwise specifically provided herein) and without abatement (except as otherwise specifically provided herein), deduction or set-off.

IN WITNESS WHEREOF, this Air Rights Lease has been duly executed by the parties hereto, or the parties hereto have caused this Air Rights Lease to be duly executed on their behalf, as of the date first set forth hereinabove.

LESSEE:

LESSOR:

HOUSING OPPORTUNITIES COMMISSION  
OF MONTGOMERY COUNTY

MONTGOMERY COUNTY, MARYLAND

By: B. A. [Signature]  
Its: Executive Director

By: Douglas M. Duncan [Signature]  
Its: County Executive

RECOMMENDED BY:

Graham J. Norton [Signature]  
Graham J. Norton  
Title: Director, Department  
of Transportation

Thomas A. Huff [Signature]  
Thomas Huff  
Office of Parking Management

APPROVED AS TO FORM AND LEGALITY:

Christopher Hitchens  
~~Charles W. Thompson, Jr.~~ Christopher Hitchens  
Ass't. County Attorney

STATE OF MARYLAND:  
COUNTY OF MONTGOMERY:

I hereby certify that on this 21st day of June, 1995, before me, the subscriber, a Notary Public in and for the aforesaid state and county, personally appeared Bernard L. Detreault and did acknowledge that he executed the foregoing Air Rights Lease on behalf of the Housing Opportunities Commission of Montgomery County, Maryland for the purpose therein contained, and further acknowledged the foregoing Air Rights Lease to be the act of the Housing Opportunities Commission of Montgomery County, Maryland.

As witness my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: 2/1/99

STATE OF MARYLAND:  
COUNTY OF MONTGOMERY:

On this 23rd day of June, 1995, before me, the undersigned officer, personally appeared Douglas M. Duncan, County Executive of Montgomery County, Maryland, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he as such County Executive executed the same for the purposes therein contained.

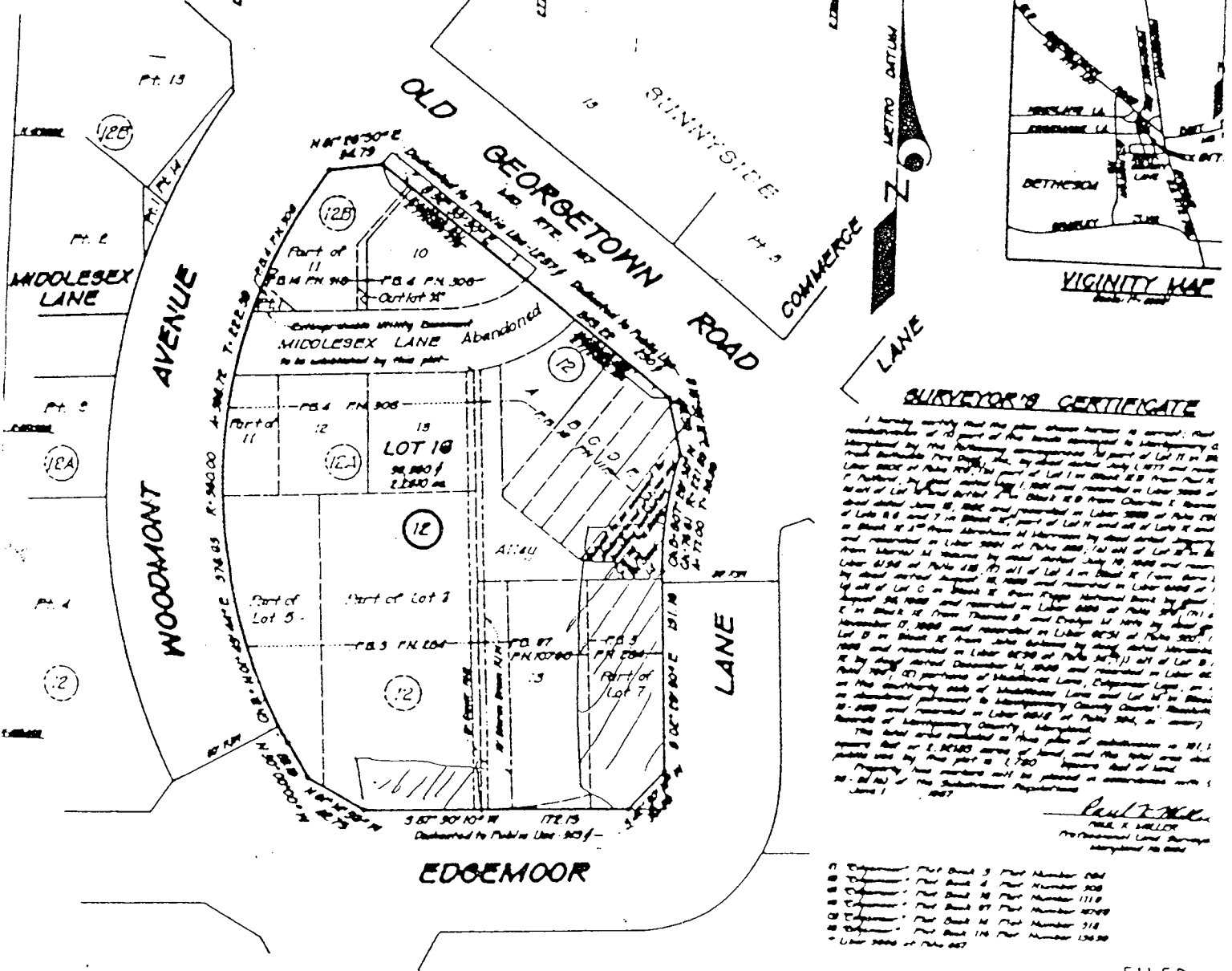
In Witness Whereof, I hereunto set my hand and official seal.

Jo Anne Poore  
Notary Public  
My Commission Expires: June 1, 1998

B:\FINAL\ARL

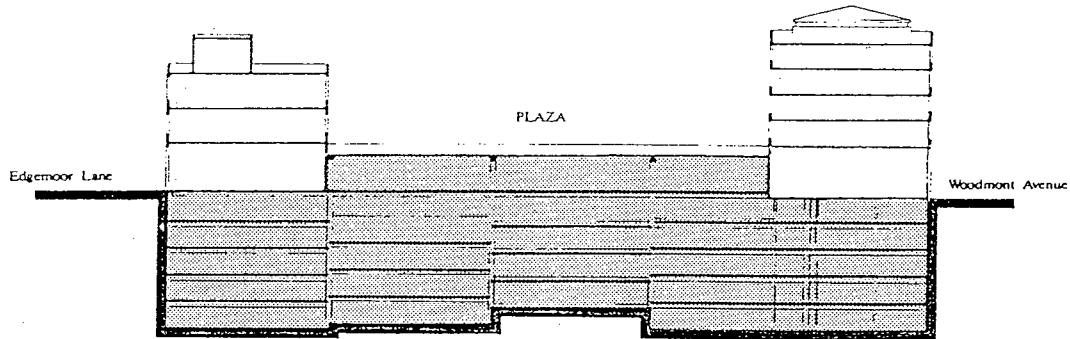
## EXHIBIT A: the Land

PLAT NO 16519

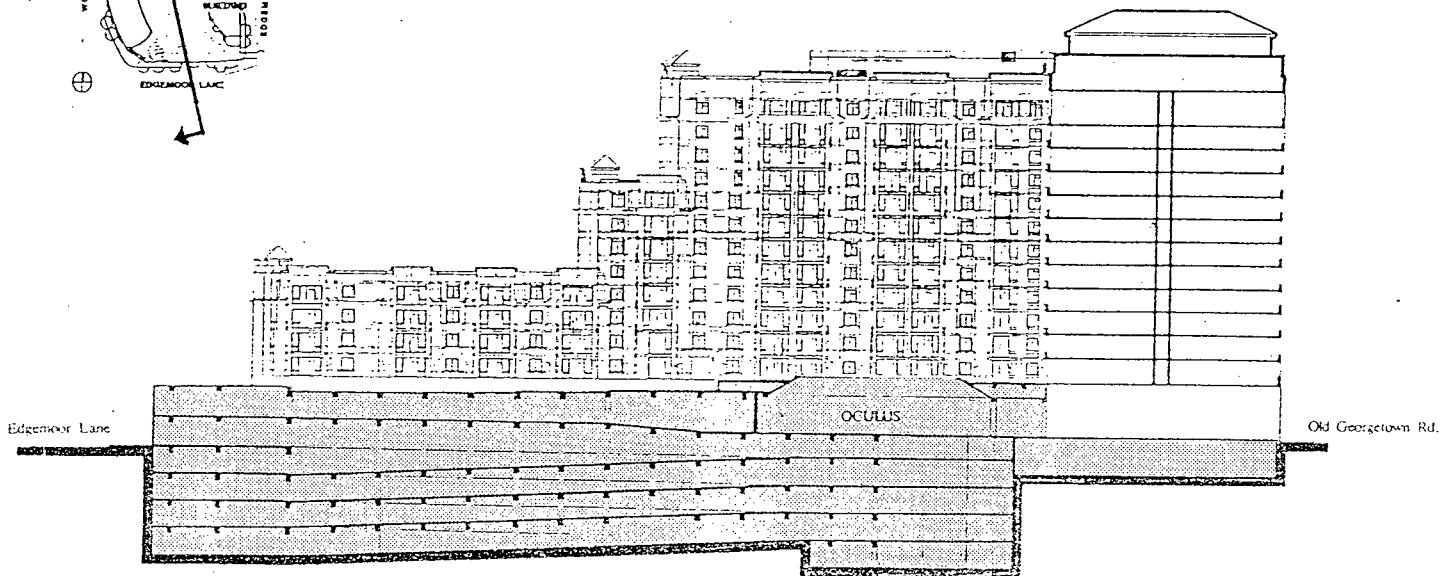
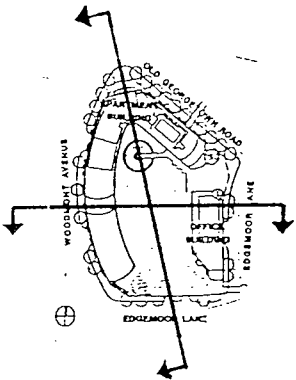




Existing Structure



SHORT SECTION LOOKING SOUTH



LONG SECTION LOOKING WEST

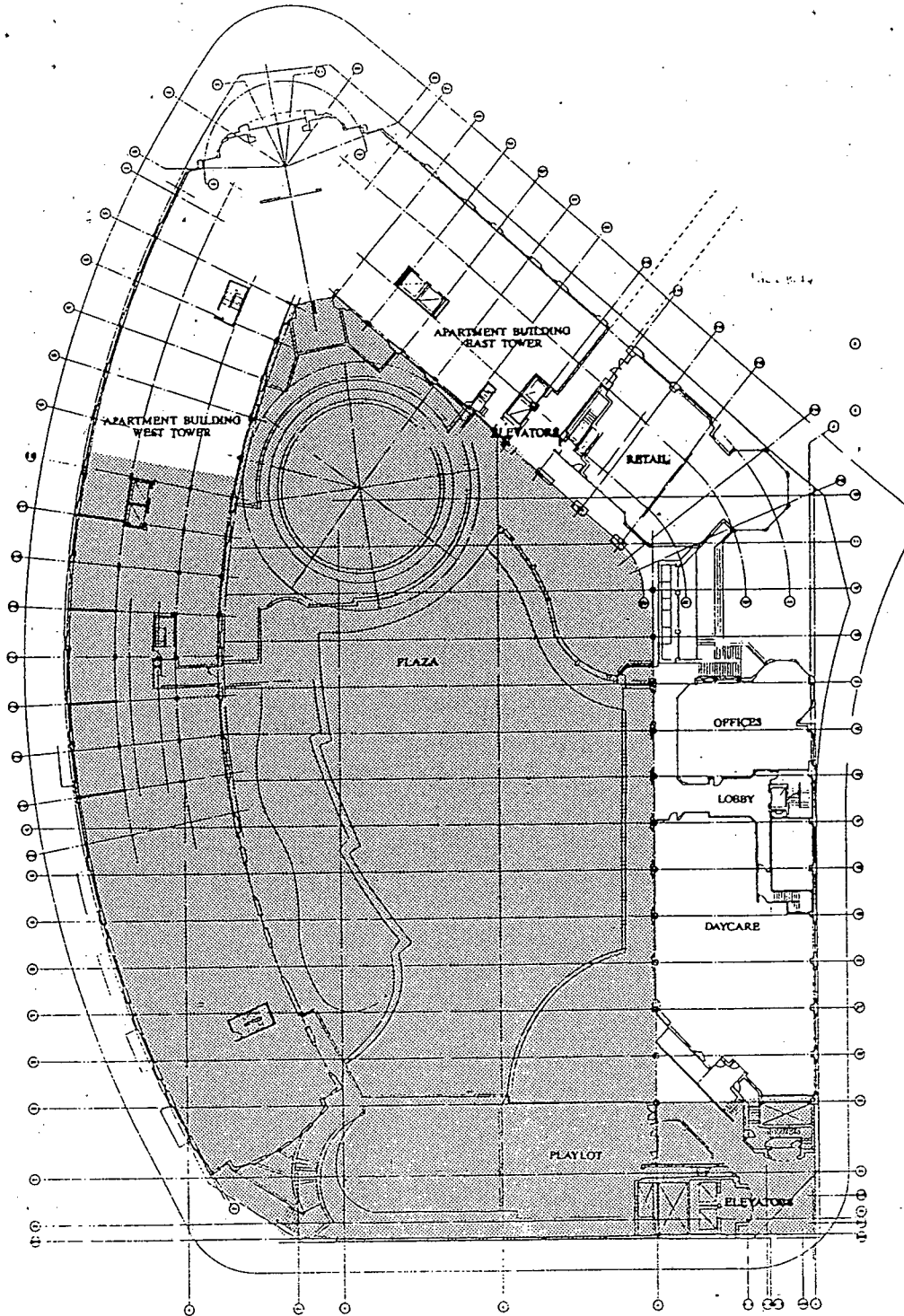
The Metropolitan

Existing Structure

Sections

B-1

Existing Structure



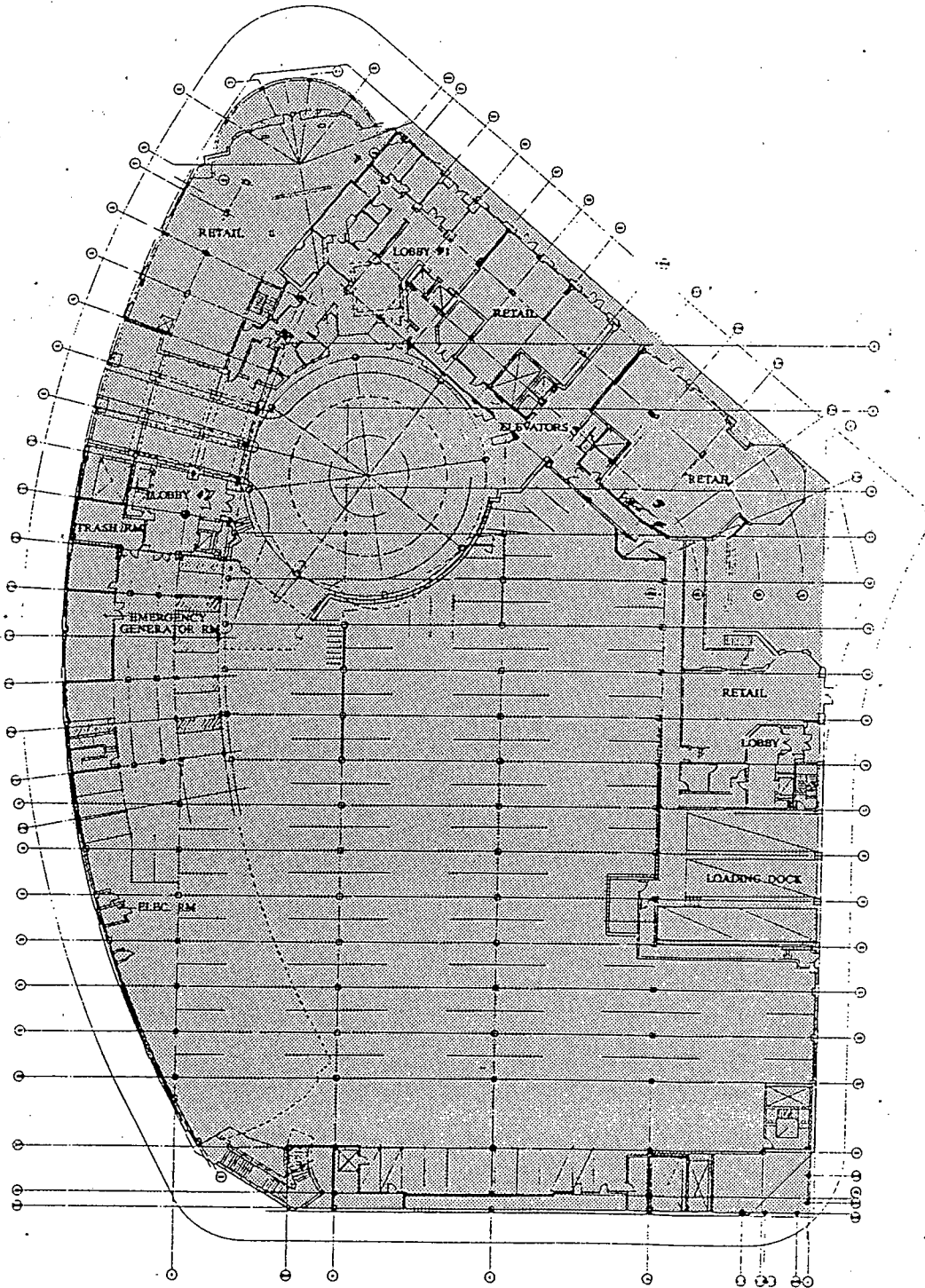
The Metropolitan

Plaza Level

Existing Structure

B-2

Existing Structure



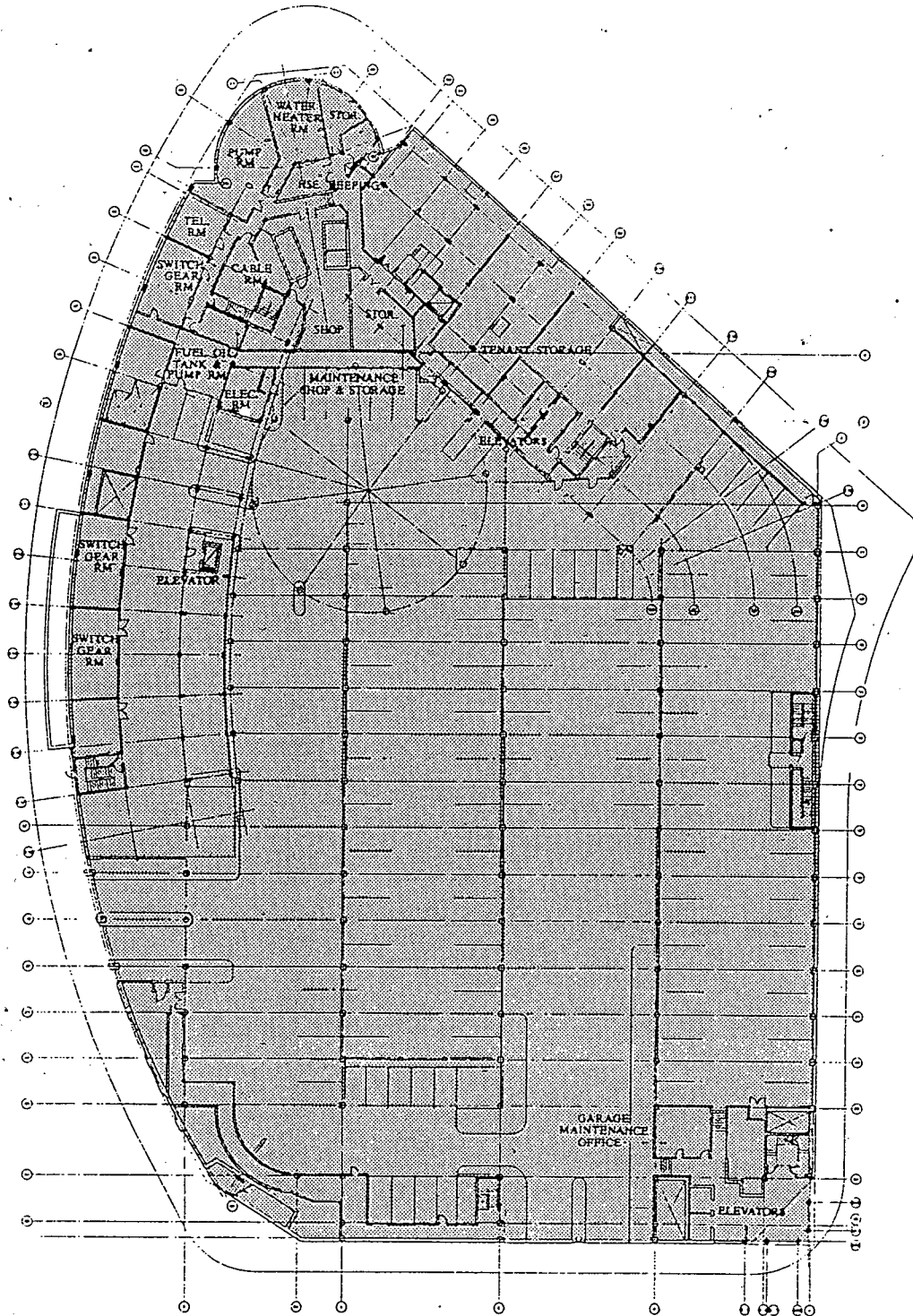
The Metropolitan

Existing Structure

Old Georgetown Road Level

B-3

Existing Structure



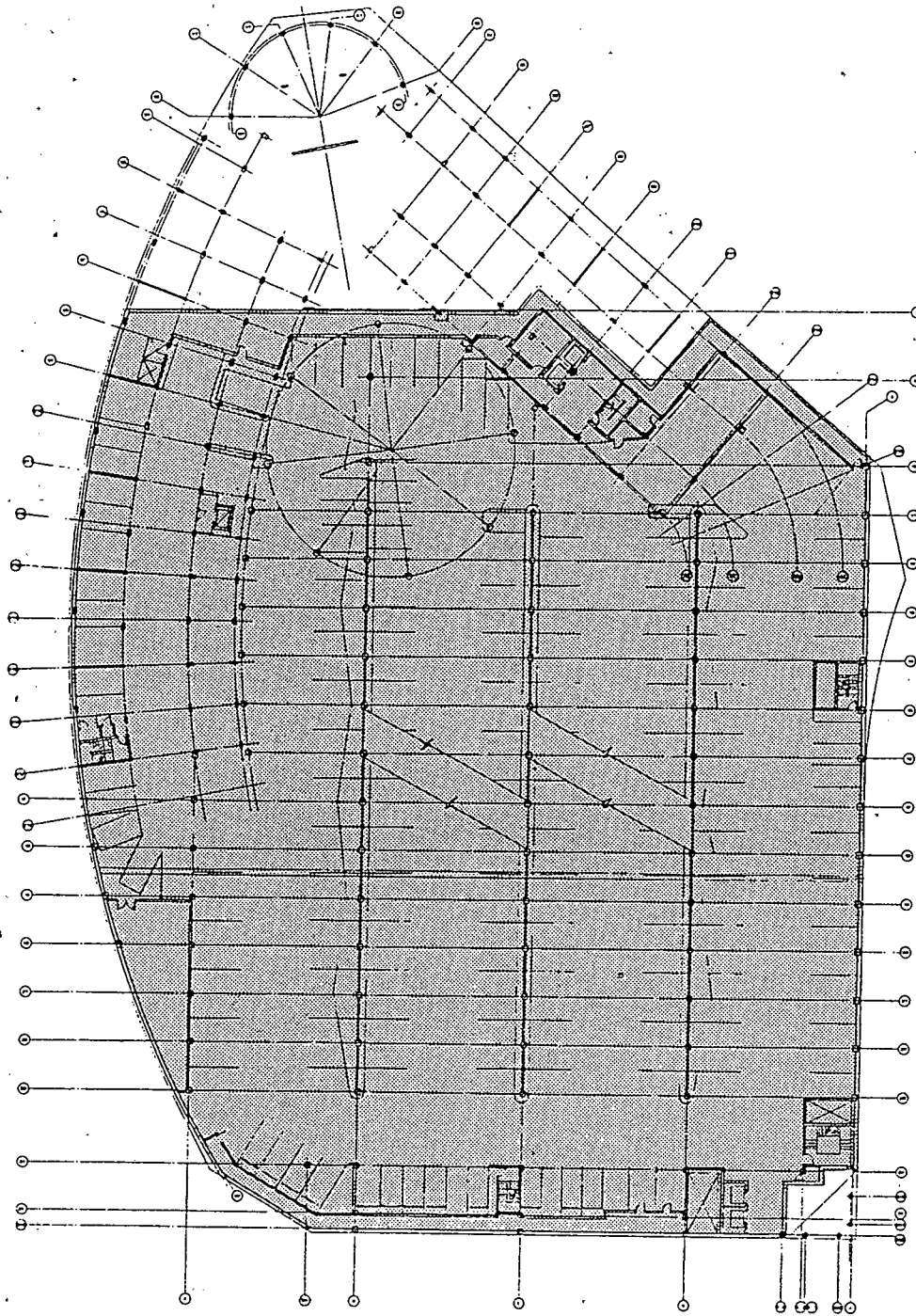
The Metropolitan

Edgemoor Lane Level

Existing Structure

B-4

Existing Structure




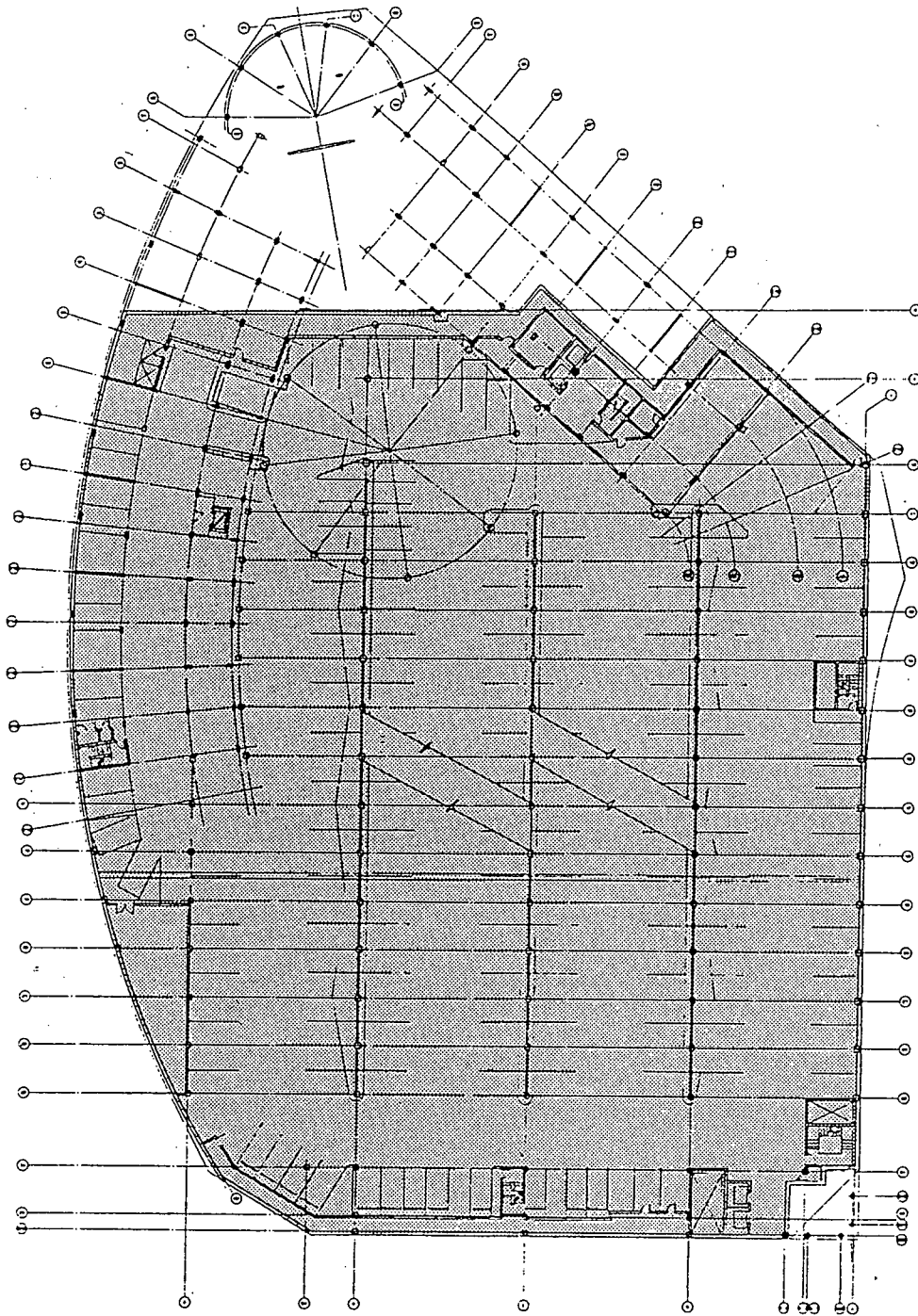
The Metropolitan

P2 Parking Level

Existing Structure

B-5

Existing Structure 



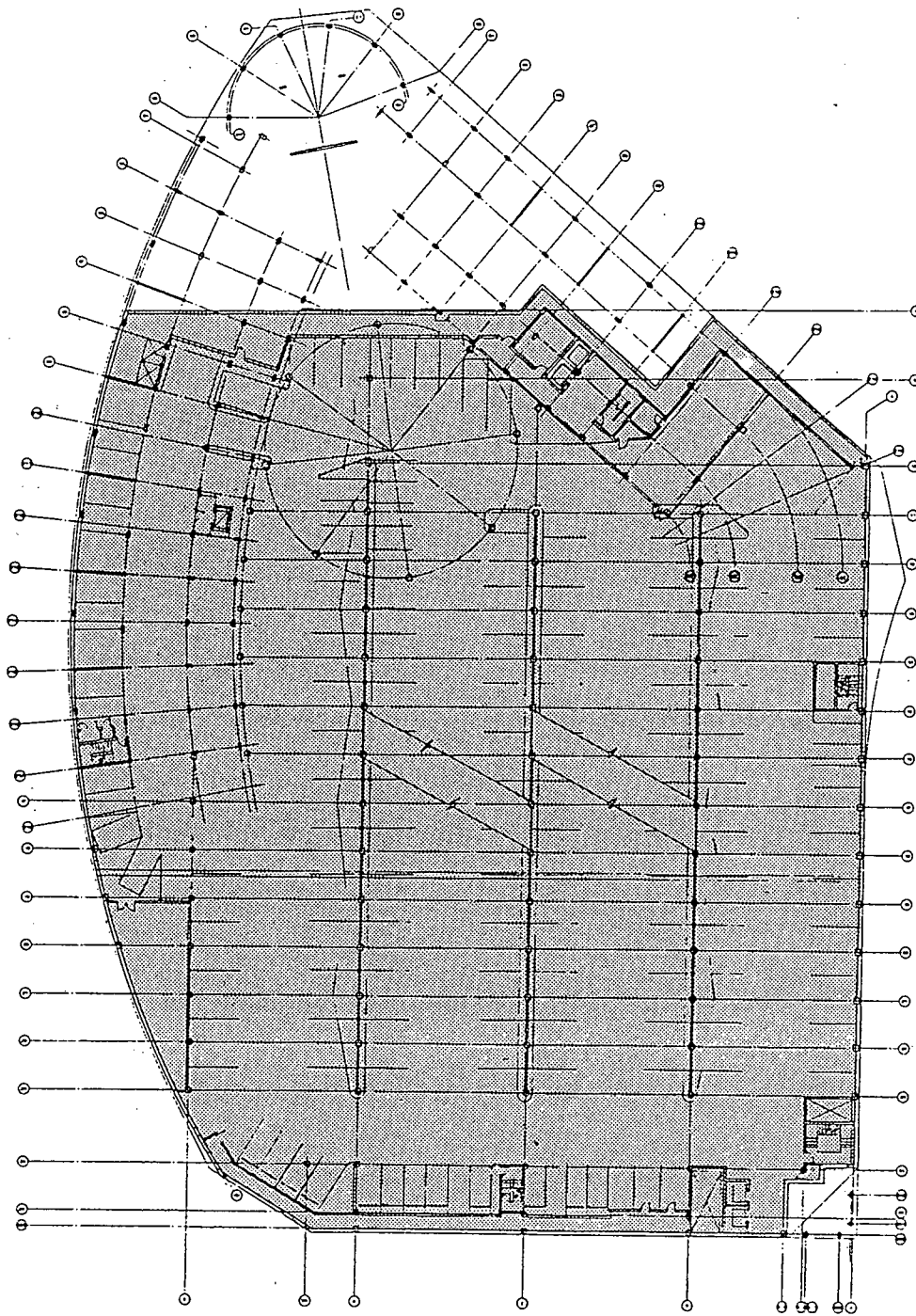
The Metropolitan  
P3 Parking Level

Existing Structure

B-6



Existing Structure



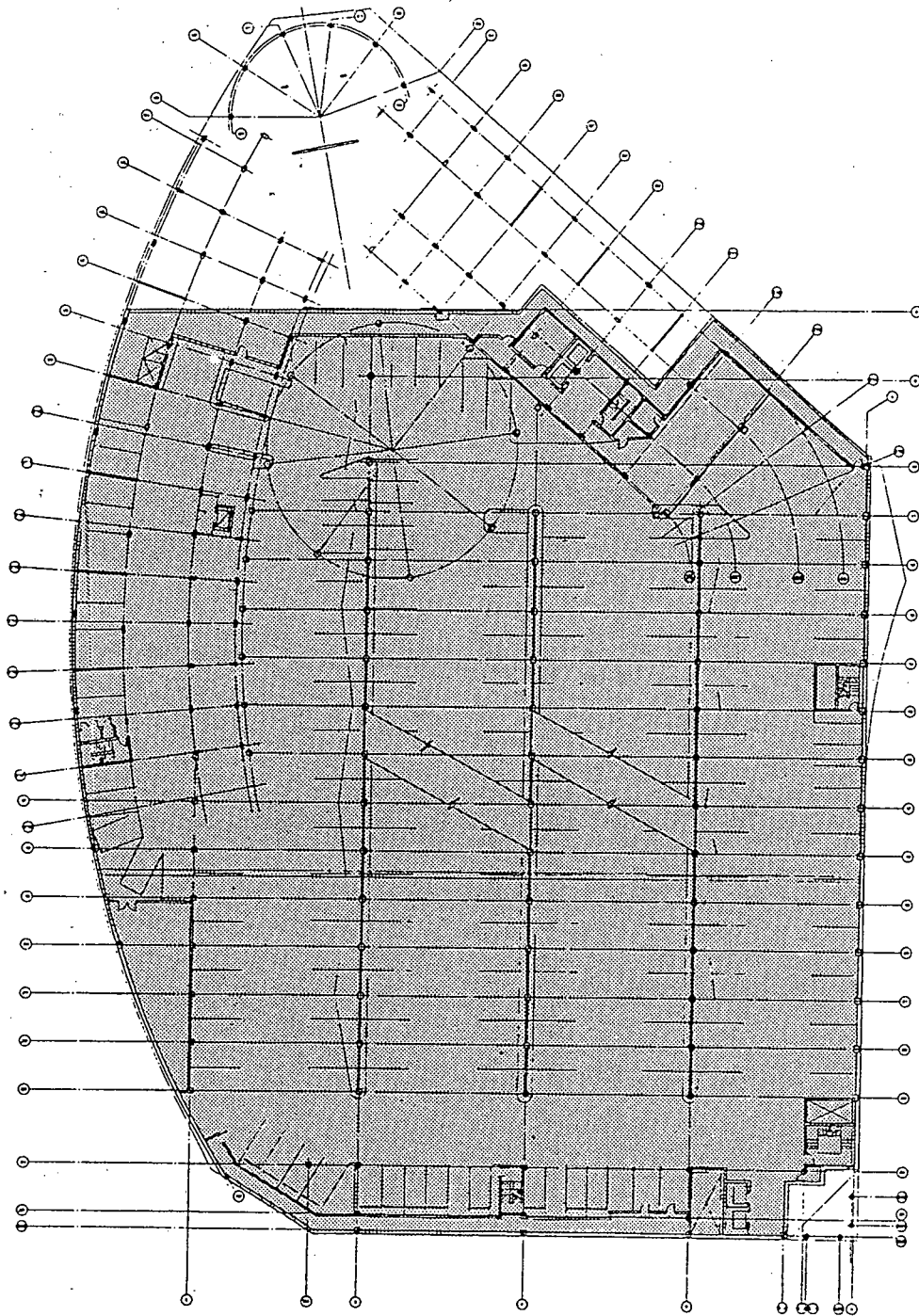
The Metropolitan

P4 Parking Level

Existing Structure

B-7

Existing Structure



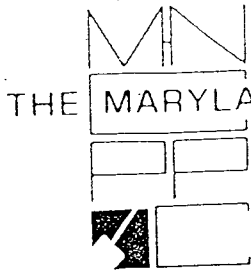
The Metropolitan

P5 Parking Level

Existing Structure

B-8





THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION  
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

RECEIVED

JUL 1 1994

MONTGOMERY COUNTY PLANNING BOARD  
OPINION

WEIHE PARTNERSHIP

AMENDMENT TO PROJECT PLAN

Amendment to Project Plan Review No. 9-93001

Date Mailed: July 8, 1994

Project: Metropolitan Park

Action: (Motion was made by Commissioner Baptiste, seconded by Commissioner Aron, with a vote of 4-0, Commissioners Baptiste, Aron, Richardson, and Chairman Hussmann voting for, and no Commissioner voting against.)

On May 12, 1994, the Housing Opportunities Commission submitted a request for an amendment to Project Plan No. 9-93001 located in the CBD-2 Zone.

On June 30, 1994, Request for Amendment to Project Plan Review No. 9-93001 was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based on the testimony and evidence presented by the staff and on the staff report hereby adopted by the Montgomery County Planning Board, and which is made a part hereof, the Montgomery County Planning Board finds:

1. The Planning Board finds that the Project Plan No. 9-93001 still meets all of the purposes and requirements of the CBD-2 Zone, as conditioned by the Board.
2. The Planning Board finds that the amended project plan conforms to the Bethesda Sector Plan, as conditioned by the Board.
3. The Planning Board finds that the amended project plan maintains compatibility with the adjacent properties, as conditioned by the Board.
4. The Planning Board finds that the amended project plan will not overburden existing or proposed public services.
5. The Planning Board finds that the amended project plan will continue to be desirable over a standard method of development, as conditioned by the Board.

The Montgomery County Planning Board approves Amendment to Project Plan No. 9-93001 with an FAR of 3.60 and a total of 358,088 square feet, as follows:

308 Dwellings - Multi-Family  
16,260 square feet - County Government Service Center  
4,650 square feet - Day Care Uses  
15,520 square feet - Retail

The Montgomery County Planning Board approves Amendment to Project Plan No. 9-93001 subject to the following conditions:

1. Revise streetscape plan in accordance with the approved Bethesda Streetscape Plan for the core district.

The applicant shall submit on the final site plan signature set revised streetscape plans which specifically show street trees at the northeast corner of the project. The streetscape plans should show seating, trash receptacles, landscape planters, and approved construction details.

2. Approve 48 vehicular trips for the project.

This number of trips is sufficient to permit 316,668 square feet of residential uses, 16,260 square feet of public use space, 4,650 square feet of day care area, and 15,520 square feet of retail uses. This represents a reduction of 37 residential trips from the previously approved 85 trips.

3. Prior to receiving approval for the site plan signature set, provide written verification from the County's Office of Facilities and Services that the proposed day care facility meets County and State licensing requirements.

4. Provide a drop-off and pick-up area within the public garage for the day-care facility subject to the Parking Division's approval and demonstrate the likelihood of meeting County day-care license requirements.

The applicant, in coordination with the Montgomery County Parking Authority, shall submit an acceptable plan for the vehicular access and operational needs of the day-care facility to be shown on the final site plan signature set for staff approval. In addition, the applicant shall demonstrate that the proposed day-care facility is likely to receive an operating license from Montgomery County Health Department.

5. Provide a landscape and lighting plan which indicates an acceptable level of quality materials, detailing and specifications for all public use areas consistent with representations made in the application in order to satisfy Finding #5 to achieve a "Better than Standard" method development.  
The applicant shall provide an adequate level of information for all plant material, paving, lighting, seating, trash receptacles, architectural planters

the final site plan signature set for staff approval. Special design attention should be given to the portal entries to the plaza.

6. Submit final details for proposed fencing and gates on the plaza level to create a secure space for residents only on the plaza. Portal gates will be permitted if designed to be visually minimized when not in use. Provide signage identifying public use space and its hours of use. Such gates may be closed between the hours of 12 p.m. and 6 a.m. Final plans and details to be submitted for staff approval.

7. Provide more specific building material information and facade detailing to ensure conformance to Finding #3, compatibility with adjacent neighbors.

The applicant shall submit more detailed information on the final site plan signature set for staff approval. Specific design attention should be given to ways in which the bulk of the building as seen from Woodmont Avenue and Old Georgetown Road can be visually reduced in scale.

8. If artwork is proposed for the project, it must be submitted to the Planning Board for approval. An activity program for public use space must be provided before final approval of the site plan signature set.

The submittal for artwork should follow the Commission's guidelines for artwork in the Optional Method of Development.

- 9. Provide maintenance, management, and security of all on-site and off-site amenity areas required by law to participate.

→ Mandatory participation in the Urban Maintenance District shall satisfy the off-site maintenance requirements of this condition. However, in the event that the District is dissolved or the Planning Board determines that the District fails to provide necessary maintenance of off-site areas, such as public sidewalks, the "air rights" owner of the residential project shall provide for adequate maintenance. On-site maintenance, management, and security of all amenity areas, circulation, and artwork shall be the responsibility of the "air rights" owner, notwithstanding separate agreements with the County's Parking Authority. The applicant shall submit for staff review a security management plan for public open spaces prior to final Site Plan approval.

- 10. Establish adequacy of existing water and sanitary sewer line service to the proposed development.

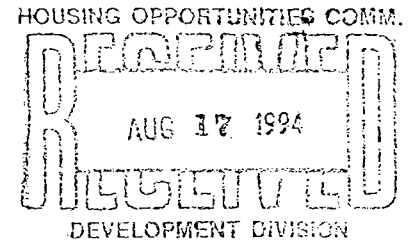
→ The applicant shall provide written verification from WSSC that adequate water and sewer service can be provided for the project prior to the final Site Plan approval.

11. Receive a waiver for on-site stormwater management.

→  
ja  
The applicant shall submit to Montgomery County Department of Environmental Protection's Stormwater Management Division and to M-NCPPC's Environmental Planning Division staff a waiver request for on-site stormwater management and shall receive written verification that a waiver has been granted prior to the final Site Plan approval.

## MONTGOMERY COUNTY PLANNING BOARD

## O P I N I O N



DATE MAILED: AUGUST 16, 1994

SITE PLAN REVIEW #8-93005A

PROJECT: METROPOLITAN PLAZA (GARAGE 49)

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*Action: Approval subject to conditions. Motion was made by Commissioner Richardson, seconded by Commissioner Baptiste, with a vote of 5-0.*

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The date of this written opinion is August 17, 1994 (which is the date that this opinion is mailed to all parties of record). Any party authorized by law to take an administrative appeal must initiate such an appeal, as provided in the Maryland Rules of Procedure, on or before September 16 1994 (which is thirty days from the date of this written opinion). If no administrative appeal is filed, then this site plan shall become valid by virtue of its plat's having been previously recorded and the previously approved site plan's having been partially constructed.

On May 13, 1994, The Housing Opportunities Commission of Montgomery County submitted an application for the approval of a site plan for property in the CBD-2 zone. The application was designated Site Plan Review #8-93005A.

On June 30, 1994, Site Plan Review #8-93005A was brought before the Montgomery County Planning Board for a public hearing. At the public hearing, the Montgomery County Planning Board heard testimony and received evidence submitted in the record on the application. Based on the testimony and evidence presented by the staff and on the staff report hereby adopted by the Montgomery County Planning Board, and which is make a part hereof, the Montgomery County Planning Board finds:

1. The Site Plan meets all of the requirements of the zone in which it is located.
2. The locations of the buildings and structures, the open spaces, the landscaping, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient.

3. Each structure and use is compatible with other uses and other site plans and with existing and proposed adjacent development.

The Montgomery County Planning Board approves Site Plan Review #8-93005A as follows:

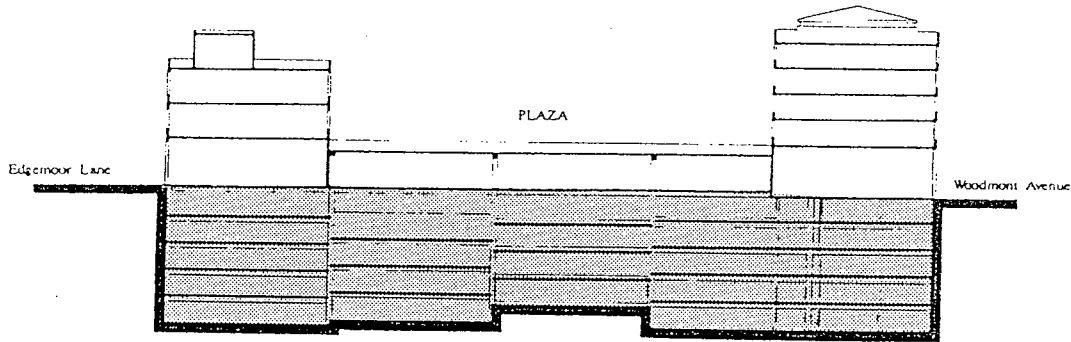
322,088 s.f. residential (308 d.u.), 16,260 s.f. public office, 4650 s.f. day care and 15,520 s.f. retail

subject to the following conditions:

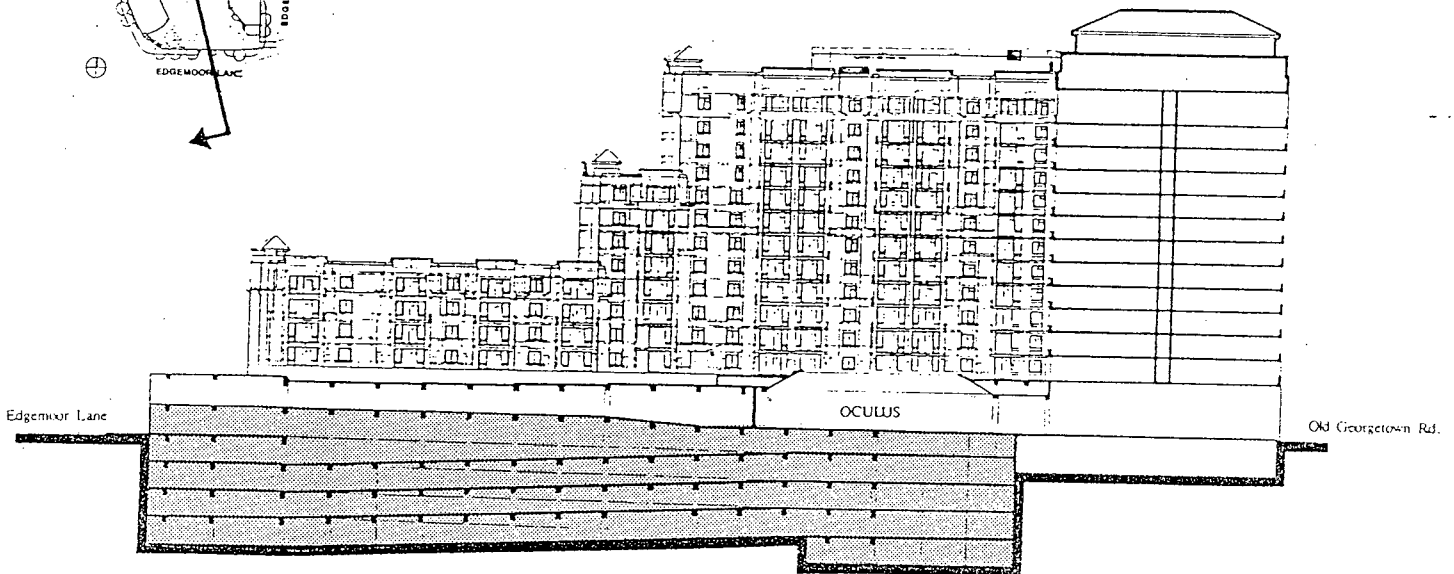
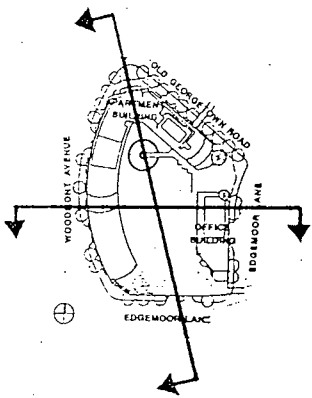
1. Submit a Site Plan Enforcement Agreement and Development Program for review and approval prior to approval of the signature set as follows:
  - a. Development Program to include a phasing schedule as follows:
    - 1) Street tree planting must progress as street construction is completed, but no later than six months after completion of the units adjacent to those streets.
    - 2) Pedestrian areas associated with each use shall be completed as construction of each use is completed.
2. Incorporate the following items into the signature set landscaping and lighting plan prior to approval of the initial building permit:
  - a. Street trees and street lighting along Old Georgetown Road, Woodmont Avenue and Edgemoor;
  - b. Planter area along side of southwest stair on street level;
  - c. Community bulletin board to be located in the vicinity of the water park;
  - d. Brick sidewalks to be continuous across driveway aprons;
  - e. Upper court security gates to be integrated into the building design as unobtrusively as possible;
  - f. Reinforce spatial enclosure of upper court at south end with appropriate landscape treatment;
  - g. Assure adequate pedestrian access between planters on plaza of water park;
  - h. Quality of materials to be consistent with representations made in the submittal, particularly plaza pavers, seating, and portal gates. Electrical outlets

are to be provided on the plaza.

- i. If the Art amenity is pursued to completion by applicant, submit the arts program for Board approval within six months of site plan approval. The art shall demonstrate conformance with the Commission's goals for art in optional method development, and the approval process shall follow that typically used in CBD optional method reviews.
3. The following information must be clearly shown on the signature set of site and landscape plans:
  - a. Conditions of DEP Concept approval (waiver) letter
  - b. The development program inspection schedule.
4. Provide a detailed plan for the day care to insure that access and license requirements are satisfied;
5. Designate 6-8 parking spaces in the garage for day care facility;
6. Submit an acoustical analysis and certification that noise levels within dwellings are under 45 dBA Ldn for approval by Environmental Planning Staff.



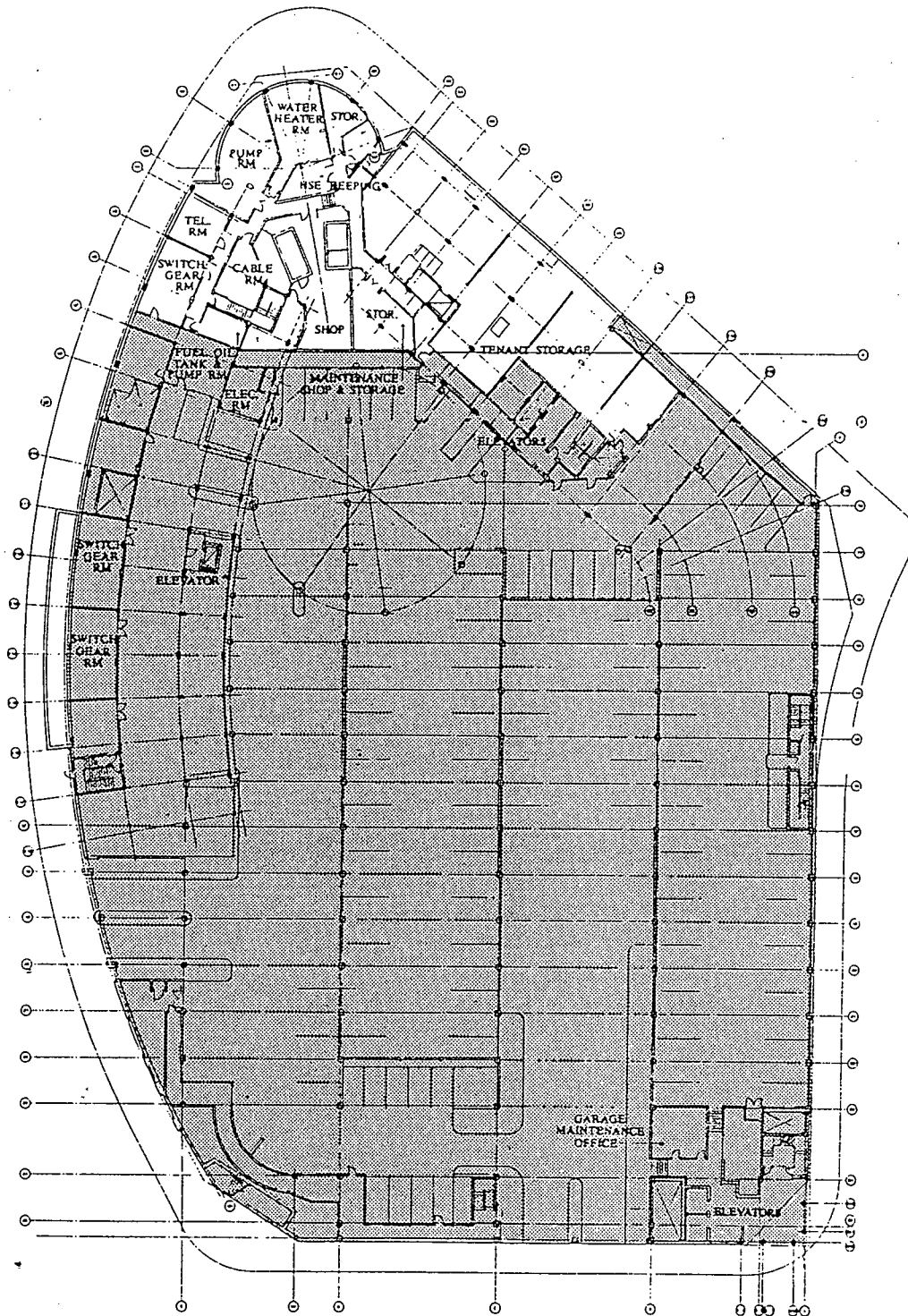
SHORT SECTION LOOKING SOUTH



LONG SECTION LOOKING WEST




Garage Property 

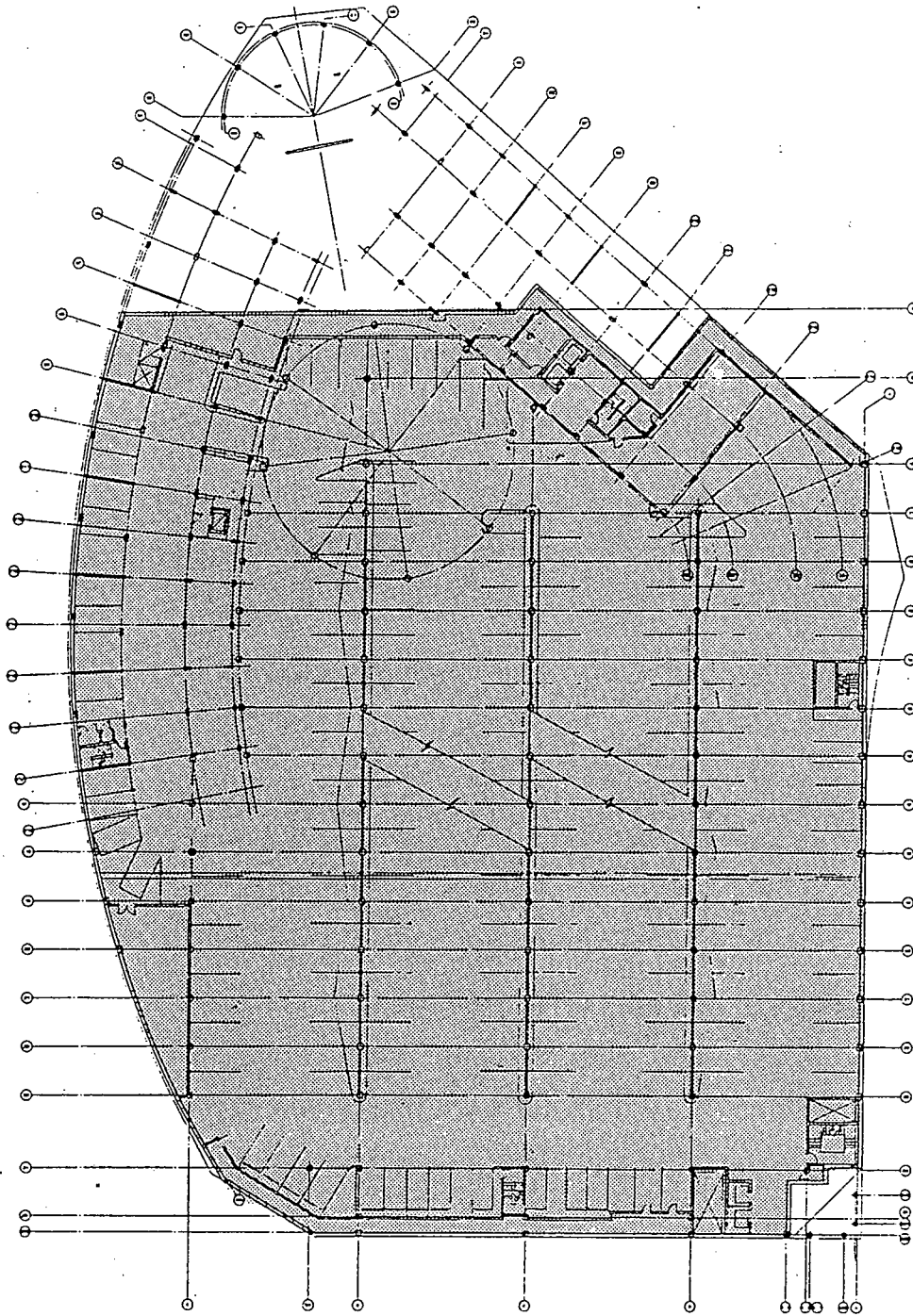


The Metropolitan  
Edgemoor Lane Level

Garage Property

E-2

Garage Property 



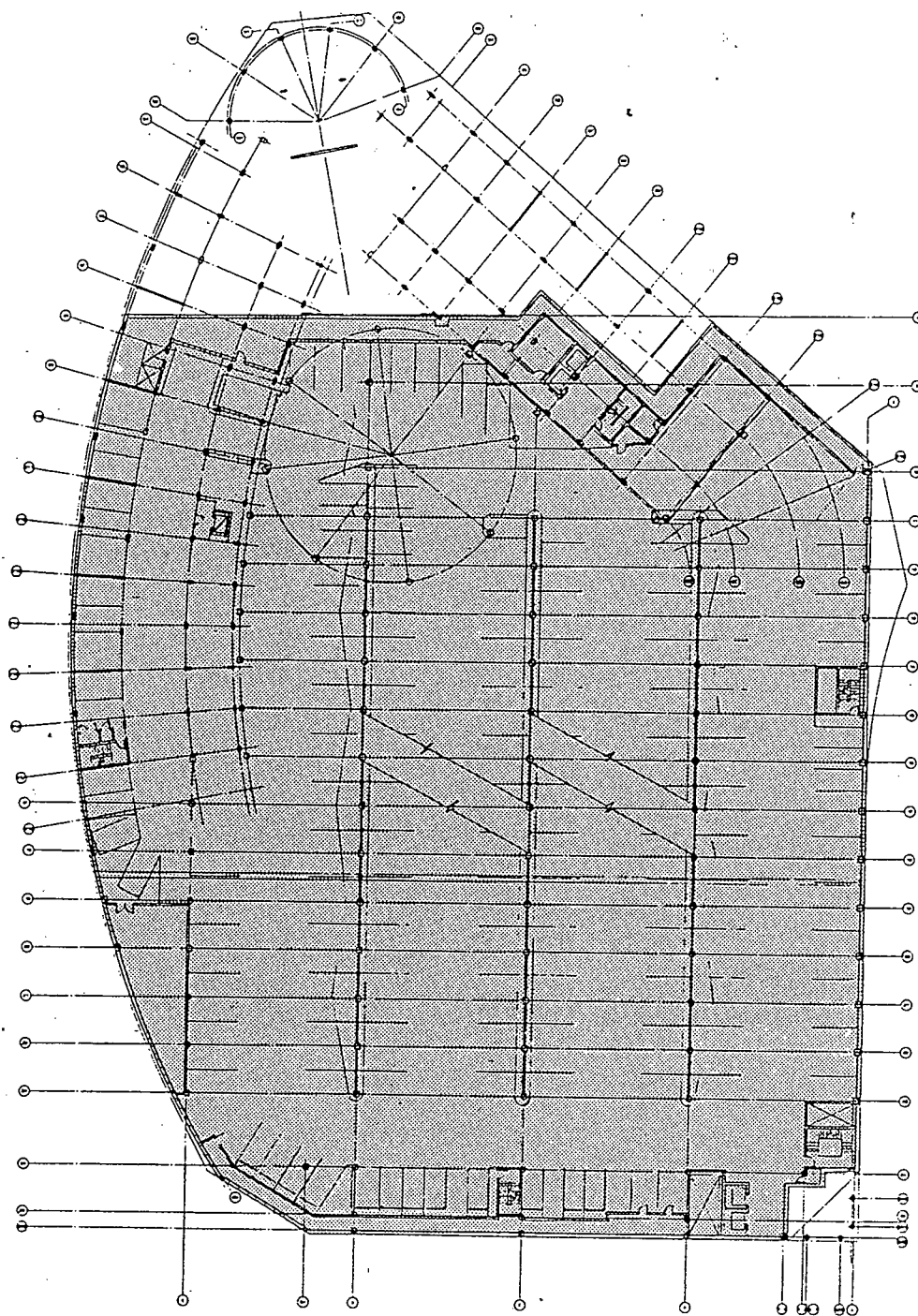
The Metropolitan

P2 Parking Level

Garage Property

E-3

Garage Property




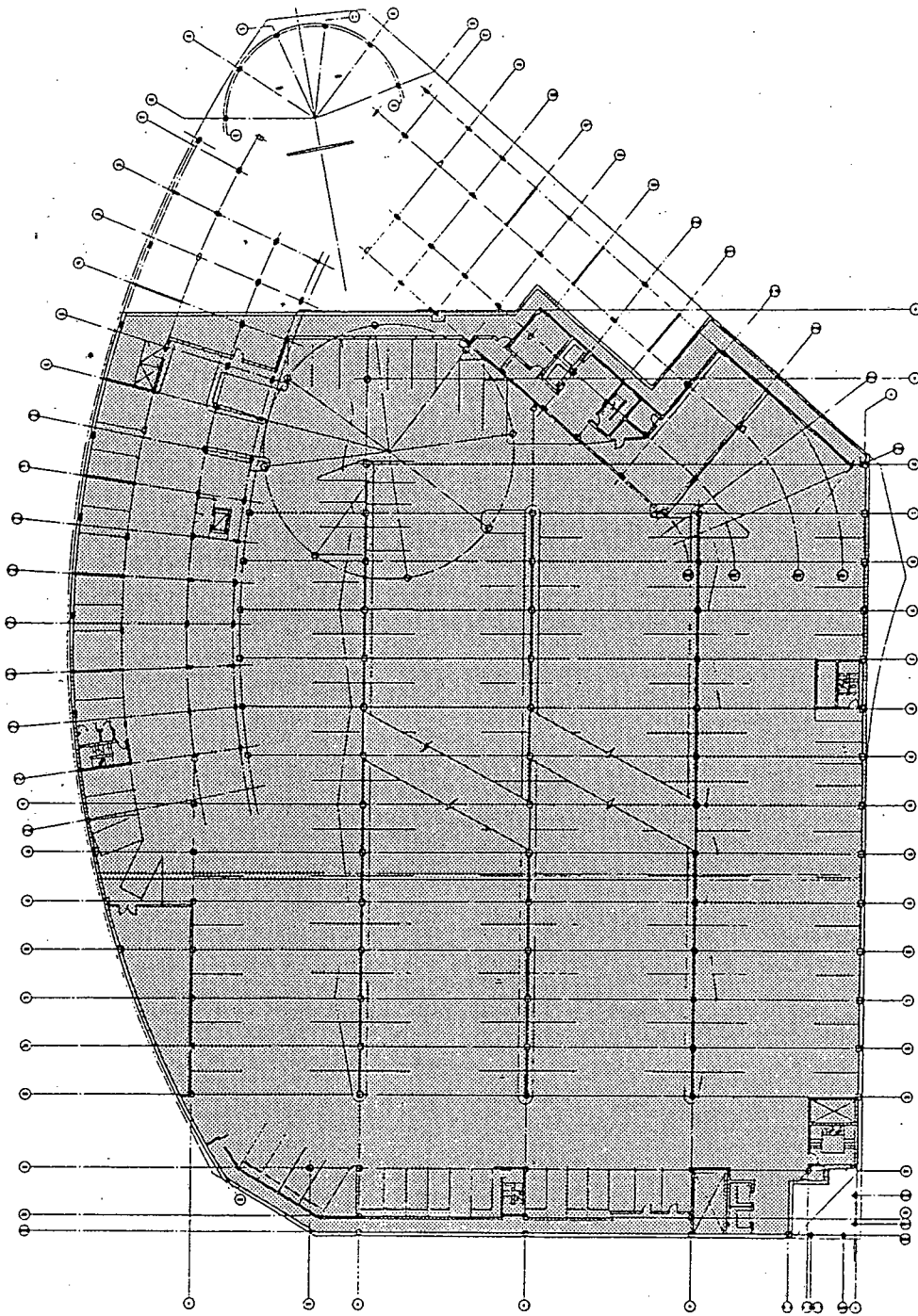
The Metropolitan

P3 Parking Level

Garage Property

E-4

Garage Property 



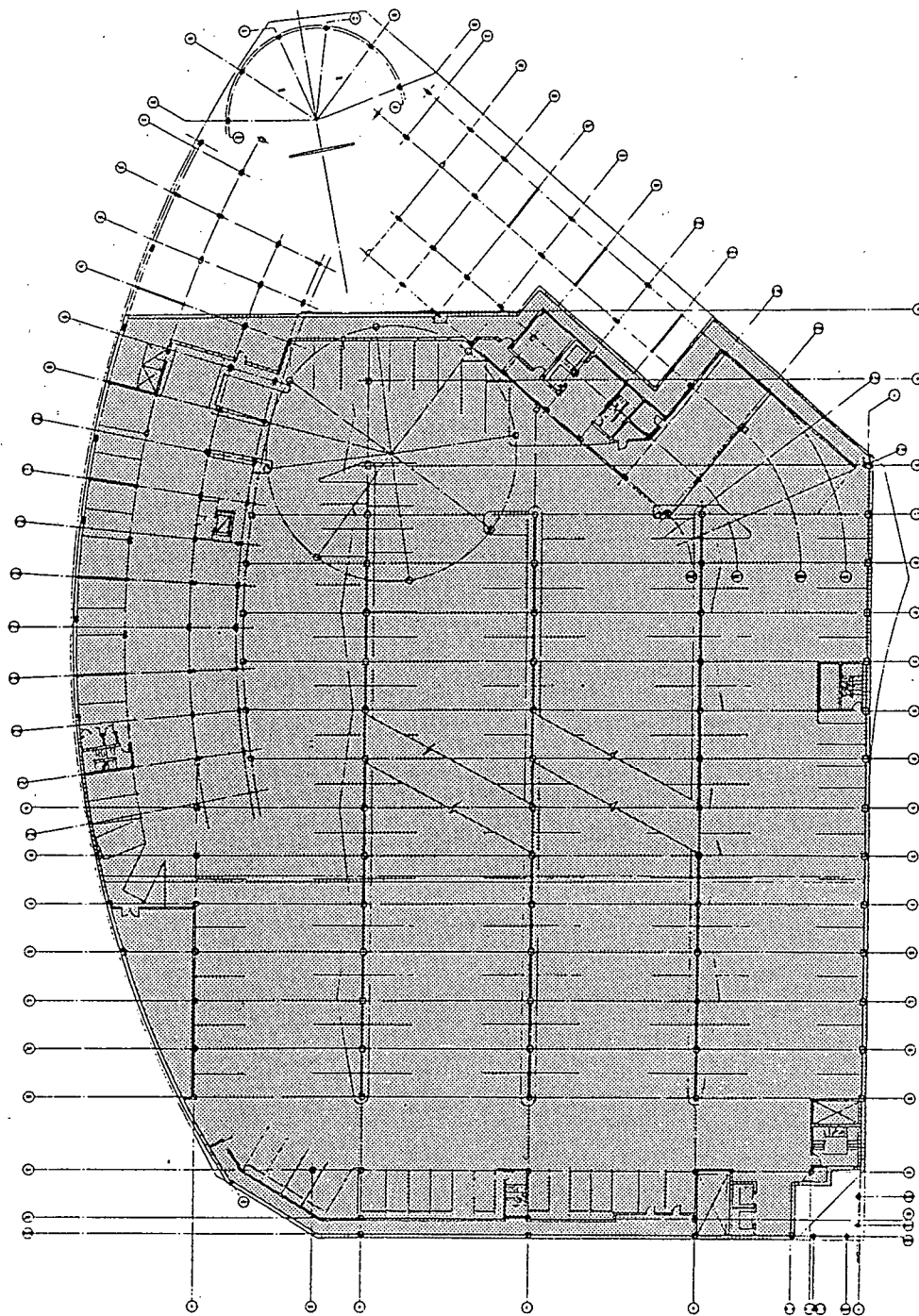
The Metropolitan

P4 Parking Level

Garage Property

E-5

Garage Property

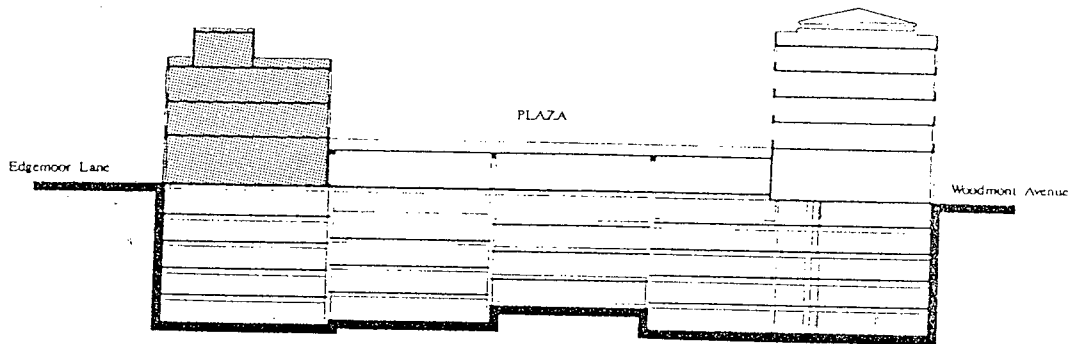


The Metropolitan

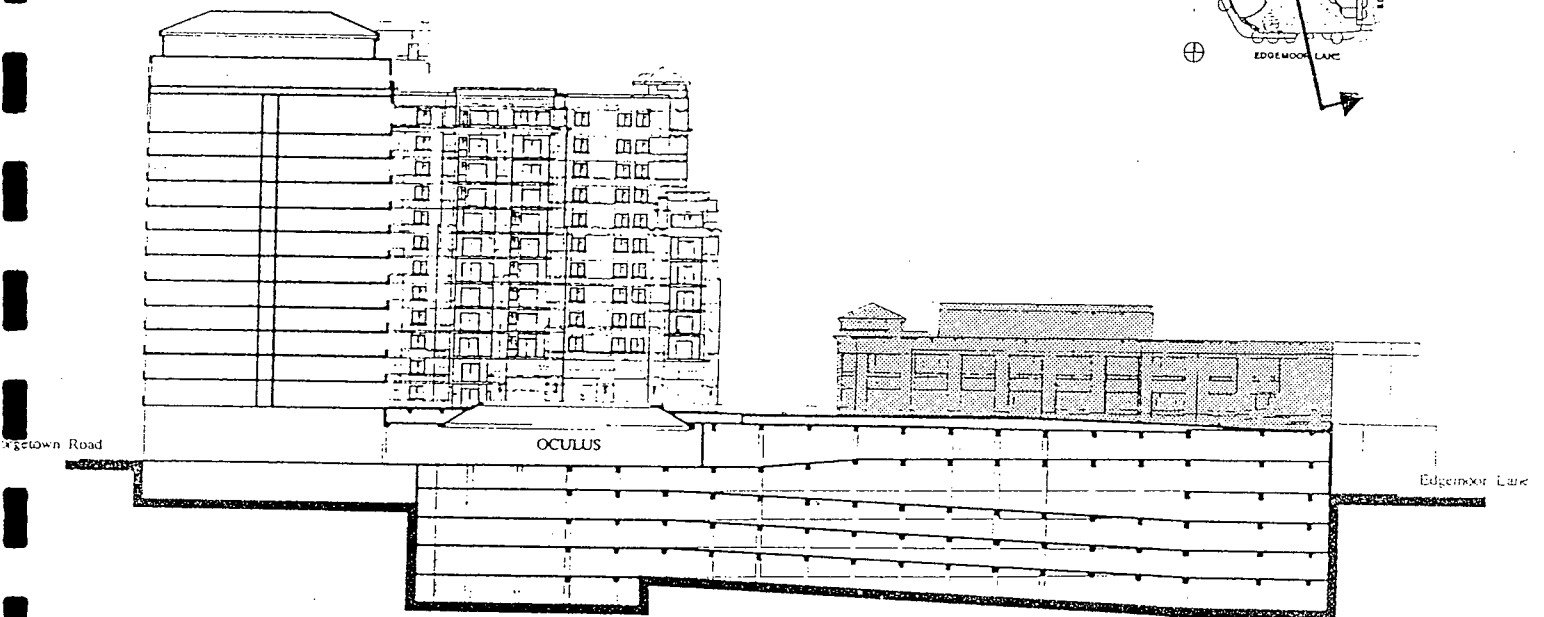
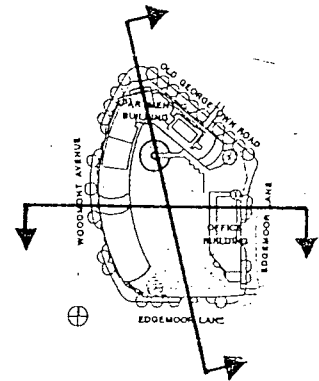
P5 Parking Level

Garage Property

E-6

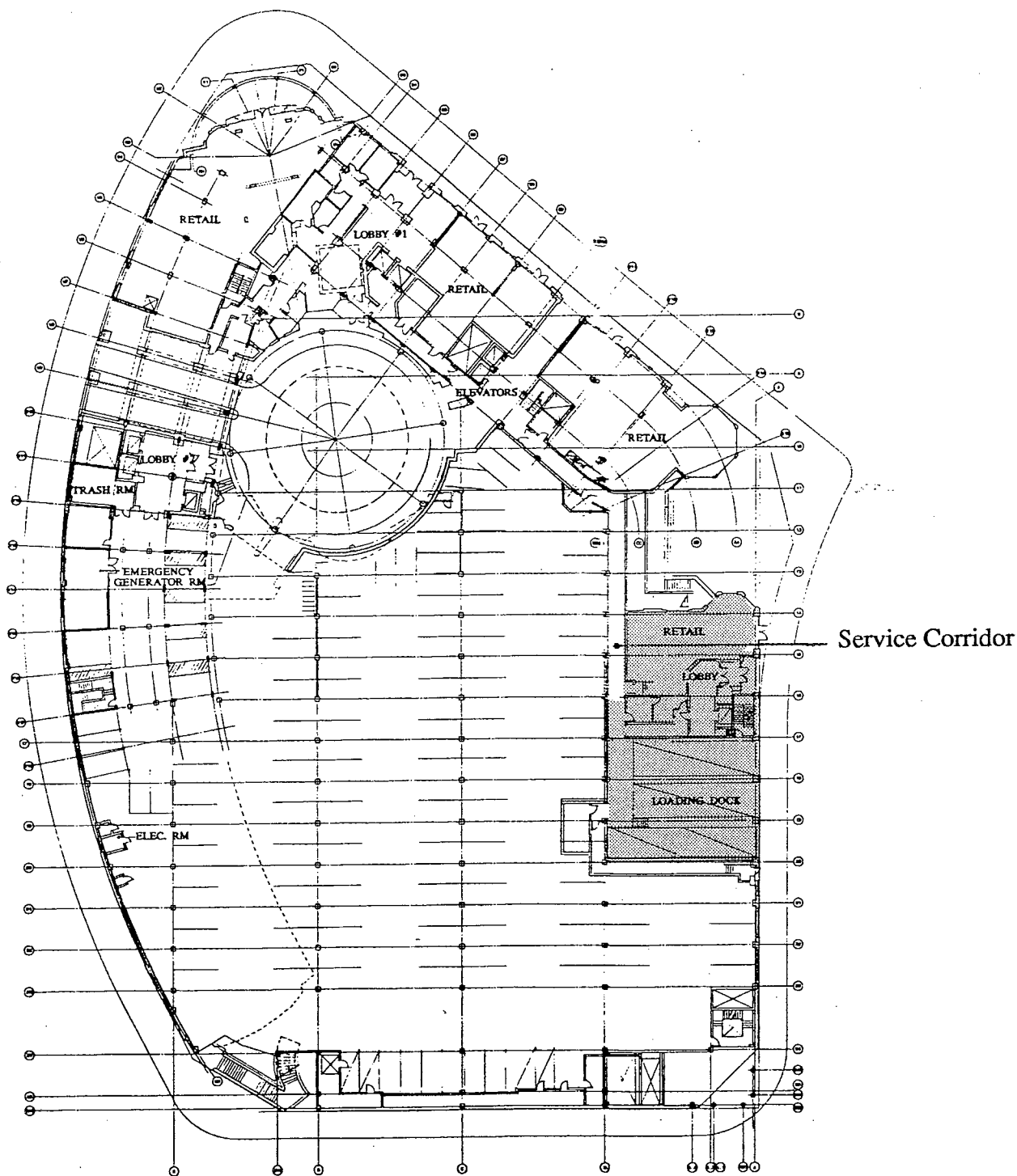


SHORT SECTION LOOKING SOUTH



LONG SECTION LOOKING EAST

Office Building



The Metropolitan

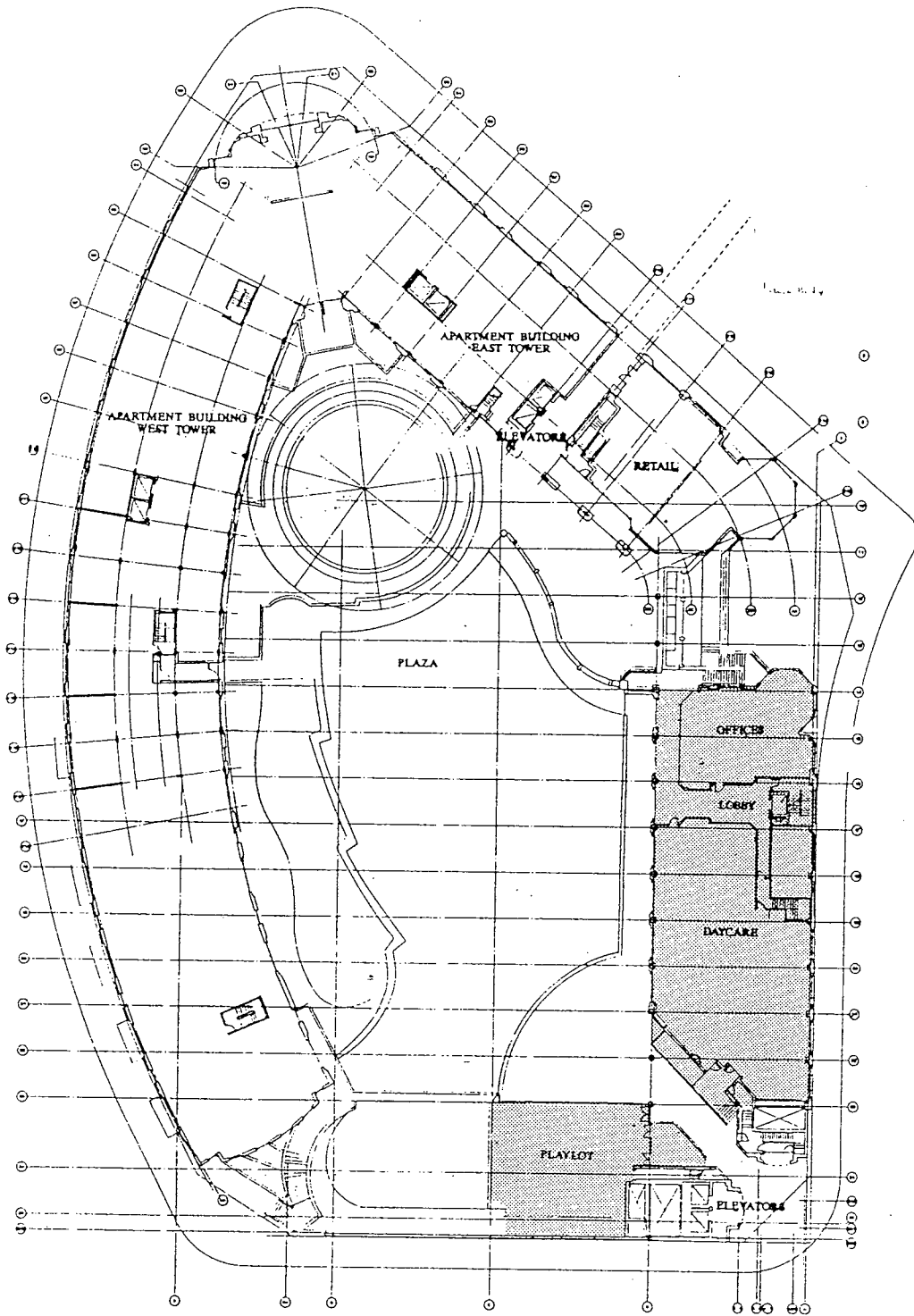
Old Georgetown Road Level

Office Building

F-2



Office Building




The Metropolitan

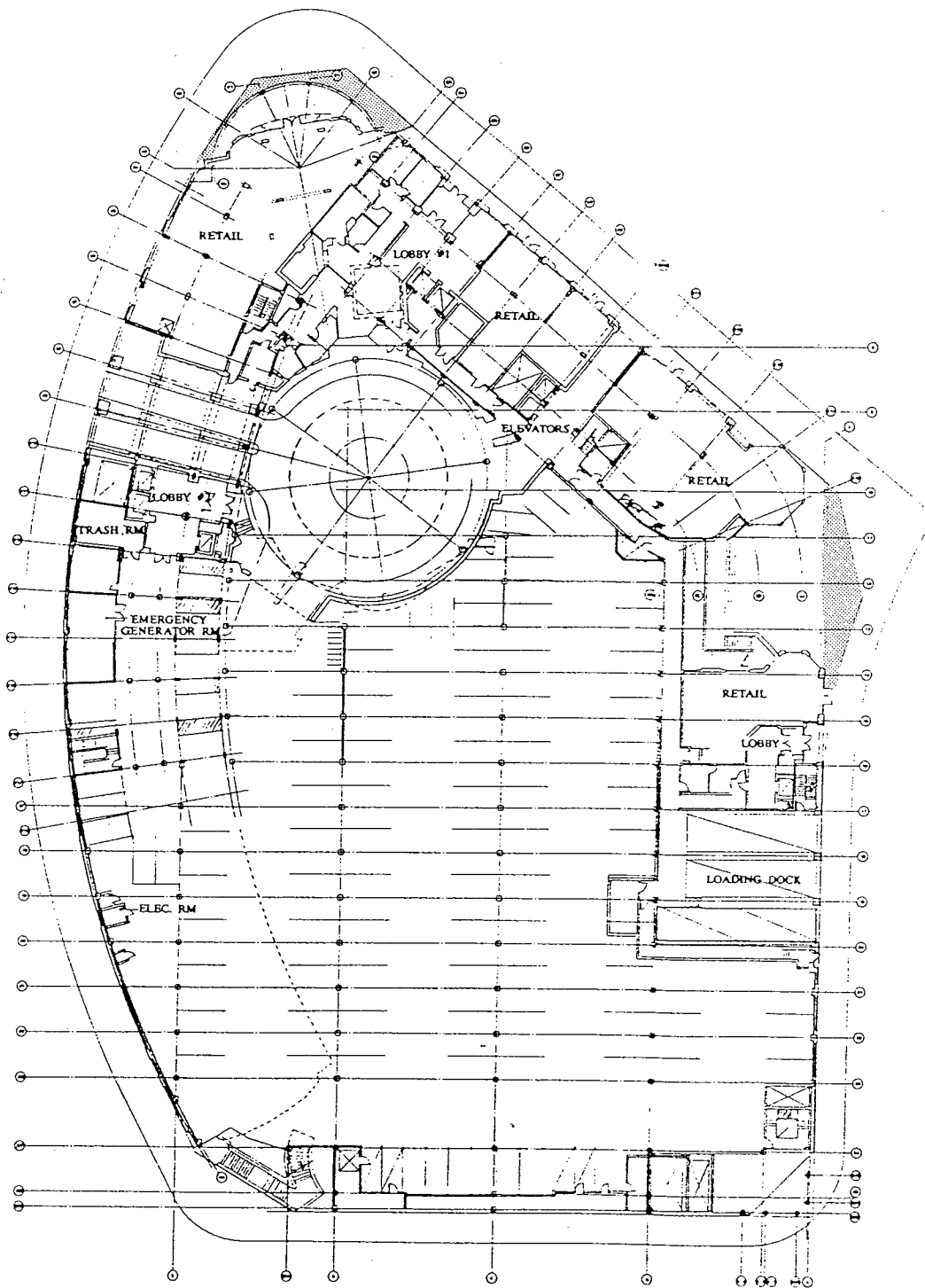
Plaza Level

Office Building

F-3



Demised Premises 

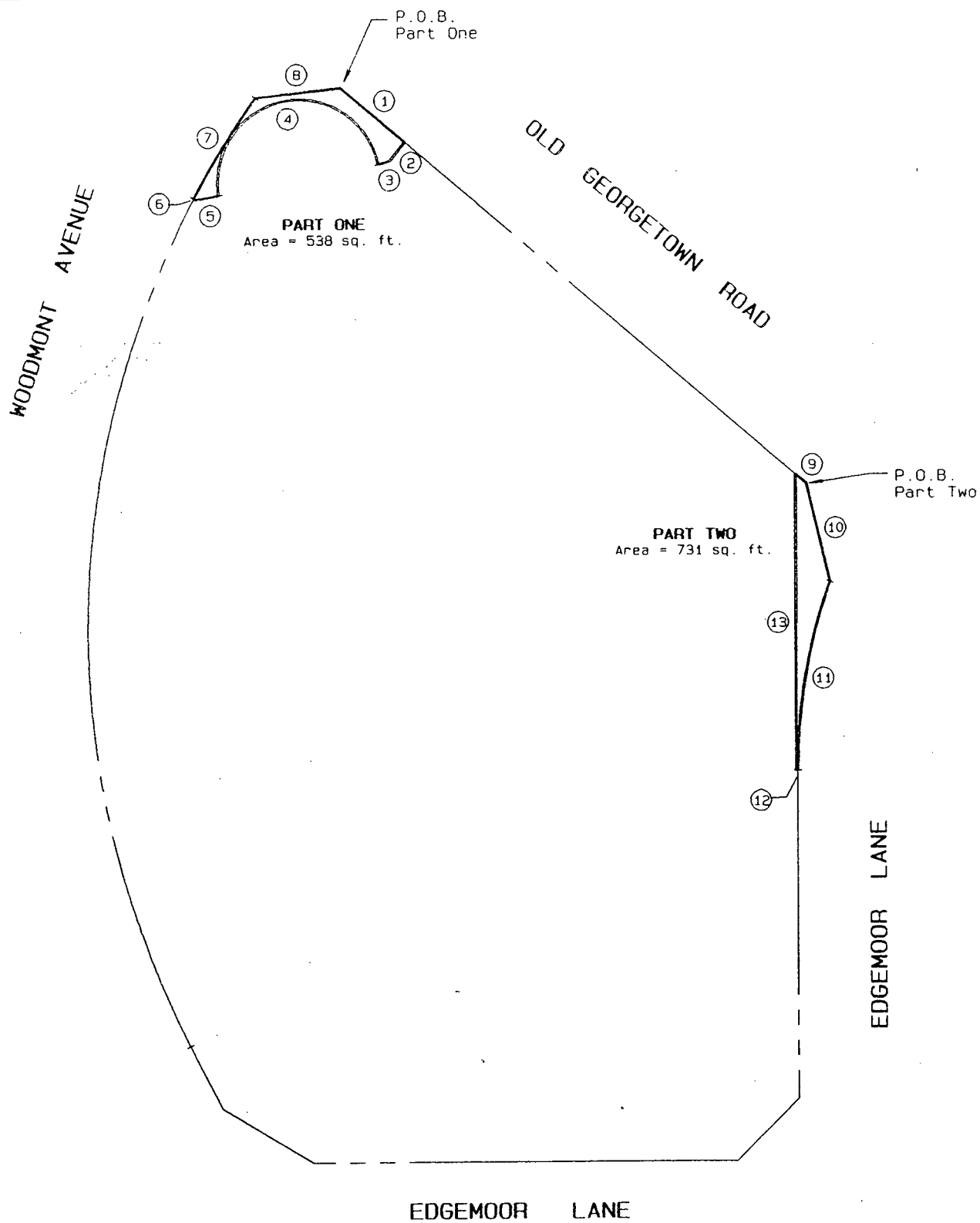


The Metropolitan

Old Georgetown Road Level

Demised Premises

G-1



**The Metropolitan**

**Land**

G-1-A

# DATA

○	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT	CHORD BEARING	CHORD DIST.
1	S 52° 34' 00"E		33.55			
2	S 37° 26' 00"W		9.79			
3	S 69° 46' 07"W		4.71			
4	177° 02' 36"	32.73	101.14	1268.24	S 77° 07' 11"W	65.44
5	S 78° 35' 53"W		9.31			
6	N 63° 59' 37"W		1.00			
7	7° 26' 57"	360.00	46.80	23.44	N 29° 43' 51"E	46.77
8	N 81° 26' 40"E		34.73			
9	S 52° 34' 00"E		5.49			
10	S 15° 59' 22"E		40.56			
11	19° 52' 54"	221.89	77.00	38.89	S 07° 26' 27"W	76.61
12	S 87° 30' 00"W		0.58			
13	N 02° 26' 02"W		118.43			

The Metropolitan

Land

G-1-B

## Description

### Part of Lot 16, Block 12, Edgemoor Exhibit G-1-C "Land"

Being two pieces or parcels of land situated in the Seventh (7th) Election District of Montgomery County, Maryland, and each being a part of Lot 16, Block 12, as shown on a plat of subdivision entitled "Lot 16, Block 12, Edgemoor", and being recorded among the Land Records of Montgomery County, Maryland in Plat Book 144 as Plat No. 16519 and being more particularly described in two parts as follows

#### Part One

**Beginning** at a point at the northwesterly end of South 52° 34' 00" East, 245.22' line of Lot 16, as shown on Plat 16519, said point also being on the southwesterly right of way line of Old Georgetown Road; thence running with and along said right of way line, as now surveyed

1. South 52° 30' 00" East, 33.55 feet, to a point; thence leaving said right of way line and crossing a part of Lot 16, Block 12
2. South 37° 26' 00" West, 9.79 feet, to a point; thence with a non-radial line
3. South 69° 46' 07" West, 4.71 feet, to a point on a curve; thence
4. 101.14 feet along the arc of a curve, deflecting to the left having a radius of 32.73 feet and a chord bearing and distance of South 77° 07' 11" West, 65.43 feet to a point; thence with a radial line
5. South 78° 35' 53" West, 9.31 feet, to a point; thence
6. North 63° 59' 37" West, 1.00 feet, to a point on the easterly right of way line of Woodmoot Avenue, said point lying 351.92 feet along the arc from the southerly end of the 398.72' curved right of way line of Woodmont Avenue; thence running with said right of way line, and with the outline of Lot 16, Block 12
7. 46.81 feet along the arc of a curve deflecting to the right having a radius of 360.00 feet and a chord bearing and distance of North 29° 43' 51" East and 46.77 feet, to a point on a curve; thence
8. North 81° 26' 40" East 34.73 feet to the point of beginning; containing 538 square feet or 0.0124 acres of land.

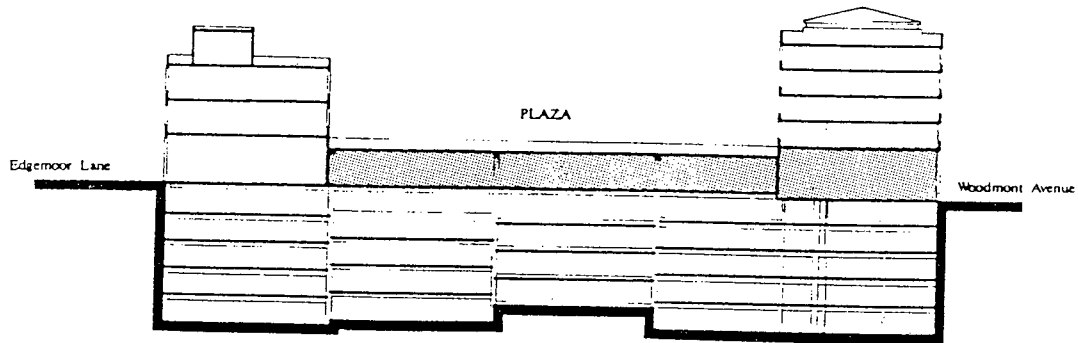
<b>G-1-C</b>
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## Part Two

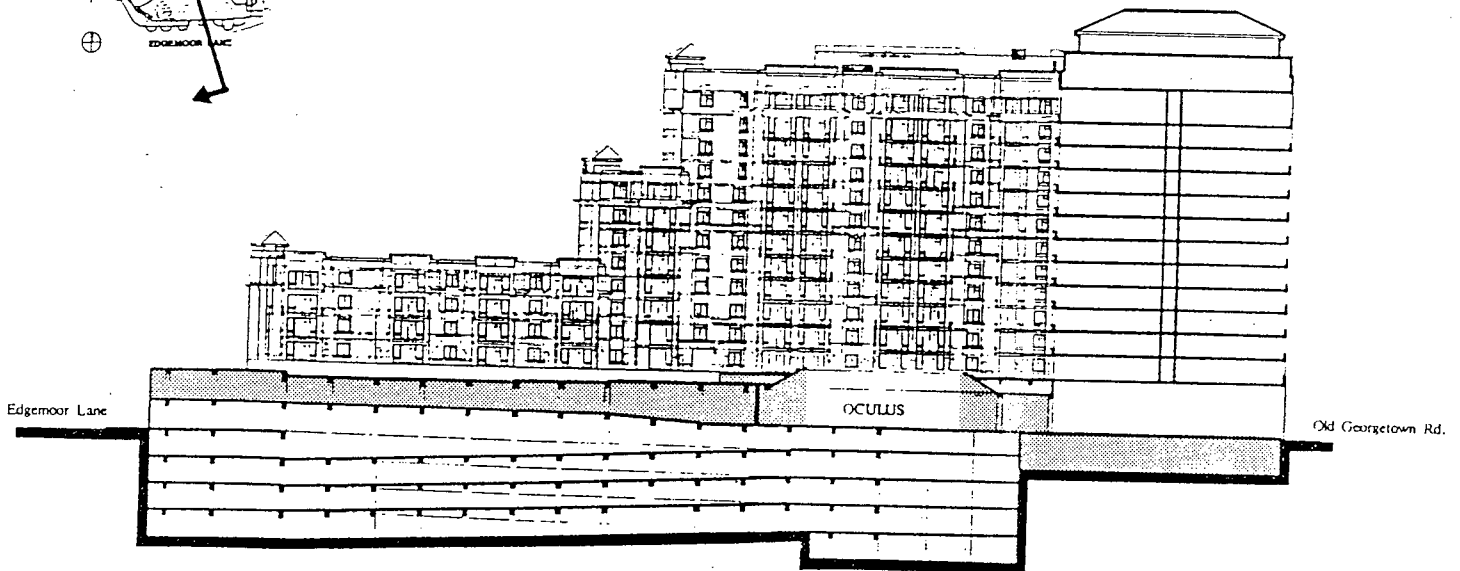
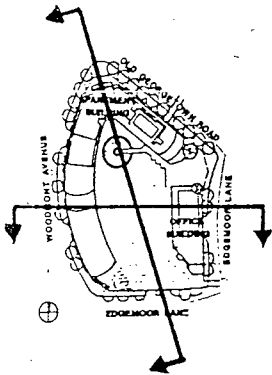
**Beginning** at a point at the northwesterly end of the South 15° 59' 12" East, 40.56' line of Lot 16, Block 12 as shown on Plat 16519, said point being on the southwesterly right of way line of Old Georgetown Road, and also on the westerly right of way line of Edgemoor Lane; thence running with said right of way line, as now surveyed

1. South 15° 59' 22" East, 40.56 feet along a non-radial line to a point; thence continuing with the westerly right of way line of Edgemoor Lane
3. 77.00 feet along the arc of a curve, deflecting to the left having a radius of 221.89 feet and a chord bearing and distance of South 07° 26' 27" West and 76.61 feet, to a point; thence leaving said right of way line crossing a part Lot 16, Block 12 with a radial line
4. South 87° 30' 00" West, 0.59 feet, to a point, thence
5. North 02° 26' 02" West, 118.43 feet to a point on the South 52° 33' 50" East, 245.22' line of Old Georgetown Road, said point lying 5.49 feet from the southeasterly end thereof; thence with said line
6. South 52° 34' 00" East, 5.49 feet, to the point of beginning; containing 731 square feet or 0.0168 acres of land.


Parts One and Two described above being subject to any and all easements, rights of way and covenants of record.

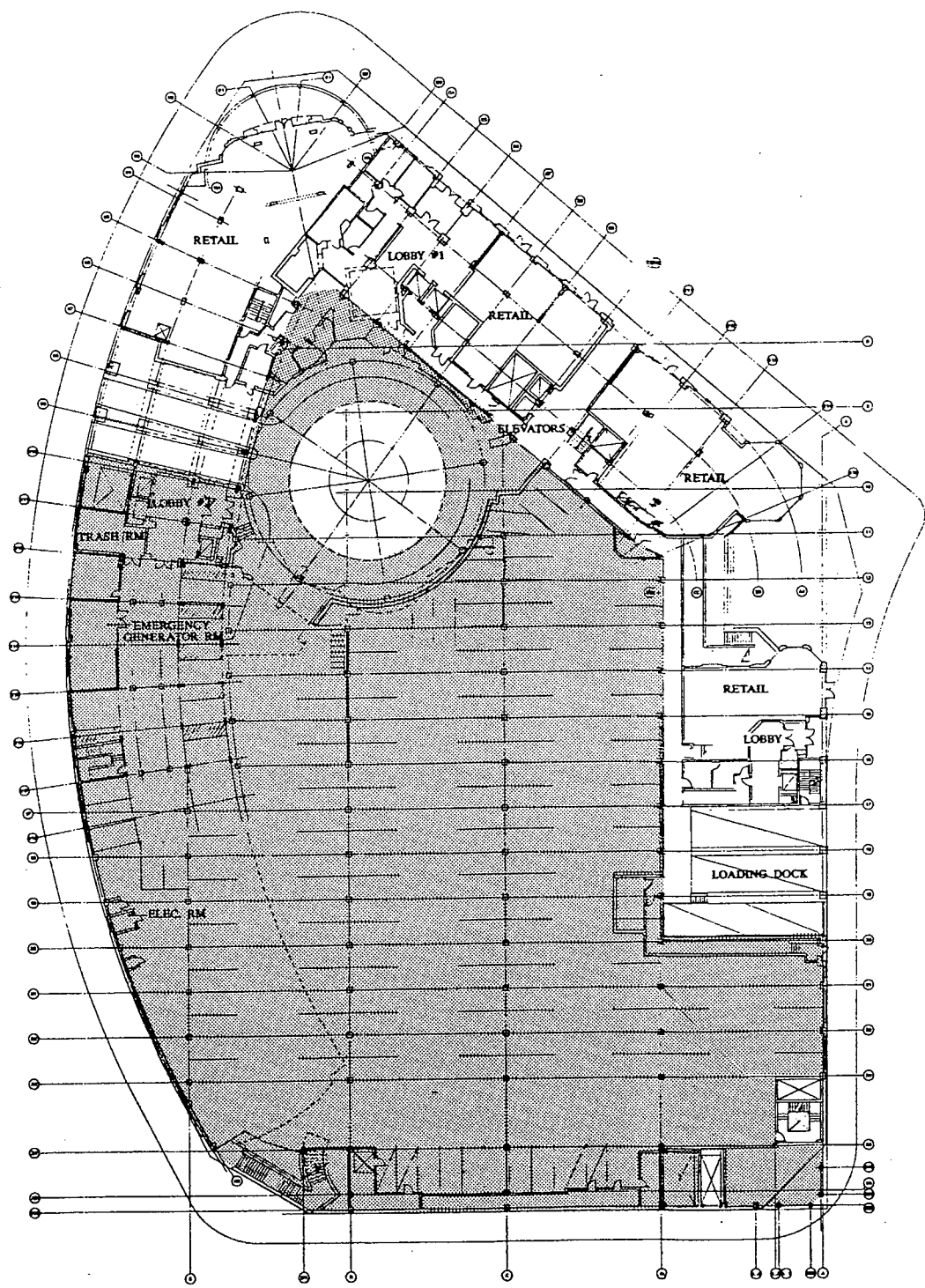


SHORT SECTION LOOKING SOUTH



LONG SECTION LOOKING WEST

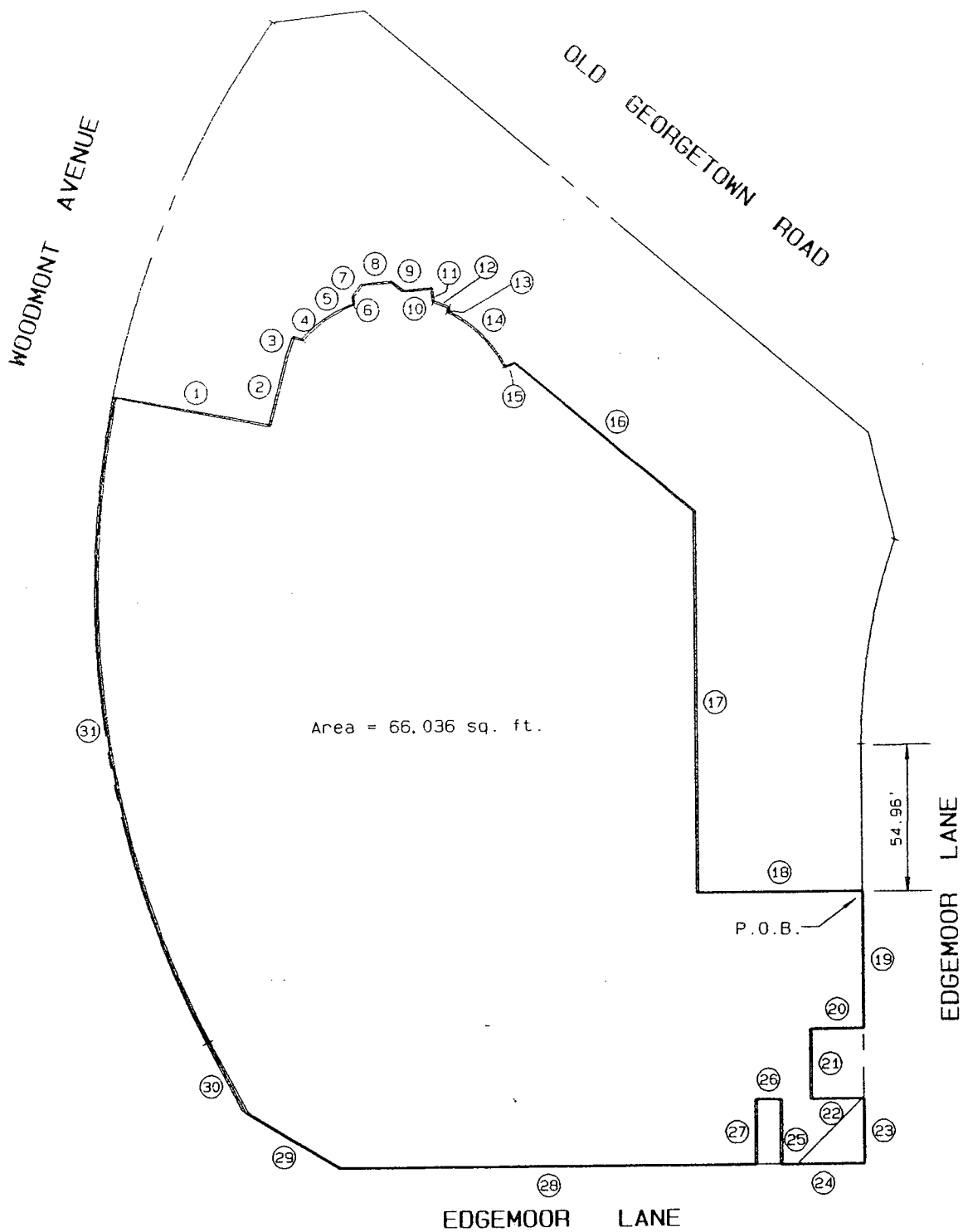
Demised Premises 



The Metropolitan  
Old Georgetown Road Level

Demised Premises  
Existing Structure

G-2B



# The Metropolitan

Old Georgetown Road Level

G-2-C



# DATA

○	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT	CHORD BEARING	CHORD DIST.
1	S 81° 19' 37" E		58.69			
2	N 11° 50' 55" E		26.45			
3	N 16° 50' 52" E		7.44			
4	S 74° 03' 28" E		3.53			
5	28° 02' 58"	47.75	23.38	11.93	N 53° 58' 44" E	23.14
6	N 05° 56' 54" W		3.16			
7	N 37° 35' 02" E		5.34			
8	N 82° 44' 20" E		11.20			
9	S 53° 53' 16" E		5.62			
10	N 82° 34' 01" E		10.74			
11	S 08° 19' 37" E		4.99			
12	7° 43' 05"	47.75	6.43	3.22	S 71° 30' 19" E	6.43
13	S 22° 21' 13" W		1.50			
14	37° 38' 43"	46.25	30.39	15.77	S 48° 49' 26" E	29.84
15	N 68° 03' 48" E		4.28			
16	S 52° 46' 17" E		86.70			
17	S 02° 30' 32" E		141.73			
18	N 87° 29' 24" E		61.70			
19	S 02° 30' 00" E		51.00			
20	S 87° 30' 00" W		19.69			
21	S 02° 30' 00" E		26.01			
22	N 87° 28' 53" E		19.69			
23	S 02° 30' 00" E		24.20			
24	S 87° 30' 00" W		30.94			
25	N 02° 30' 00" W		24.19			
26	S 87° 28' 53" W		9.33			
27	S 02° 30' 00" E		24.19			
28	S 87° 30' 00" W		156.88			
29	N 61° 15' 05" W		40.40			
30	N 30° 25' 15" W		30.21			
31	39° 25' 59"	359.00	247.08	128.66	N 10° 17' 11" W	242.23

The Metropolitan

Old Georgetown Road Level

G-2-D

## Description

### Part of Lot 16, Block 12, Edgemoor Exhibit G-2-E "Old Georgetown Road Level"

Being two (2) three dimensional spaces, situated in the Seventh (7th) Election District of Montgomery County, Maryland, and being a part of an existing building situated on Lot 16, Block 12, as shown on a plat of subdivision entitled "Lot 16, Block 12, Edgemoor", and being recorded among the Land Records of Montgomery County, Maryland in Plat Book 144 as Plat No. 16519, and having an upper and lower elevation as shown on Exhibit G-3-A, and being more particularly described as follows

#### Part One

Beginning at a point lying on and distant 54.96 feet from the South 02° 29' 50" East, 131.16 foot plat line, as shown on said plat, said point also being on the westerly right of way line of Edgemoor Lane; thence running with and along said right of way line

1. South 02° 29' 50" East, 51.00 feet to a point; thence leaving said right of way of Edgemoor Lane and crossing a part of Lot 16, Block 12
2. South 87° 30' 10" West, 19.69 feet to a point; thence
3. South 02° 29' 50" East, 26.01 feet to a point; thence
4. North 87° 29' 03" East, 18.89 feet to a point on and distant 34.23 feet from the southwesterly end of South 42° 30' 10" West, 35.36' line of Lot 16; thence with the outline of Lot 16
5. South 42° 30' 10" West, 34.23 feet to a point; thence
6. South 87° 30' 10" West, 5.93 feet to a point; thence leaving the outline of Lot 16 and crossing a part thereof
7. North 02° 29' 50" West, 24.19 feet to a point; thence
8. South 87° 29' 03" West, 9.33 feet to a point; thence
9. South 02° 29' 50" East, 24.19 feet to a point on the northerly right of way line of Edgemoor Lane; thence with said right of way line
10. South 87° 30' 10" West, 156.88 feet to a point; thence with a part of the right

G-2-E

of way line of Woodmont Avenue

11. North  $61^{\circ} 14' 55''$  West, 40.40 feet to a point; thence leaving said right of way line and crossing a part of Lot 16 with a non-radial line
12. North  $30^{\circ} 25' 05''$  West, 30.21 feet to a point on a curve; thence with a curved line which is concentric with and parallel to the 398.72' curved right of way line of Woodmont Avenue, and offset 1.00 feet easterly thereof
13. 247.08 feet along the arc of a curve deflecting to the right having a radius of 359.00 feet and a chord bearing North  $10^{\circ} 17' 01''$  West, 242.23 feet; thence with a non-radial line
14. South  $81^{\circ} 19' 27''$  East, 58.69 feet to a point; thence
15. North  $11^{\circ} 51' 05''$  East, 26.45 feet to a point; thence
16. North  $16^{\circ} 51' 02''$  East, 7.44 feet to a point; thence with a non-radial line
17. South  $74^{\circ} 03' 18''$  East, 3.53 feet to a point on a curve; thence
18. 23.38 feet along the arc of a curve deflecting to the right having a radius of 47.75 feet and a chord bearing North  $53^{\circ} 58' 54''$  East, 23.14 feet to a point; thence with a non-radial line
19. North  $05^{\circ} 56' 44''$  West, 3.16 feet to a point; thence
20. North  $37^{\circ} 35' 12''$  East, 5.34 feet to a point; thence
21. North  $82^{\circ} 44' 30''$  East, 11.20 feet to a point; thence
22. South  $53^{\circ} 53' 06''$  East, 5.62 feet to a point; thence
23. North  $82^{\circ} 34' 11''$  East, 10.74 feet to a point; thence with a non-radial line
24. South  $08^{\circ} 19' 27''$  East, 4.99 feet to a point on a curve; thence
25. 6.43 feet along the arc of a curve deflecting to the right having a radius of 47.75 feet and a chord bearing South  $71^{\circ} 30' 10''$  East, 6.43 feet to a point; thence with a line which is radial to both the preceding curve and the following curve
26. South  $22^{\circ} 21' 23''$  West, 1.50 feet to a point on a curve; thence
27. 30.39 feet along the arc of a curve deflecting to the right having a radius of 46.25 feet and a chord bearing South  $48^{\circ} 49' 16''$  East and 29.84 feet to a point; thence with a non-radial line

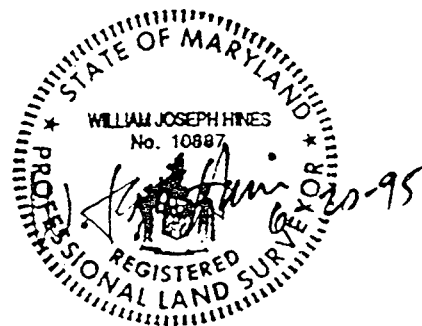
28. North 68° 03' 58" East, 4.28 feet to a point; thence
29. South 52° 46' 07" East, 86.70 feet to a point; thence
30. South 02° 30' 23" East, 141.73 feet to a point; thence
31. North 87° 29' 33" East, 61.70 feet to the **point of beginning**; containing 65,724 square feet or 1.5088 acres.

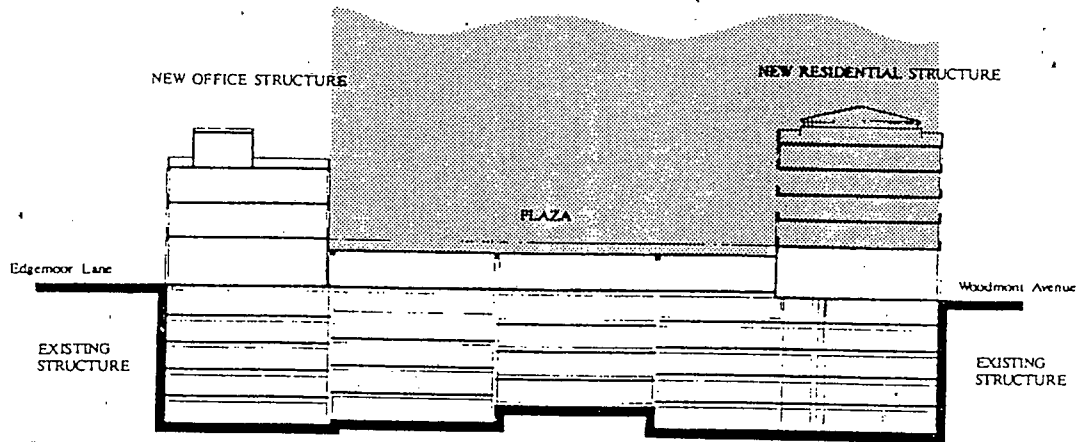
## Part Two

**Beginning** at the northeasterly end of the South 87° 30' 10" West, 172.15' right of way line of Edgemoor Lane, as shown on said plat; thence with the outline of Lot 16, Block 12

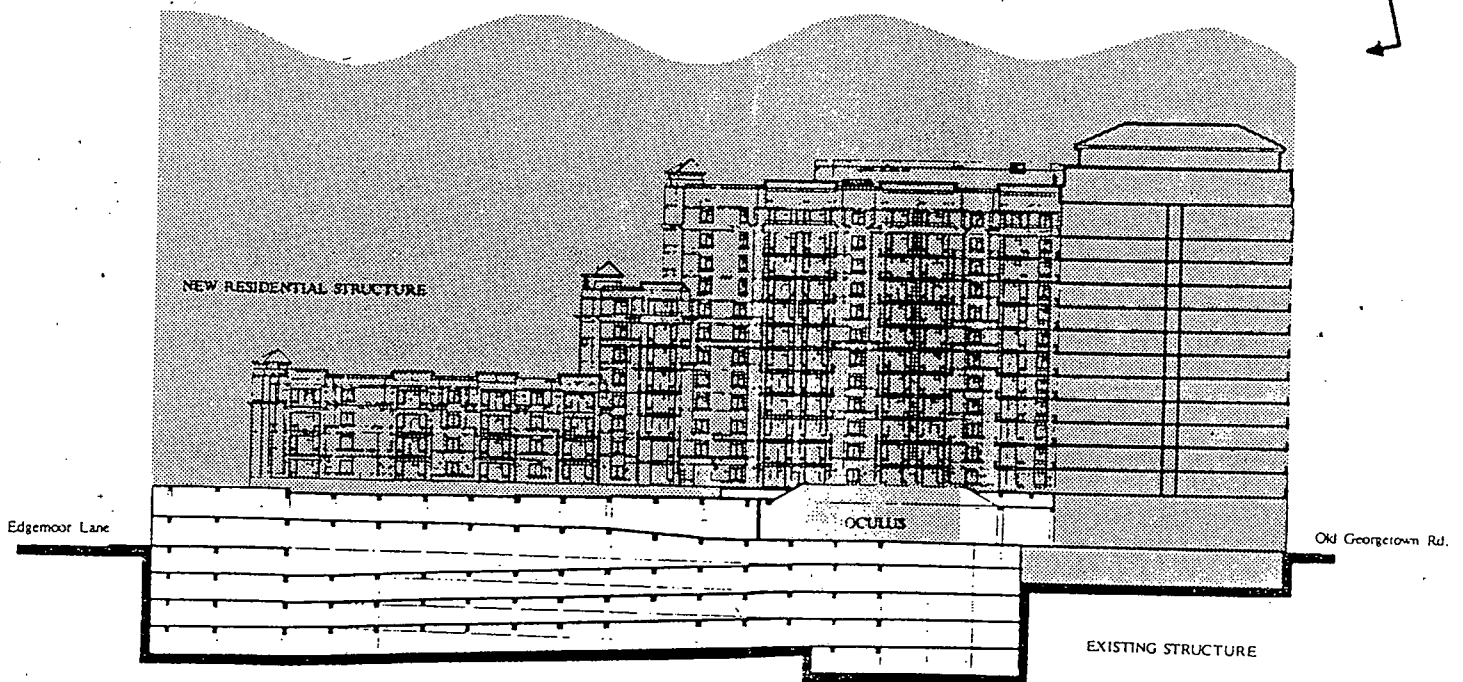
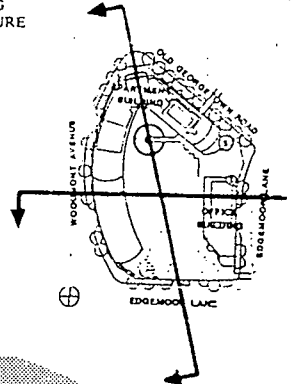
1. North 42° 30' 10" East, 34.23 feet, to a point; thence crossing a part of the right of way for Edgemoor Lane
2. North 87° 29' 03" East, 0.80 feet, to a point; thence
2. South 02° 29' 50" East, 24.20 feet, to a point; thence
2. South 87° 30' 10" West, 25.00 feet, to the **point of beginning**, containing 312 square feet or 0.0072 acres.

Parts One and Two described above being subject to any and all easements, rights of way and covenants of record.





SHORT SECTION LOOKING SOUTH



LONG SECTION LOOKING WEST

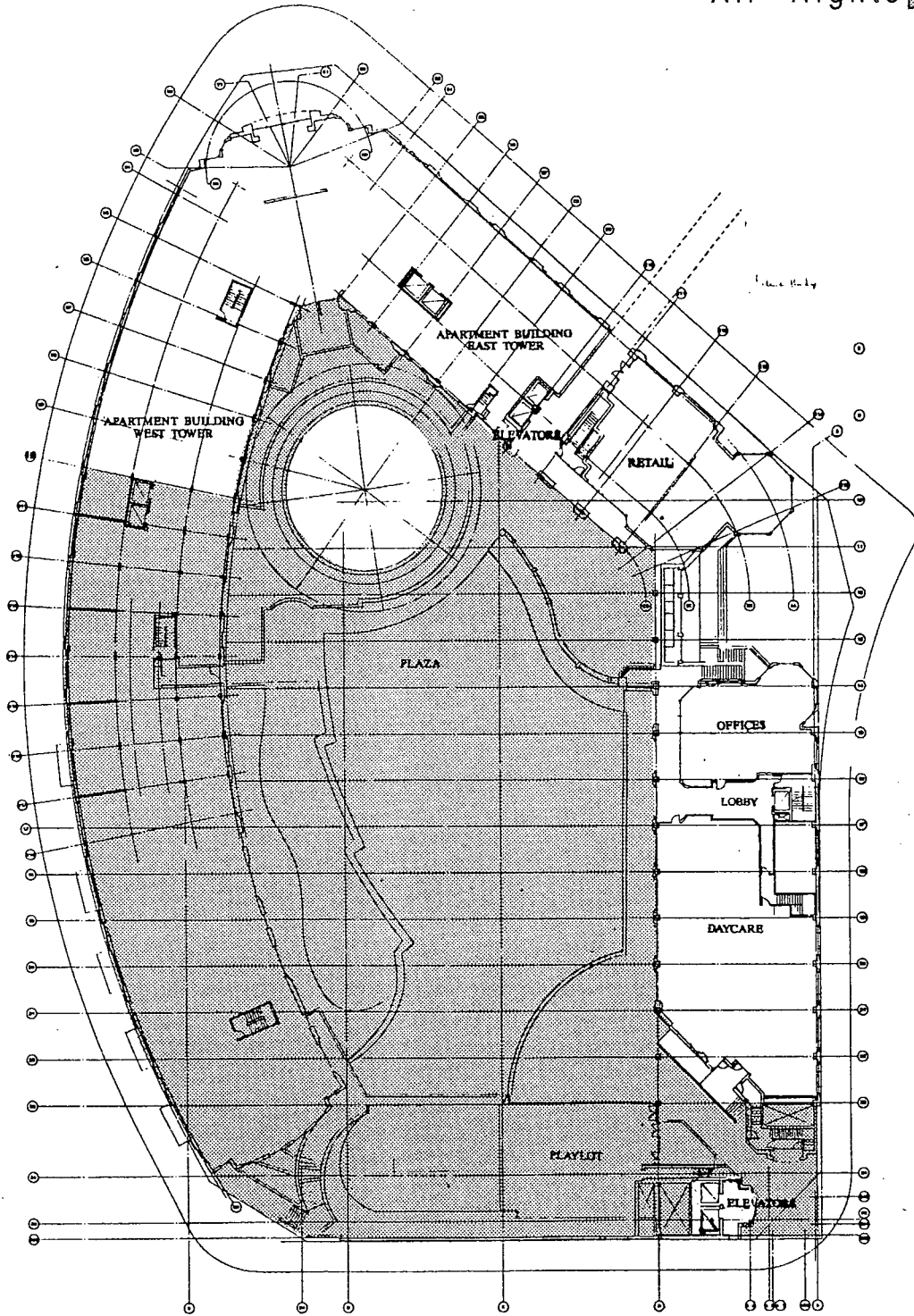
The Metropolitan

Sections

Demised Premises

Air Rights

G-3A




The Metropolitan

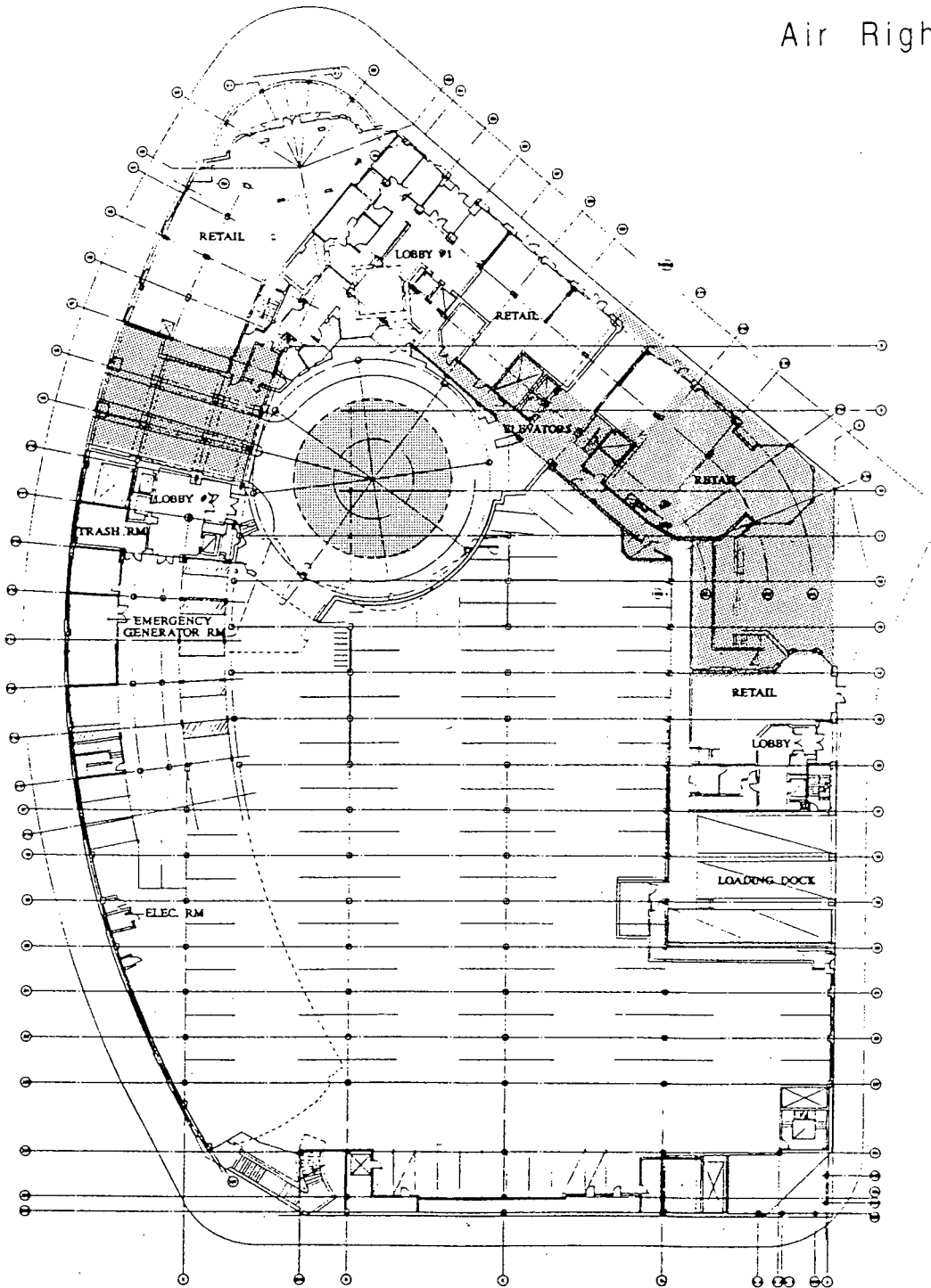
Plaza Level

Demised Premises

Air Rights

G-3B

Air Rights 



The Metropolitan

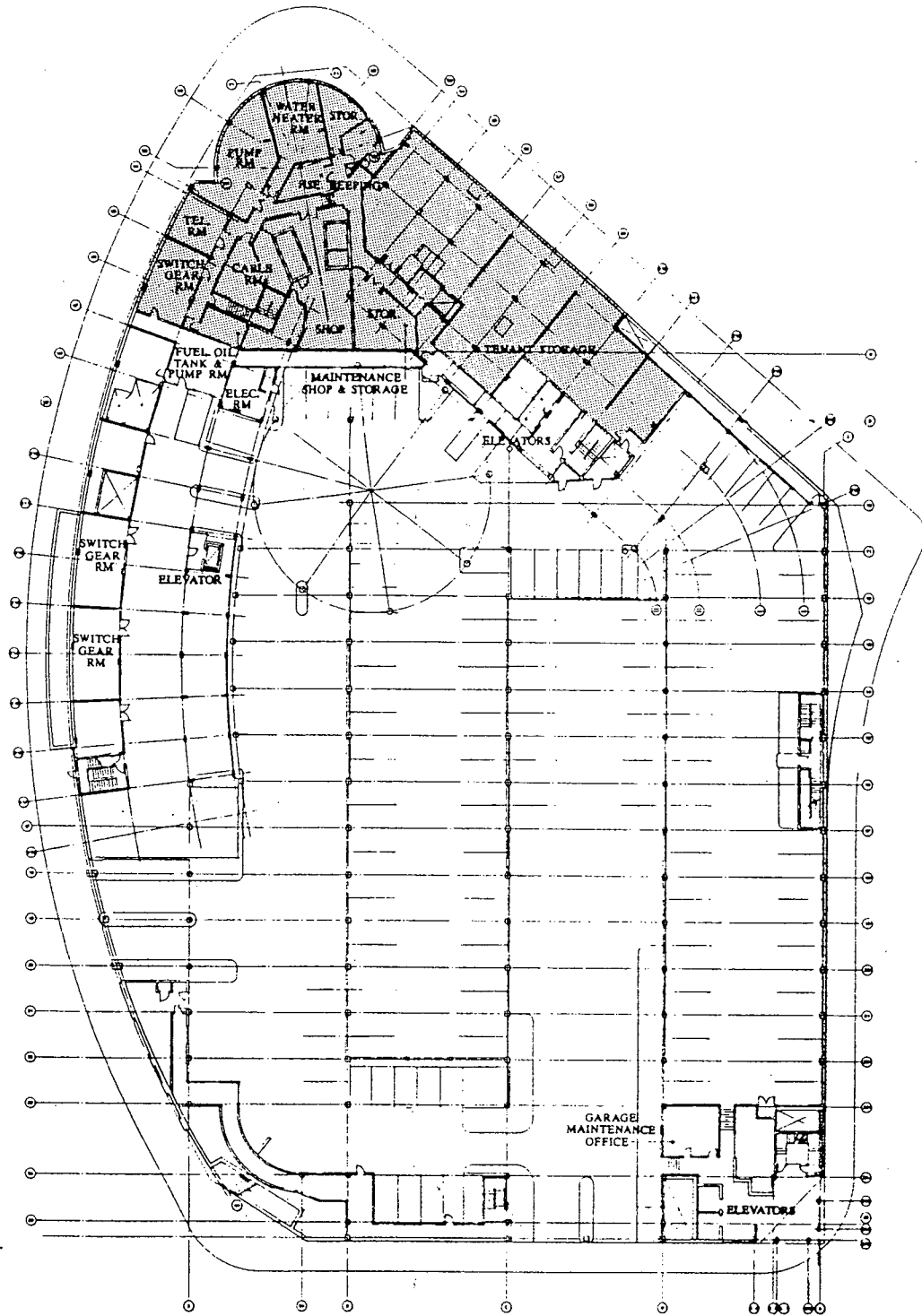
Old Georgetown Road Level

Demised Premises

Air Rights

G-3C

Air Rights

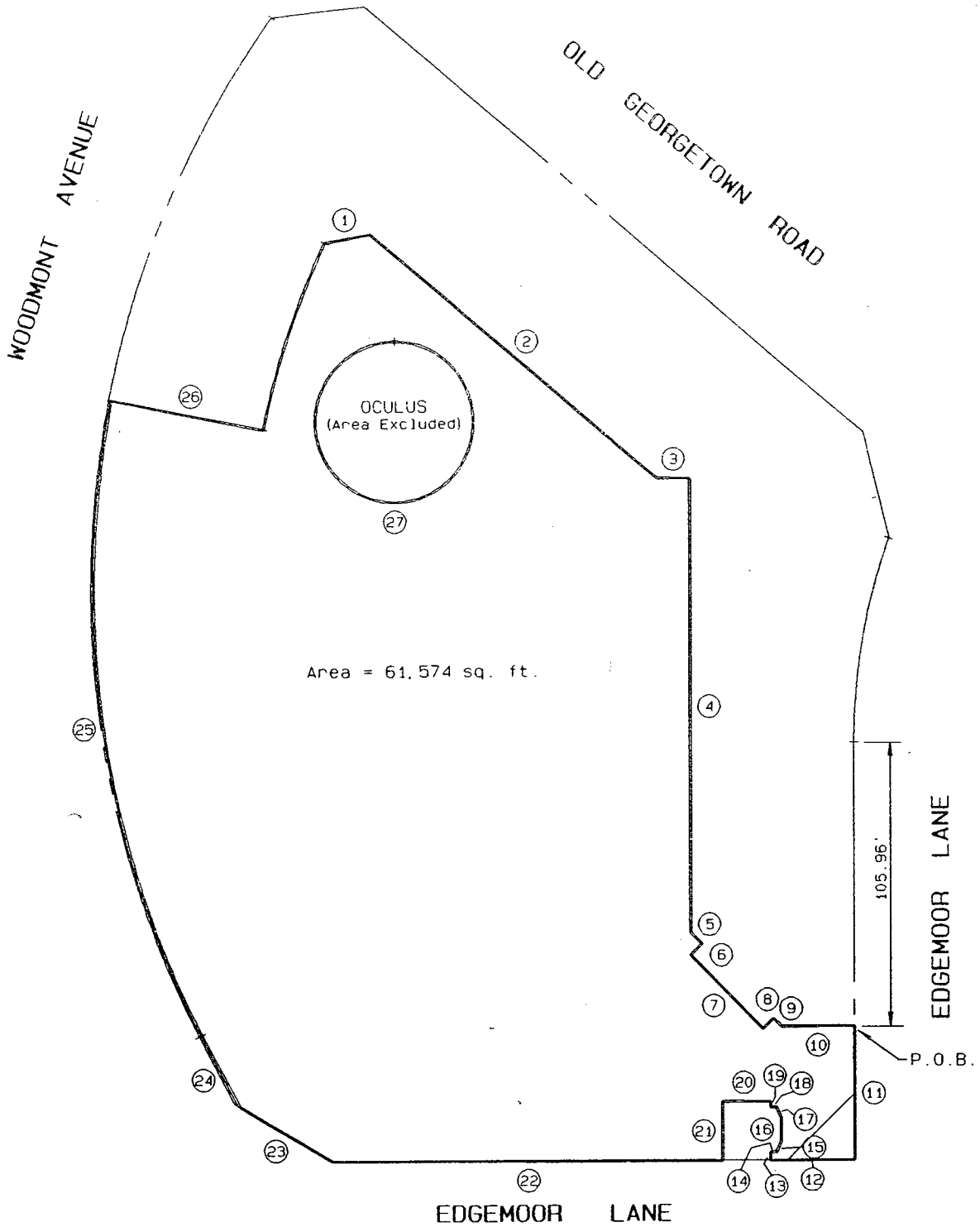


The Metropolitan  
Edgemoor Lane Level

Demised Premises  
Air Rights

G-3D





# The Metropolitan

Plaza Level

G-4-A

## DATA

○	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT	CHORD BEARING	CHORD DIST.
1	N 77° 06' 55"E		17.37			
2	S 52° 34' 00"E		141.00			
3	N 88° 07' 37"E		12.54			
4	S 02° 30' 32"E		168.94			
5	S 47° 30' 42"E		6.01			
6	S 42° 29' 18"W		6.01			
7	S 47° 30' 42"E		38.99			
8	N 42° 29' 18"E		5.62			
9	S 47° 30' 42"E		4.20			
10	N 87° 28' 53"E		27.18			
11	S 02° 30' 00"E		50.20			
12	S 87° 29' 13"W		31.41			
13	N 02° 30' 00"W		3.04			
14	N 85° 30' 47"E		2.34			
15	N 20° 39' 01"E		4.35			
16	N 02° 30' 00"W		8.76			
17	N 25° 39' 11"W		4.35			
18	S 87° 28' 53"W		2.34			
19	N 02° 30' 00"W		2.18			
20	S 87° 40' 11"W		18.27			
21	S 02° 34' 28"E		22.22			
22	S 87° 32' 32"W		147.50			
23	N 61° 15' 05"W		40.40			
24	N 30° 25' 15"W		30.21			
25	38° 54' 20"	359.00	243.77	126.80	N 10° 33' 00"W	239.12
26	S 81° 05' 50"E		58.21			
27	0° 00' 00"	29.75	0.00	0.00	S 87° 29' 28"W	0.00

**The Metropolitan**

**Plaza Level**

**G-4-B**

## Description

### Part of Lot 16, Block 12, Edgemoor Exhibit G-4-C "Plaza Level"

Being two (2) three dimensional spaces, situated in the Seventh (7th) Election District of Montgomery County, Maryland, and being a part of an existing building situated on Lot 16, Block 12, as shown on a plat of subdivision entitled "Lot 16, Block 12, Edgemoor", and being recorded among the Land Records of Montgomery County, Maryland in Plat Book 144 as Plat No. 16519, and having an upper and lower elevation as shown on Exhibit G-3-A, and being more particularly described as follows

#### PART ONE

**Beginning** at a point lying on and distant 105.96 feet from the northerly end of the South 02° 29' 50" East, 191.18 foot plat line, as shown on said plat, said point also being on the westerly right of way line of Edgemoor Lane (80' wide); thence running with and along a part of said right of way line, and with the outline of Lot 16, Block 12

1. South 02° 29' 50" East, 25.20 feet to a point; thence
2. South 42° 30' 10" West, 35.36 feet to a point; thence
3. South 87° 30' 10" West, 6.40 feet to a point; leaving said right of way line of Edgemoor Lane and crossing a part of Lot 16
4. North 02° 29' 50" West, 3.03 feet to a point; thence
5. North 85° 30' 57" East, 2.34 feet to a point; thence
6. North 20° 39' 11" East, 4.35 feet to a point; thence
7. North 02° 29' 50" West, 8.76 feet to a point; thence
8. North 25° 39' 02" West, 4.35 feet to a point; thence
9. South 87° 29' 03" West, 2.34 feet to a point; thence
10. North 02° 29' 50" West, 2.18 feet to a point; thence
11. South 87° 40' 20" West, 18.27 feet to a point; thence
12. South 02° 34' 18" East, 22.22 feet to a point on the northerly right of way line

G-4-C
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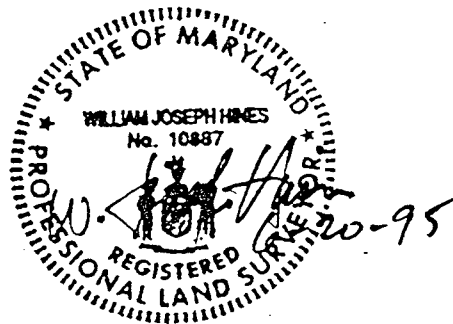
(19th) line, said circle having a radius of 29.75 feet and containing 2781 square feet or 0.0638 acres. The total net area described in Part One is 61,253 square feet or 1.4061 acres.

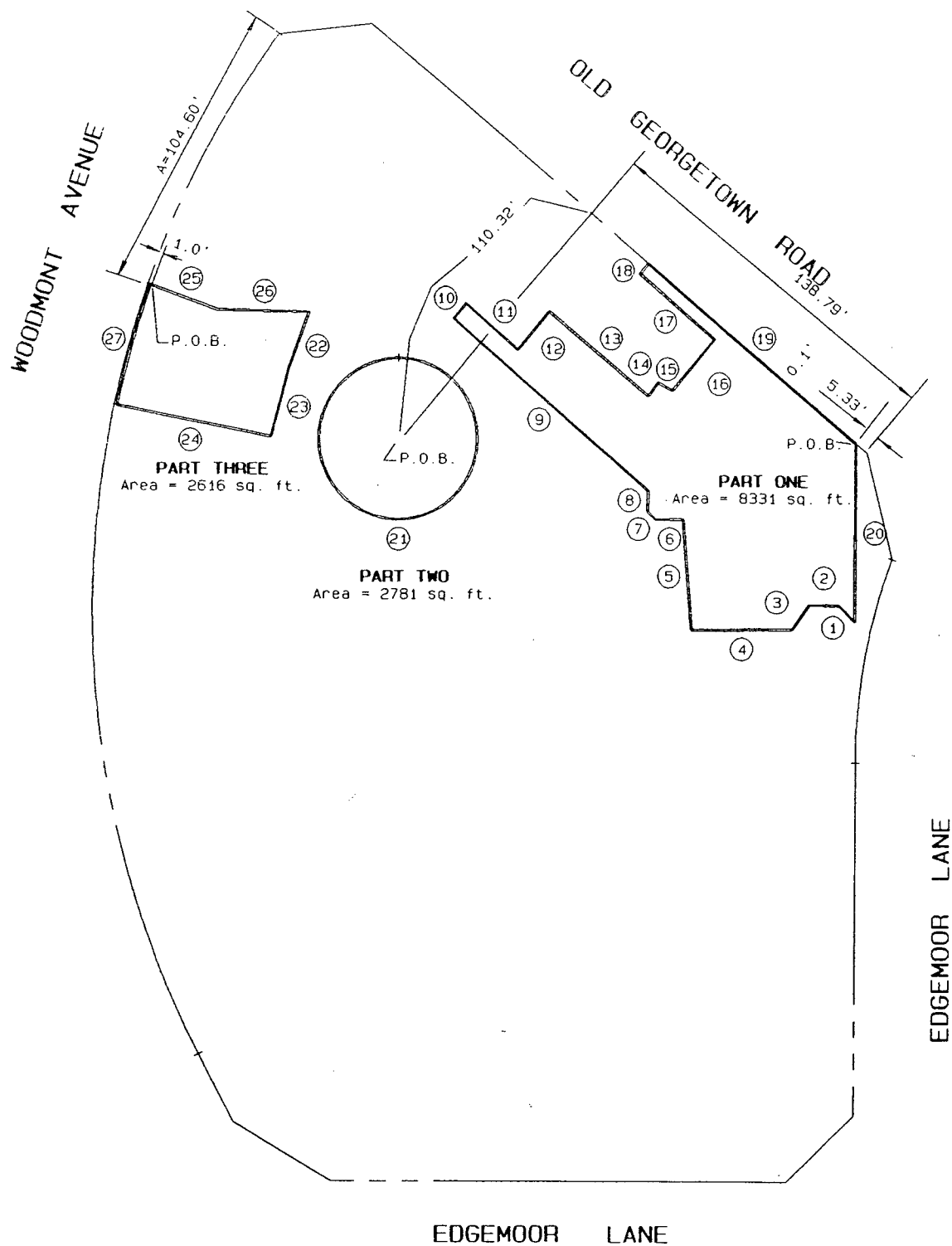
## PART TWO

**Beginning** at the northeasterly end of the South 87° 30' 10" West, 172.15' right of way line of Edgemoor Lane, as shown on said plat; thence with the outline of Lot 16, Block 12

1. North 42° 30' 10" East, 35.36 feet, to a point; thence crossing a part of the right of way for Edgemoor Lane
2. South 02° 29' 50" East, 25.00 feet, to a point; thence
2. South 87° 30' 10" West, 25.00 feet, to the **point of beginning**, containing 313 square feet or 0.0072 acres.

Parts One and Two described above being subject to any and all easements, rights of way and covenants of record.





# The Metropolitan

Old Georgetown Road Level

G-4-D

# DATA

○	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT	CHORD BEARING	CHORD DIST.
1	N 46° 39' 27" W		8.59			
2	S 87° 56' 58" W		11.24			
3	S 31° 26' 18" W		11.04			
4	S 87° 21' 00" W		37.79			
5	N 07° 12' 47" W		40.92			
6	S 86° 59' 52" W		10.60			
7	N 47° 30' 46" W		4.23			
8	N 01° 10' 50" W		7.80			
9	N 52° 13' 23" W		97.55			
10	N 36° 55' 39" E		7.28			
11	S 51° 59' 50" E		26.23			
12	N 37° 28' 27" E		18.33			
13	S 53° 17' 25" E		49.02			
14	N 33° 30' 53" E		6.16			
15	S 64° 49' 54" E		6.24			
16	N 37° 43' 25" E		24.69			
17	N 52° 32' 47" W		37.25			
18	N 37° 42' 52" E		4.87			
19	S 52° 34' 00" E		102.37			
20	S 02° 22' 56" E		66.05			
21	0° 00' 00"	29.75	0.00	0.00	S 87° 29' 28" W	0.00
22	S 17° 26' 59" W		21.50			
23	S 11° 57' 05" W		26.49			
24	N 81° 08' 00" W		58.69			
25	S 72° 33' 44" E		26.91			
26	N 88° 42' 58" E		33.81			
27	7° 19' 46"	359.00	45.92	22.99	N 13° 08' 36" E	45.89

The Metropolitan

Old Georgetown Road Level

G-4-E

## Description

### Part of Lot 16, Block 12, Edgemoor

#### Exhibit G-4-F

#### "Old Georgetown Road Level"

Being a three (3) three dimensional spaces situated in the Seventh (7th) Election District of Montgomery County, Maryland, and being a part of an existing building situated on Lot 16, Block 12, as shown on a plat of subdivision entitled "Lot 16, Block 12, Edgemoor", and being recorded among the Land Records of Montgomery County, Maryland in Plat Book 144 as Plat No. 16519 and being more particularly described in three parts as follows

#### Part One

Beginning for the first piece or parcel of land at a point lying on and distant 137.52 feet from the northwesterly end of the South 52° 34' 00" East, 245.22 foot plat line, as shown on said plat, said point also being on the southwesterly right of way line of Old Georgetown Road; thence running with and along said right of way line

1. South 52° 34' 00" East, 102.37 feet, to a point; thence leaving said right of way line and running in, through, over and across Lot 16, Block 12.
2. South 02° 22' 56" East, 66.05 feet to a point; thence
3. North 46° 39' 27" West, 8.59 feet, to a point; thence
4. South 87° 56' 58" West, 11.24 feet, to a point; thence
5. South 31° 26' 18" West, 11.04 feet, to a point; thence
6. South 87° 21' 00" West, 37.79 feet, to a point; thence
7. North 07° 12' 47" West, 40.92 feet, to a point; thence
8. South 86° 59' 52" West, 10.60 feet, to a point; thence
9. North 47° 30' 46" West, 4.23 feet, to a point; thence
10. North 01° 10' 50" West, 7.80 feet, to a point; thence
11. North 52° 13' 23" West, 97.55 feet, to a point; thence
12. North 36° 55' 39" East, 7.28 feet, to a point; thence

G-4-F

13. South 51° 59' 50" East, 26.23 feet, to a point; thence
14. North 37° 28' 27" East, 18.33 feet, to a point; thence
15. South 53° 17' 25" East, 49.02 feet, to a point; thence
16. North 33° 30' 53" East, 6.16 feet, to a point; thence
17. South 64° 49' 54" East, 6.24 feet, to a point; thence
18. North 37° 43' 25" East, 24.69 feet, to a point; thence
19. North 52° 32' 47" West, 37.25 feet, to a point; thence
20. North 37° 42' 52" East, 4.87 feet to the point of beginning containing 8,350 square feet or 0.1917 of an acre of land.

#### Part Two

Being a circle, the center of which lies 51.30 feet from the northwesterly end of the above described nineteenth (19th) line, 47.40 feet right and perpendicular thereof, said circle having a radius of 29.75 feet and containing 2781 square feet or 0.0638 of an acre of land, with a total area being conveyed is 61,574 square feet or 1.4135 acres of land.

#### Part Three

Beginning at a point lying on and an arc distant 104.60 feet from the Northerly end of the 398.72 foot arc plat line, as shown on said plat, said point also being on the easterly right of way line of Woodmont Avenue; thence running in, through, over and across lot 16, Block 12.

1. South 72° 33' 44" East, 26.91 feet, to a point; thence
2. North 88° 42' 58" East, 33.81 feet, to a point; thence
3. South 17° 26' 59" West, 21.50 feet, to a point; thence
4. South 11° 57' 05" West, 26.49 feet, to a point; thence
5. North 81° 08' 00" West, 58.69 feet, to a point on the aforesaid right of way line of Woodmont Avenue; thence running with and along said right of way line



6. 45.92 feet along the arc of a curve, deflecting to the right having a radius of 359.00 feet and a chord bearing and distance of North  $13^{\circ} 08' 36''$  East and 45.89 feet to the point of beginning; containing 2,616 square feet or 0.0601 of an acre of land.



## DATA

○	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT	CHORD BEARING	CHORD DIST.
1	177°02'36"	32.73	101.14	1268.24	N 77°07'11"E	65.44
2	N 69°46'07"E		4.71			
3	N 37°26'00"E		8.79			
4	S 52°34'00"E		104.22			
5	S 37°26'00"W		6.00			
6	S 52°34'00"E		36.12			
7	S 37°26'00"W		24.78			
8	N 52°34'00"W		7.11			
9	S 37°26'00"W		5.06			
10	N 52°34'00"W		48.26			
11	S 37°26'00"W		18.91			
12	N 52°34'00"W		26.57			
13	S 37°26'00"W		7.73			
14	N 52°34'00"W		6.30			
15	S 87°31'10"W		63.29			
16	N 72°38'25"W		43.44			
17	7°55'47"	359.00	49.69	24.88	N 22°02'29"E	49.65
18	N 78°35'53"E		9.31			

**The Metropolitan**

**Edgemoor Lane Level**

**G-4-H**

## Description

### Part of Lot 16, Block 12, Edgemoor Exhibit G-4-I "Edgemoor Lane Level"


Being a three dimensional space situated in the Seventh (7th) Election District of Montgomery County, Maryland, and being a part of an existing building situated on Lot 16, Block 12, as shown on a plat of subdivision entitled "Lot 16, Block 12, Edgemoor", and being recorded among the Land Records of Montgomery County, Maryland in Plat Book 144 as Plat No. 16519 and being more particularly described as follows

**Beginning** at a point lying on and an arc distant 46.81 feet from the northerly end of the 588.72 foot plat line, as shown on said plat, said point also being on the easterly right of way line of Woodmont Avenue (80' wide), thence running in, through over and across said Lot 16, Block 12, the following four (4) courses

1. North 78° 35' 53" East, 9.31 feet to a point; thence running on a nontangent curve 2.101.14 feet along the arc of a curve deflecting to the right, having a radius of 32.73 feet and a chord bearing and distance of North 77° 07' 11" East, 65.44 feet to a point; thence 3. North 69° 46' 07" East, 4.71 feet to a point; thence
2. 101.14 feet along the arc of a curve deflecting to the right, having a radius of 32.73 feet and a chord bearing and distance of North 77° 07' 11" East, 65.44 feet to a point; thence
3. North 69° 46' 07" East, 4.71 feet to a point; thence
4. North 37° 26' 00" East, 8.79 feet to a point, said point being 33.71 feet from the northwesterly end of the south 52° 34' 00" East, 243.82 foot plat line, as shown on said plat; said point also being on the southwesterly right of way line of Old Georgetown Road; thence running thence running with and along said plat line.
5. South 52° 34' 00" East, 104.22 feet to a point; thence leaving said right of way and running I, through, over and across said Lot 15, Block 12, the following twelve (12) courses
6. South 37° 26' 00" West, 6.00 feet to a point; thence
7. South 52° 34' 00" East, 36.12 feet to a point
8. South 37° 26' 00" West, 24.78 feet to a point; thence
9. North 52° 34' 00" West, 7.11 feet to a point; thence

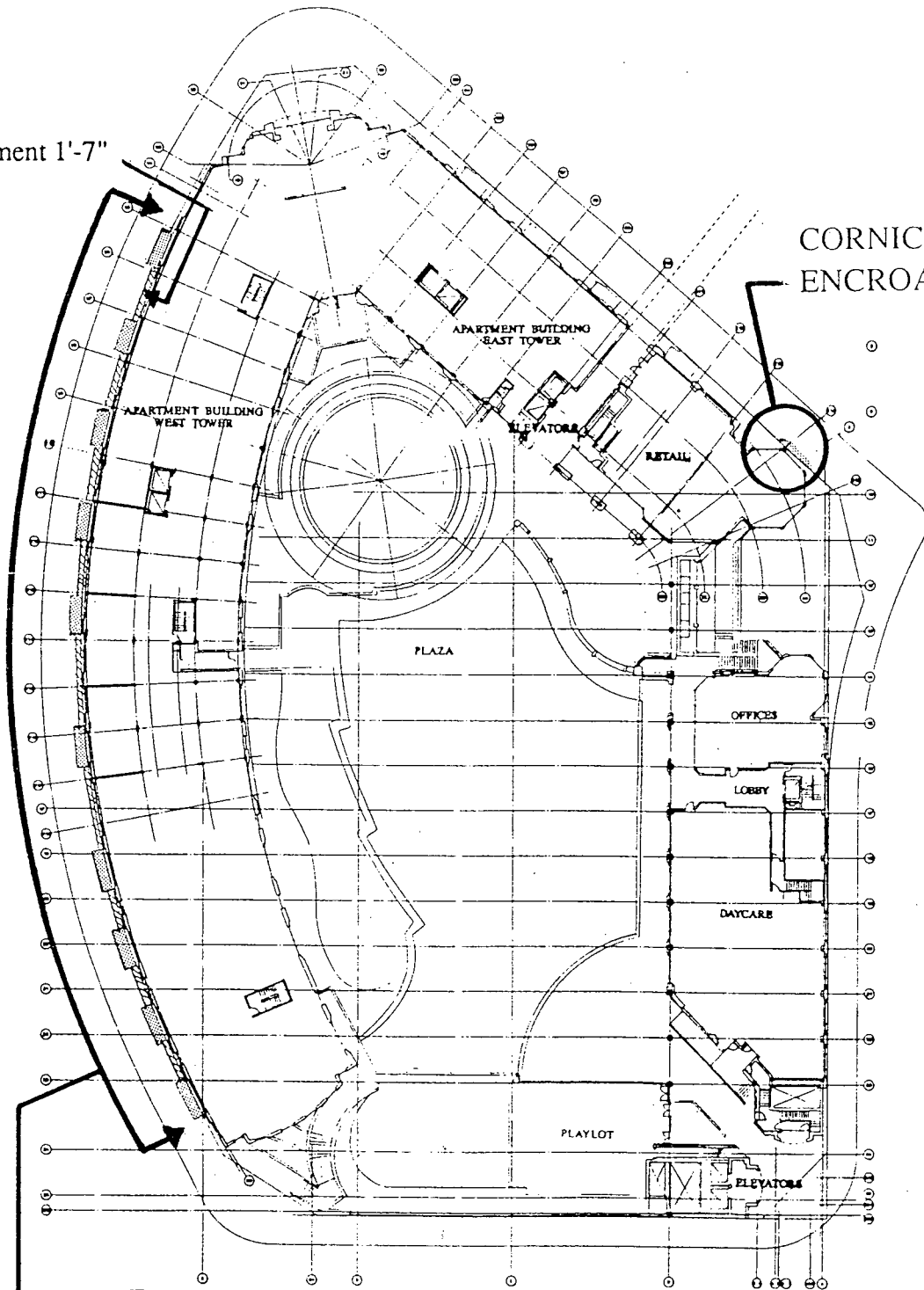
G-4-I

10. South  $37^{\circ} 26' 00''$  West, 5.06 feet to a point; thence
11. North  $52^{\circ} 34' 00''$  West, 48.26 feet to a point; thence
12. South  $37^{\circ} 26' 00''$  West, 18.91 feet to a point; thence
13. North  $52^{\circ} 34' 00''$  West, 26.57 feet to a point; thence
14. South  $37^{\circ} 26' 00''$  West, 7.73 feet to a point; thence
15. North  $52^{\circ} 34' 00''$  West, 6.30 feet to a point; thence
16. South  $87^{\circ} 31' 10''$  West, 63.29 feet to a point; thence
17. North  $72^{\circ} 38' 25''$  West, 43.44 feet to a point on the aforesaid right of way line of Woodmont Avenue; thence running with and along said right of way on a nontangent curve
18. 49.69 feet along the arc of a curve deflecting to the right having a chord bearing and distance of North  $22^{\circ} 02' 29''$  East 49.65 feet to the point of beginning; containing 12,983 square feet or 0.2980 of an acre of land.

Encroachment 

Cornice Encroachment 1'-7"

CORNICE  
ENCROACHMENT



BALCONIES TO ENCROACH  
THIS AREA ONLY

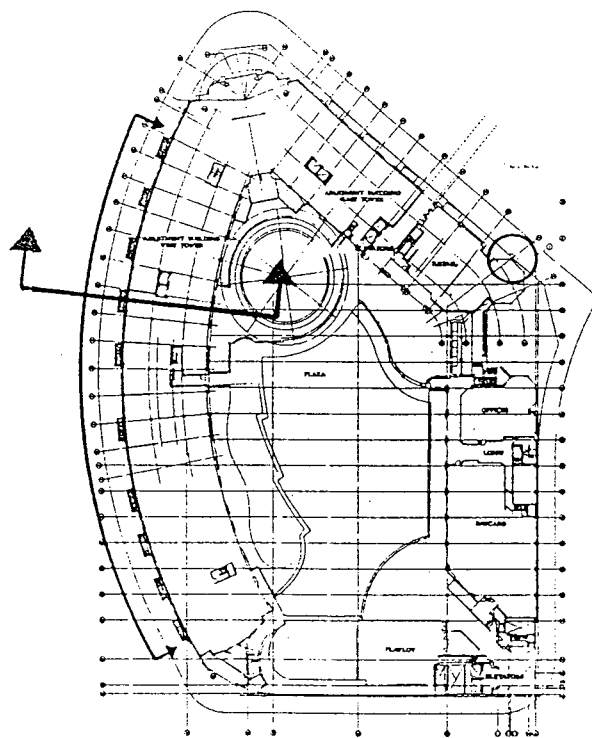
The Metropolitan

Plaza Level

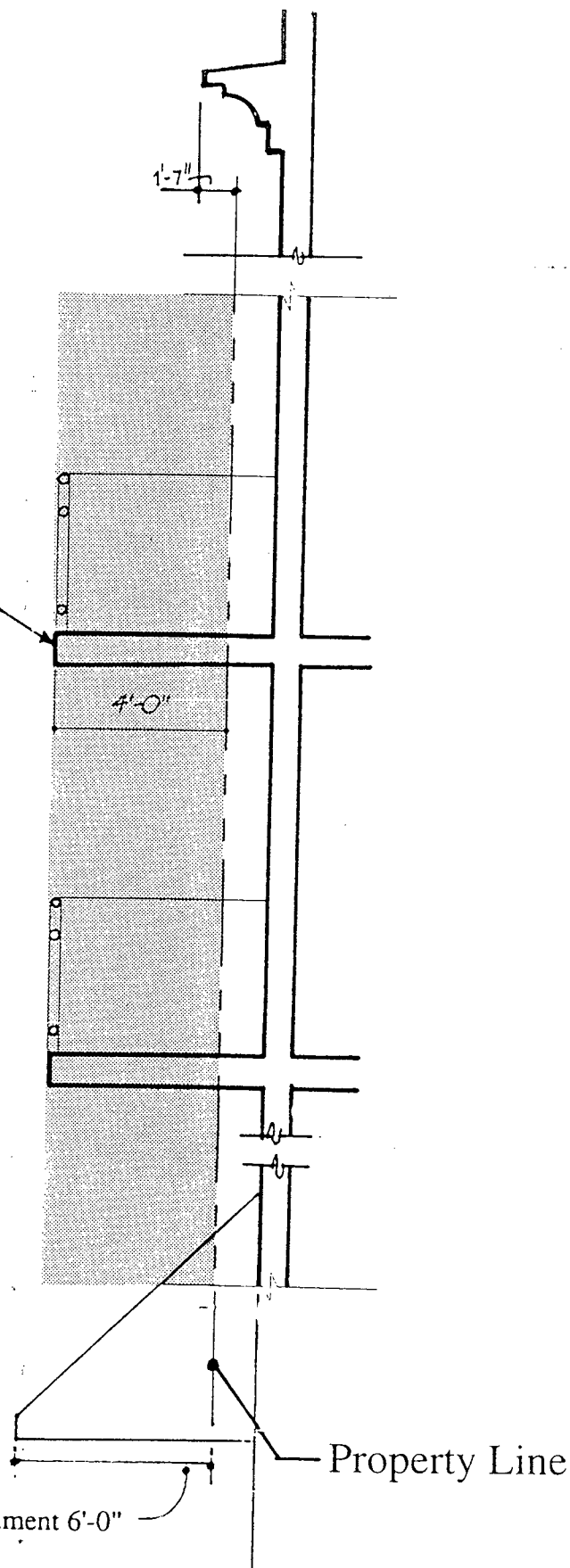
Encroachments

G-5A

Encroachment



Balcony



The Metropolitan

Section

Encroachments

G-5B

## Schedule B - Section 2

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company:

Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.

1. Rights or claims of parties in possession not shown by the public records.
2. Any lien, or rights to a line, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
3. Taxes or special assessments which are not shown as existing liens by the public records.
4. Unpaid water rents.
5. Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the land.
6. Easements, or claims or easements, not shown by the public records.
7. State, County and Municipal real estate taxes, subsequent to the original levy for the year ending June 30, 1995, not yet due and payable, plus possible supplemental taxes.
8. "Front Foot Benefit" charges by the Washington Suburban Sanitary Commission, subsequent to December 31, 1994, not yet due and payable.
9. Sewer Right-of-Way as shown on plat recorded in Plat Book 3 at Plat 284 and in Plat Book 144 at Plat 16519.
10. Reservation area as shown on plat recorded in Plat Book 4 at Plat 308 and in Plat Book 144 at Plat 16519.
11. Commercial building restriction line as shown on plat recorded in Plat Book 18 at Plat 1119.
12. Right-of-Way for construction, operation and maintenance of a storm drain as shown on plats recorded in Plat Book 97 at Plat 10785 and Plat Book 144 at Plat 16519.
13. Ten Foot (10') Sewer Right-of-Way as shown on Plats recorded in Plat Book 97 at Plat 10785 and Plat Book 144 at Plat 16519.
14. Minimum building restriction lines are established by Owner's Dedication on plat recorded in Plat Book 144 at Plat 16519, but are not shown thereon.
15. Extinguishable utility easement as shown on plat recorded in Plat Book 144 at Plat 16519.
16. Reservation for easement for underground utilities and building ventilation purposes as necessary per Owner's Dedication and shown on Plats recorded in Plat Book 116 at Plat 13699 and Plat Book 144 at Plat 16519.
17. Reservation in favor of Washington Suburban Sanitary Commission described in Deed dated October 22, 1925 and recorded on November 19, 1926 in Liber 414 at folio 187, further mentioned in various Deeds forming the chain of title and shown on plat recorded in Plat Book 4 at Plat 308.



18. Easement and Right-of-Way granted to Potomac Electric Power Company by Instrument dated March 16, 1974 and recorded on April 4, 1974 in Liber 4510 at Folio 154.

NOTE: AS TO ITEMS 9 TO 18, MORTGAGEE POLICY ONLY WHEN ISSUED WILL PROVIDE AFFIRMATIVE COVERAGE TO THE EFFECT THAT NO PRESENT VIOLATION EXISTS AND A FUTURE VIOLATION WILL NOT RESULT IN A FORFEITURE OR REVERSION OF TITLE.

MORTGAGEE POLICY ONLY WHEN ISSUED WILL INCLUDE ENVIRONMENTAL ENDORSEMENT (8.1).

19. Rights of the fee owner, MONTGOMERY COUNTY, MARYLAND.
20. Terms, provisions and conditions contained in Air Rights Lease by and between the HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY, MARYLAND ("Lessee") and Montgomery County, Maryland ("Lessor") and the Memorandum of Lease to be recorded in the Land Records of Montgomery County, Maryland.
21. TERMS, PROVISIONS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RIGHTS OF WAY, CONTAINED IN THE RECIPROCAL EASEMENT AGREEMENT AND DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS by and between HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY, MARYLAND, and MONTGOMERY COUNTY, MARYLAND to be recorded in the Land Records of Montgomery County, Maryland.
22. Nothing herein shall be construed as a guarantee of the accuracy of the computation of the description set forth in Exhibit A. This exception will be deleted upon receipt and review of proper surveyor/engineer certification acceptable to the Company as to the accuracy of the description.
23. Regulatory Agreement by the HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY, MARYLAND to be executed and recorded in the Land Records of Montgomery County, Maryland.
24. Financing Statement from the HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY, MARYLAND securing MONTGOMERY COUNTY, MARYLAND to be recorded in the Land Records of Montgomery County.

EXHIBIT I

ADDITIONAL PARKING MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the "Additional Parking MOU") dated this \_\_\_\_ day of \_\_\_\_\_, 199\_, by and between Montgomery County, Maryland, a political subdivision of the State of Maryland ("Montgomery County") and The Housing Opportunities Commission of Montgomery County, a housing authority established under the provisions of Article 44A of the Annotated Code of Maryland ("HOC").

WHEREAS, HOC is authorized to provide housing for persons of low and moderate qualified income in Montgomery County;

WHEREAS, Montgomery County is the Owner of a structure containing approximately 984 parking spaces, to be operated by the County as a public parking facility, located in Bethesda, Maryland in the area bounded by Old Georgetown Road, Woodmont Avenue and Edgemoor Lane ("Garage 49");

WHEREAS, HOC, with the approval of the County, has filed an application with the Montgomery County Planning Board (the "Planning Board") for the development of a certain portion of the air rights above Garage 49;

WHEREAS, by Opinion Site Plan # 8-93005A, the Planning Board approved a development which includes: (i) a residential building containing 308 dwelling units and 13,109 square feet of retail space (hereinafter the "Residential/Retail Building"); (ii) an office building containing approximately 13,990 square feet of office space, a 5,050 square foot day care facility, 1,610 square feet of retail space and a loading dock serving the entire development (hereinafter the "Office/Day Care Building"); and (iii) certain common facilities, including a landscaped plaza, a pedestrian walkway system, a park with a waterfall at the street level and related sidewalk improvements (hereinafter the "Common Elements");

WHEREAS, simultaneously with the execution of this Memorandum of Understanding, HOC is entering into a lease agreement with the County providing for a lease of those portions of the air rights above Garage 49, the existing Garage 49 structure and the parcel of land within the property bounded by Old Georgetown Road, Woodmont Avenue and Edgemoor Lane as is necessary to facilitate the development of the Residential\Retail Building and related facilities all as set forth therein (the "Air Rights Lease");

WHEREAS, HOC's ownership of all or a portion of the apartment units in the Residential/Retail Building (the "HOC Units") qualifies under the Internal Revenue Code as a governmental activity carried on by a public purpose entity;

WHEREAS, HOC and the County have certain understandings with respect to the operation and maintenance of the existing Garage 49.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual undertakings as set forth herein and for good and valuable consideration the receipt and sufficiency of which the parties acknowledge, the County and HOC agree as follows:

1. The County shall keep and maintain Garage 49 in a safe, clean, attractive first class condition similar to other County-owned parking facilities.

2. The County shall operate Garage 49 pursuant to rules, regulations, procedures and fee schedules, adopted from time to time, designed to encourage use and occupancy by the general public, including occupants of the Residential/Retail Building and their visitors. Such rules, regulations, procedures and fee schedules shall allow occupants of the Residential/Retail Building the opportunity to purchase monthly parking permits, or similar revenue collection method which provides for payment of parking fees and allows twenty-four (24) hour access to Garage 49 at rates no less favorable than those in effect for monthly parkers in the Bethesda Parking Lot District.

3. The County shall keep Garage 49 as follows:

(a) Repair and maintenance shall be promptly performed and scheduled to minimize inconvenience to the public, consistent with the nature and urgency of the required work.

(b) Cleaning shall be performed in accordance with the then current contract for Montgomery County Parking Facilities.

(c) Security will be provided in accordance with the then current contract for Montgomery County Parking Facilities.

4. The parties acknowledge, understand and agree that Garage 49 is to be a public parking garage in the Bethesda Parking Lot District and that nothing in this agreement is to be a limitation on the use or operation of Garage 49 as a public parking garage.

5. The parties agree that, from time to time, HOC shall have the right to furnish the County with a written notice of its intent to use all or a portion of the area shown on Exhibit A for the exclusive use of residential occupants of the portion of the Residential/Retail Building owned by a public purpose entity. Such area shall be used only for the parking of vehicles owned or leased by residential occupants of the HOC Units. Such written notice shall be accompanied by plans detailing all modifications of Garage 49 to be made to segregate the designated parking area from the general public. All plans shall comply with all applicable rules, regulations and codes. The plans shall be reviewed by the County and approved if they do not interfere with the operation of the remainder of Garage 49 which approval shall not be unreasonably withheld. Within 30 days of receipt of written notice accompanied by all required permit approvals, the County shall furnish HOC a right of entry authorizing HOC or its designees to enter upon the parking facility to erect, at its sole cost and expense, fences, gates and such other equipment shown on the permit approved plans.

6. The following shall apply to the operation, maintenance and use of the parking area(s) established pursuant to Section 5:

(a) HOC shall purchase from the County the monthly permits in a quantity equal to the number of spaces designated in the parking area and at a rate no less favorable than those in effect for monthly parking in the Bethesda Parking Lot District.

(b) HOC and the County will cooperate in developing a method acceptable to the County for identifying vehicles permitted to park in the designated parking area.

(c) The cost and the process, if any, for replacement, refund, cancellation, revalidation, etc. of permits shall be in accordance with costs and processes for other monthly permit holders in Garage 49. All reasonable costs of any additional service provided by the County to operate the parking area(s) established pursuant to Section 5 shall be paid by HOC.

(d) HOC will be responsible for the installation use and maintenance of any fences or other equipment it installs pursuant to this Section 5

(e) HOC will be responsible for the installation, use, maintenance and security of the area enclosed pursuant to Section 5 hereof. Notwithstanding the provisions of Subsection (c) of this Section 6, the County shall be responsible for providing all utilities that were

provided prior to HOC enclosing the designated parking area. Capital structural repairs required for all such enclosed parking areas shall be provided by the County at its cost.

(f) The County shall have immediate access to the designated parking area for access to storage rooms or other areas necessary to operate Garage 49. However, the County will provide 24 hour notice to HOC if such access is not required for emergency operations.

(g) HOC indemnifies and holds harmless the County from and against any claims or causes of action arising out of or relating to injuries or damages claimed to have occurred within any portion of the Garage secured and restricted by HOC as provided in this Additional Parking MOU.

7. Notwithstanding anything herein to the contrary, it is mutually agreed that this Additional Parking MOU shall at all times be interpreted in a manner that is consistent with, and which does not compromise, the tax exempt financing of Garage 49.

8. Unless sooner terminated by the mutual consent of the parties, this Additional Parking MOU shall remain in effect for so long as the Air Rights Lease remains in full force and effect.

9. Notwithstanding anything herein to the contrary, the parties intend that only Section 5 and Section 6 (a), (c) and (g) of this Additional Parking MOU shall create legally enforceable obligations. It is the further intention of the parties that to the extent the provisions of this Additional Parking MOU are inconsistent with the provisions of the Air Rights Lease, the provisions of the Air Rights Lease shall prevail and be legally enforceable.

IN WITNESS WHEREOF, the parties hereto have caused their hands to be affixed the day and year first above written.

WITNESS:

THE HOUSING OPPORTUNITIES  
COMMISSION OF MONTGOMERY COUNTY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

WITNESS:

MONTGOMERY COUNTY, MARYLAND

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

RECOMMEND APPROVAL

\_\_\_\_\_, Director,  
Department of Transportation

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
County Attorney

Date: \_\_\_\_\_

RECIPROCAL EASEMENT AGREEMENT AND  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS RECIPROCAL EASEMENT AGREEMENT AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, (this "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 1995, by and between HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY, a body politic and corporate (the "Lessee") and MONTGOMERY COUNTY, MARYLAND, a political subdivision of the State of Maryland in its capacity as an owner of real estate, not in its capacity as a governmental entity (the "Lessor").

RECITALS

WHEREAS, the Lessor is the owner of that certain parcel of land in Bethesda, Maryland bounded by Woodmont Avenue, Old Georgetown Road and Edgemoor Lane in the central business district of Bethesda, Maryland and more particularly described on Exhibit A attached hereto (the "Land"), upon which the Lessor has caused to be constructed a multi-level, approximately 1200-space parking structure (the "Existing Structure"); and

WHEREAS, the Lessor and the Lessee have entered into that certain Air Rights Lease of even date herewith (the "Air Rights Lease") which is incorporated herein by reference; and

WHEREAS, Lessor, pursuant to the Air Rights Lease, has leased to the Lessee, a portion of the Land, a portion of the Existing Structure (consisting of the parking deck being generally on the level of Old Georgetown Road and the portions of the parking deck being generally on the level of Edgemoor Lane), a portion of the air rights over the Existing Structure hereto all referred to as

the "Demised Premises" and more particularly defined in the Air Rights Lease; and

WHEREAS, the portions of the Existing Structure which are not included within the Demised Premises are being retained by the Lessor and will be used to operate a public parking garage (the "Garage") and to build and operate an office building with a day care center and play lot (the "Office Project") both as more particularly defined in the Air Rights Lease; and

WHEREAS, it is the intent of the parties that the Lessee shall complete specific elements of the Existing Structure and construct within the Demises Premises a 308 unit residential rental community with approximately 14,725 square feet of related retail uses an open space system including a plaza on the roof of a portion of the Existing Structure (the "Plaza") a street level vest pocket park (the "Water Plaza"), a pedestrian walkway system linking two pedestrian bridges to be built by the Lessor (the "Pedestrian Bridges") to all elements of the development in and above the Existing Structure together with the "Lessee Development" (which term shall include the portion of the Existing Structure within the Demised Premises and any substitute or replacement improvement within the Demised Premises), as more fully described in the Air Rights Lease in accordance with the Lessee Plans and Specifications as defined in the Air Rights Lease; and



WHEREAS, the Lessor desires to provide the Lessee with certain non-exclusive easements of support for the Lessee Improvements over certain portions of the Garage and the Land, and the parties desire to grant to each other certain exclusive and non-exclusive easements within the Existing Structure, the Lessee Improvements and the Office Project for the installation, construction, maintenance, and repair of certain facilities necessary for the coordinated operation, repair, construction, reconstruction and maintenance of the Garage, the Lessee Improvements and the Office Project, including, without limitation, easements for the location, use, operation, maintenance and repair, of utilities, utilities vaults, mechanical rooms, heating, ventilating and air conditioning facilities, elevators and related equipment, stairwells, and other necessary facilities for the coordinated operation of the Garage, the Lessee Improvements and the Office Project, together with easements for pedestrian ingress, egress and transport between portions of the Garage, the Lessee Improvements and the Office Project; and

NOW THEREFORE, for and in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### TERM

Unless the Lessee shall have purchased the Demised Premises pursuant to the Air Rights Lease, this Agreement shall have the same term as the Air Rights Lease. If the Lessee purchases the Demised Premises, this Agreement shall be effective in perpetuity unless terminated by the mutual agreement of the owners from time to time of the Garage, the Lessee Improvements and the Office Project and Montgomery County, Maryland, as a municipal entity (and not as owner of the Garage for purposes of extinguishing any rights of use created by Section 3.08 hereof.

## ARTICLE 2

### CERTAIN DEFINITIONS

Section 2.01. Capitalization of Words. All capitalized terms used in this Agreement and not otherwise defined in this Agreement shall have the meanings ascribed to them in the Air Rights Lease (and the relevant portions of the Air Rights Lease defining such meanings are incorporated into this Agreement by this reference). All definitions incorporated by reference from the Air Rights Lease shall, to the extent necessary, survive the expiration or earlier termination of the Air Rights Lease or any substitute New Lease.

Section 2.02. Easement Holder and Dominant Parcel. For the purposes of this Easement, the owner of the improvements or estate

which is benefited by any of the easements granted herein shall be referred to as the "Easement Holder" and the improvements or estate which are benefited by any such easement shall be referred to as the "Dominant Parcel". The owner of the improvements or estate in or upon which any such easement is located shall be referred to as the "Servient Owner," and the improvements or estate in or upon which any such easement is located shall be referred to as the "Servient Parcel".

### ARTICLE 3

#### GRANTING OF EASEMENTS

##### Section 3.01. Non-Exclusive Easements for Structural Support.

The Lessor grants a non-exclusive easement for the support of the Lessee Improvements and the Office Project through and over the caissons, grade beams, columns, footings, transfer beams, shear walls, floor slabs and beams and other structural elements (together, the "Support Members") within the Garage Property as necessary for the support of the Lessee Improvements as contemplated by the Lessee Plans and Specifications, and the Office Project as contemplated by Office Plans and Specifications. The Support Members subject to such non-exclusive support easement are designated on the drawings listed on Exhibit B attached hereto. The Support Members have been constructed and are in place on the date hereof. The Lessor further grants a non-exclusive easement

for the benefit of the Demised Premises and the Lessee Improvements and the Office Project over and across the areas occupied by such Support Members for the placement, replacement, construction, reconstruction, maintenance, repair and replacement (subject to the conditions set forth herein) of such existing or substitute Support Members as may from time to time be necessary for the support of the Lessee Improvements, the Office Project or any replacement improvements within the Demised Premises (subject to the limitations on replacement improvements set forth in the Air Rights Lease so long as the Air Rights Lease remains in effect); provided, however, that the loads created or allowed to be created upon such Support Members (including both live loads and static loads) shall not exceed the design capabilities thereof as set forth on the drawings listed on Exhibit B attached hereto or otherwise permit the Lessee Improvements or any replacement improvements to be used for any purpose or to any degree which is inconsistent with the intended use and design capabilities of the Support Members. The existing Support Members shall not be altered or modified except as specified on the drawings listed on Exhibit C (which alteration or modifications do not exceed the design capabilities set forth on the drawings listed on Exhibit B), without the express prior written consent of the other party, which consent may be conditioned upon the agreement by the party seeking to alter or

modify the Support Members to take steps necessary to minimize the necessary disruption of the other party's operations; provided, however, that in an emergency, such work may be performed without such prior consent provided that (a) the party conducting such work promptly notifies the other party and (b) the party conducting such work uses best efforts not to materially interfere with the other party's use or operation of its property (i.e., the Garage, the Lessee Improvements or the Office Project as the case may be); provided, however, that the Support Members and the easements provided therefor by this Section 3.01 shall not be altered, and the structural integrity of the support provided thereby to the Lessee Improvements or Office Project shall not be diminished as a result of any change, alteration or utilization.

Section 3.02. Easements For Water and Gas Utilities.

3.02(a). Non-Exclusive Water Easement for Lessee Improvements and Office Project. The Lessor grants a non-exclusive easement for the benefit of the Lessee Improvements and Office Project for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation, and removal from time to time of water utility lines and utilities equipment shown on the Lessee Plans and Specifications attached to the Air Rights Lease as Exhibit M now or hereafter necessary for the delivery and removal of water and gas services to or from the Lessee Improvements, which

non-exclusive easements shall run over and across the areas within and through the structure of the Garage Property and Demised Premises designated for such purpose on Exhibit D-3 attached hereto and as shown more particularly on the Lessee Plans and Specifications.

3.02(b). Exclusive Water and Gas Easements for Lessee Improvements. The Lessor grants and conveys to the Lessee an exclusive easement for the benefit of the Lessee Improvements for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation, and removal from time to time of utility lines and equipment shown on the Lessee Plans and Specifications attached to the Air Rights Lease as Exhibit M now or hereafter necessary for the delivery and removal of water and gas services to or from the Lessee Improvements, which exclusive easements shall run over and across the areas within and through the structure of the Garage Property designated for such purpose on Exhibits D-1 through D-3 attached hereto and as shown more particularly on the Lessee Plans and Specifications.

3.02(c). Exclusive Water and Gas Easement for Office Project. The Lessee grants an exclusive easement for the benefit of the Office Project for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation and removal from time to time of utility lines and equipment now or hereafter

necessary for the delivery or removal of water and gas service to or from the Office Project as shown on the Office Plans and Specifications attached to the Air Rights Lease as Exhibit P, which easements shall run over and across the areas within the Garage or the Demised Premises designated for such purposes on Exhibit D-3 attached hereto and more particularly on the Office Plans and Specifications.

Section 3.03. Easements for Fire Protection.

3.03(a). Non-Exclusive Fire Protection Easement for Lessee Improvements and Office Project. The Lessor grants a non-exclusive easement for the benefit of the Lessee Improvements and Office Project for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation, and removal from time to time of fire protection facilities and equipment shown on the Lessee Plans and Specifications attached to the Air Rights Lease as Exhibit M now or hereafter necessary for the provision of fire protection services to or from the Lessee Improvements, which non-exclusive easement shall run over and across the areas within and through the structure of the Garage Property and Demised Premises designated for such purposes on Exhibits E-2 and E-3 attached hereto and as shown more particularly on the Lessee Plans and Specifications.

3.03(b). Exclusive Fire Protection Easements for Lessee Improvements. The Lessor grants and conveys to the Lessee an exclusive easement for the benefit of the Lessee Improvements for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation, and removal from time to time of fire protection facilities and equipment shown on the Lessee Plans and Specifications attached to the Air Rights Lease as Exhibit M now or hereafter necessary for the provision of fire protection services to or from the Lessee Improvements, which exclusive easements shall run over and across the areas within and through the structure of the Garage Property designated for such purpose on Exhibits E-2 and E-3 attached hereto and as shown more particularly on the Lessee Plans and Specifications.

3.03(c) Exclusive Fire Protection Easements for Garage Project. The Lessee grants and conveys to the Lessor an exclusive easement for the benefit of the Garage Project for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation, and removal from time to time of fire protection facilities and equipment shown on the Drawing List for the Existing Structure attached hereto as Exhibit B now or hereafter necessary for the provision of fire protection services to or from the Garage Project, which exclusive easement shall run over and across the areas within and through the structure of the



Lessee Improvements designated for such purpose on Exhibits E-2 and E-3 attached hereto and as shown more particularly on the Lessee Plans and Specifications.

3.03(d). Exclusive Fire Protection Easement for Office Project. The Lessee grants an exclusive easement for the benefit of the Office Project for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation and removal from time to time of fire protection facilities and equipment now or hereafter necessary for the provision of fire protection services to and from the Office Project as shown on the Office Plans and Specifications attached to the Air Rights Lease as Exhibit P, which easements shall run over and across the areas within the Garage Property or the Demised Premises designated for such purposes on Exhibit E-3 attached hereto and more particularly on the Office Plans and Specifications.

Section 3.04. Electrical, Telephone, Cable and Telecommunications Easements

3.04(a). Exclusive Electrical, Telephone, Cable and Other Telecommunication Services Easement for Lessee Improvements. The Lessor grants and conveys to the Lessee an exclusive easement for the benefit of the Lessee Improvements for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation, and removal from time to time of utility

lines and equipment shown on the Lessee Plans and Specifications attached to the Air Rights Lease as Exhibit M now or hereafter necessary for the delivery of electrical, telephone, cable and other telecommunication services to or from the Lessee Improvements, which exclusive easements shall run over and across the areas within and through the structure of the Garage Property designated for such purpose on Exhibits F-1 through F-4 attached hereto and as shown more particularly on the Lessee Plans and Specifications.

3.04(b). Exclusive Electrical, Telephone, Cable and Other Telecommunication Services Easement for Office Project. The Lessor and Lessee grant and convey an exclusive easement for the benefit of the Office Project for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation and removal from time to time of utility lines and equipment now or hereafter necessary for the delivery of electrical, telephone, cable and other telecommunication services to or from the Office Project as shown on the Office Plans and Specifications attached to the Air Rights Lease as Exhibit P, which easements shall run over and across the areas within the Garage Property or the Demised Premises designated for such purposes on Exhibit F-3 attached hereto and more particularly on the Office Plans and Specifications.

Section 3.05. Storm and Sanitary Sewer Easements.

3.05(a). Exclusive Easement for Sanitary and Storm Sewer for Lessee Improvements. The Lessor hereby grants and conveys to the Lessee an exclusive easement for the benefit of the Lessee Improvements over and across the areas designated for such purpose on Exhibits G-1 through G-4 attached hereto for connection to and use of the sanitary and storm sewer mains, pipelines, disposal units, and related facilities from time to time located within the Garage and the Office Project, together with a non-exclusive easement to share in the use of all such facilities within the Garage and the Office Project as may be necessary to connect the sanitary and storm sewer system within the Lessee Improvements to the public sanitary sewer system all as shown on the Lessee Plans and Specifications attached to the Air Rights Lease as Exhibit M; provided, however, the Lessee's sharing thereof shall not cause the designed capacity thereof at any time to be exceeded, but provided, further, that the Lessee shall not be deemed in breach of the foregoing covenant to the extent the designed capacity has been exceeded due to an increase in use by the Garage or the Office Project beyond the current anticipated use levels. The Lessee shall be responsible for the installation, location, construction, use, operation, maintenance, repair, replacement, and removal of all facilities connected by it to the Lessor's sanitary sewer

system and of all facilities placed by the Lessee within the sanitary sewer easement granted hereby and shall at all times ensure that such installation, location, use, construction, operation, maintenance, repair, replacement, and removal shall not interfere with the Lessor's use or enjoyment of the Land, the Garage, the Office Project, or the sanitary sewer system located within the Garage, except to the extent any such interference results from the Lessor's own increase in use beyond the levels set forth above.

3.05(b). Non-Exclusive Easement for Sanitary and Storm Sewer for Garage and Office Project. The Lessee hereby grants a non-exclusive easement for the benefit of the Garage and Office Project over and across the areas designated for such purpose on Exhibits G-3 and G-4 attached hereto for connection to and use of the sanitary and storm sewer mains, pipelines, disposal units, and related facilities from time to time located within the Lessee Improvements, together with a non-exclusive easement to share in the use of all such facilities within the Garage and the Office Project as may be necessary to connect the sanitary and storm sewer system of Lessor and Lessee to the public sanitary sewer system all as shown on the Lessee Plans and Specifications attached to the Air Rights Lease as Exhibit P; provided, however, the Lessor's sharing thereof shall not cause the designed capacity thereof at any time

to be exceeded, but provided, further, that the Lessee shall not be deemed in breach of the foregoing covenant to the extent the designed capacity has been exceeded due to an increase in use by the Lessee Improvements beyond the current anticipated use levels. The Lessor shall be responsible for the installation, location, construction, use, operation, maintenance, repair, replacement, and removal of all facilities connected by it to the Lessee's sanitary sewer system and of all facilities placed by the Lessor within the sanitary sewer easement granted hereby and shall at all times ensure that such installation, location, use, construction, operation, maintenance, repair, replacement, and removal shall not interfere with the Lessee's use or enjoyment of the Lessee Improvements, or the sanitary sewer system located within the Lessee Improvements, except to the extent any such interference results from the Lessee's own increase in use beyond the levels set forth above.

3.05(c) Exclusive and Non-Exclusive Easements for Sanitary and Storm Sewer for Office Project. The Lessee hereby grants and conveys to the Lessor an exclusive easement for the benefit of the Office Project over and across the areas designated for such purpose on Exhibits G-2 through G-4 attached hereto for connection to and use of the sanitary and storm sewer mains, pipelines, disposal units, and related facilities from time to time located

within the Garage and the Lessee Improvements, together with a non-exclusive easement to share in the use of all such facilities within the Garage and the Lessee Improvements as may be necessary to connect the sanitary and storm sewer system within the Office Project to the public sanitary sewer system all as shown on the Office Project Plans and Specifications attached to the Air Rights Lease as Exhibit P; provided, however, the Lessor's sharing thereof shall not cause the designed capacity thereof at any time to be exceeded, but provided, further, that the Lessor shall not be deemed in breach of the foregoing covenant to the extent the designed capacity has been exceeded due to an increase in use by the Garage or the Lessee Improvements beyond the current anticipated use levels. The Lessor shall be responsible for the installation, location, construction, use, operation, maintenance, repair, replacement, and removal of all facilities connected by it to the Lessee's sanitary sewer system and of all facilities placed by the Lessor within the sanitary sewer easement granted hereby and shall at all times ensure that such installation, location, use, construction, operation, maintenance, repair, replacement, and removal shall not interfere with the Lessee's use or enjoyment of the Lessee Improvements, or the sanitary sewer system located within the Garage, except to the extent any such interference results from the Lessee's own increase in use beyond the levels set

forth above.

Section 3.06. Mechanical Room Easements.

3.06(a). Non-Exclusive Mechanical Room Easement for Garage and Office Project. The Lessee grants a non-exclusive easement for the benefit of the Garage, and the Office Project in and to the mechanical rooms located within the Demised Premises and designated for such purpose on Exhibits F-2, H-1 and H-2 hereto attached for the purposes of ingress and egress thereto and for constructing, reconstructing, inspecting, altering, maintaining, repairing, and replacing from time to time electrical and mechanical equipment necessary or desirable in connection with the furnishing of utilities and mechanical services to the Lessee Improvements. The Lessee shall be responsible for placing, repairing, replacing, operating, and maintaining its own equipment within such mechanical rooms and for any cleaning of the mechanical rooms necessitated by any of the foregoing all at its sole cost and expense. The Lessee shall at all times operate and maintain its facilities located therein in a safe and sound condition at the Lessee's sole cost and expense.

Section 3.07. Ventilation Easements.

3.07(a). Exclusive Ventilation Easement for Lessee Improvements. The Lessor grants an exclusive easement for the benefit of the Lessee Improvements for the location, construction,

use, operation, maintenance, repair, replacement, relocation and removal from time to time of ventilation shafts (both intake and exhaust), plenums, ducts, fans, blowers, motors, and other equipment related to the heating, ventilating and air conditioning of the Lessee Improvements over portions of the Garage Property designated on Exhibits I-1 and I-2 attached hereto.

3.07(b). Exclusive Ventilation Easement for Garage. The Lessee grants an exclusive easement for the benefit of the Garage for the location, construction, use, operation, maintenance, repair, replacement, relocation, and removal from time to time of ventilation shafts (both intake and exhaust), plenums, ducts, fans, blowers, motors, and other equipment related to the heating, ventilating and air conditioning of the Garage over the portions of the Lessee Improvements designated for such purpose on Exhibit I-1 through I-2 attached hereto. In accordance with Section 4.01(e) of the Air Rights Lease, Lessee shall install certain ventilation shafts as part of the initial construction and thereafter shall not interfere with the use thereof for the purposes set forth in this Section 3.07.

Section 3.08. Easements for Elevators and Stairtowers.

3.08(a). Exclusive Elevator Easement for Lessee Improvements. The Lessor grants an exclusive easement for the benefit of the Lessee Improvements for the installation, location, construction,



use, operation, maintenance, repair, replacement, relocation, and removal of elevators, elevator pits, elevator shafts, and related equipment over and across the areas within the Garage Property designated for such purpose on Exhibit J-2 through J-7 attached hereto. All such elevators, elevator penthouses, elevator shafts, and related equipment shall be installed, operated, repaired and maintained in a safe and sound condition in compliance with all applicable laws and regulations at the sole cost and expense of the Lessee.

3.08(b). Exclusive Elevator Easement for Garage. The Lessee grants an exclusive easement for the benefit of the Garage for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation, and removal of elevators, elevator pits, elevator shafts, and related equipment over and across the areas within the Demised Premises designated for such purpose on Exhibit J-1 and J-2 attached hereto. Except as provided in Section 4.01(e) of the Air Rights Lease, all such elevators, elevator penthouses, elevator shafts, and related equipment shall be installed, operated, repaired and maintained in a safe and sound condition in compliance with all applicable laws and regulations at the sole cost and expense of the Lessor; provided, however, that the areas from the outside unfinished surfaces of the elevator shafts and elevator penthouses outward constructed by the Lessee in

accordance with Section 4.01(e) of the Air Rights Lease shall be maintained by the Lessee at its sole cost and expense, and Lessee shall be responsible for installing, maintaining, repairing and replacing the finished surfaces to such shafts and penthouses.

Section 3.09. Easements for Garage for Ingress and Egress Over Stairways and Other Areas and for Stairtowers.

3.09(a) Non-Exclusive Easements for Garage ingress and egress for Garage. In order to provide access for users of the Garage from and between the Garage and the Plaza referred to in Section 3.10 hereof, Lessee grants a non-exclusive easement for the benefit of the Garage and the users thereof over and across the portions of the stairways, stairwells, stairtowers, entrances, and landing areas within the Lessee Improvements to be constructed within the Demised Premises shown on Exhibit K-1 and K-2 attached hereto. The Lessor shall maintain such stairways and other areas within the Demised Premises in a good, safe, and sound condition at the Lessor's sole cost and expense. The Lessee shall not close, remove, alter, modify or relocate any such stairways and other areas without the Lessor's prior written consent, which consent shall not be unreasonably withheld, but which consent may be conditioned upon the continued availability of reasonable means of access, ingress and egress between the Garage and the Plaza. The Lessor shall at all times maintain, at its sole cost and expense,

adequate lighting within the foregoing easement areas in compliance with applicable laws and regulations.

3.09(b) Lessee Right to Secure Entrance to Plaza.

Except for the elevator and stairway access from the Garage to the Edgemoor Lane pedestrian bridge, Lessee reserves the right to secure the Plaza level from the stairways leading to the Garage and the elevators to the Garage after 11:00 P.M. each night by locking gates or doors at appropriate locations so that access will not be available between the Garage and Plaza.

Section 3.10. Operation of Open Space. The Lessee agrees to construct the open space system consisting of the areas designated as Plaza, Water Plaza, and Pedestrian Walkway on Exhibit L-1 - L-2 attached hereto in accordance with the Lessee Plans and Specifications, to repair and maintain such facilities and all such other areas in a good and sound condition, and to operate such facilities in accordance with the requirements of the Project Plan Opinion and Site Plan Opinion as they may be modified from time to time of the Maryland National Capital Park and Planning Commission with the consent of the Lessee; provided, however, the Lessee shall have the right to establish reasonable rules and regulations with respect to the use of such areas, which rules and regulations must be consistent with the Project Plan Opinion and the Site Plan Opinion. The rights created by this Section 3.10 shall survive the

termination of this Reciprocal Easement Agreement except upon the consent of Montgomery County, Maryland as a municipal entity (and not as the owner of the Garage). The rights created by this Section 3.10 may be enforced solely by Montgomery County, Maryland as a municipal entity (and not as the owner of the Garage). The parties to this Agreement do not intend to create by this Section any rights which may be enforceable by anyone other than the aforesaid Montgomery County, Maryland.

Section 3.11. Exclusive Easement for Support of Pedestrian Bridges. The Lessee grants, conveys, and dedicates to Montgomery County, Maryland an exclusive easement over and across the areas designated "Bridge Support Easements" on Exhibit M attached hereto for the purpose of maintaining support for a pedestrian bridge across Old Georgetown Road and a pedestrian bridge across Edgemoor Lane at the locations shown on said Exhibit. The Lessee shall not install or erect, or permit to be installed or erected, any building, fence, structure or other obstacle of any kind which would impede access, ingress or egress between the Plaza and such pedestrian bridges except as shown on the Lessee Plans and Specifications or as otherwise agreed in writing by the Lessor. The easement created by this Section 3.11 shall survive the termination of this Reciprocal Easement agreement except upon the consent of Montgomery County, Maryland as a municipal entity (and

not as the owner of the Garage). Notwithstanding the foregoing, nothing in this Agreement shall be construed to require the Lessee to construct such pedestrian bridges or the related support elements beyond the Plaza.

Section 3.12. Non-Exclusive Easements for Maintenance, Repair and Inspection. Each Servient Owner grants the applicable Easement Holder a non-exclusive temporary easement for ingress and egress at such times and over such portions of the Lessee Improvements, Garage Project or Office Project as may be necessary from time to time to permit the applicable Easement Holder to inspect, install, locate, construct, replace, repair, maintain, alter, remove or relocate any of the Easement Holder's facilities within any of the easement areas established hereby; provided, however, that all such repairs, maintenance and other activities shall be effected at reasonable times upon reasonable prior written notice to the Servient Owner (except in an emergency, in which case notice shall be given promptly) and shall be conducted in such a way as to minimize any interference or disruption of the Servient Owner's operations on the Lessee Improvements, Garage Project, or Office Project, as the case may be; provided, however, if any such repairs, maintenance or other activities are necessitated by condemnation, catastrophe, acts of God, change in law, or other matters outside the Easement Holders' (or its agents', subtenants',

employees', contractors', or invitee) reasonable ability to control, then the Easement Holder shall be required to use best efforts not to materially interfere with or disrupt the Servient Owner's operations on the Lessee Improvements, Garage Project, or Office Project, as the case may be.

Section 3.13. Easement to Maintain Waterproof Membrane for Garage Property. In the event the Lessee fails to maintain the waterproof membrane described in Section 6.02 in the manner described in Section 6.02, the Lessor shall have a temporary construction easement over the portions of the Lessee Improvements necessary and at the times necessary to effect such repairs as may be necessary to maintain such membrane in the condition required by said Section 6.02, and the costs thereof incurred by the Garage Property shall be reimbursed by the Lessee within thirty (30) days after the Lessor's written demand therefor.

Section 3.14. Easement For Loading Dock, Retail and Service Corridor.

3.14(a). Non-exclusive Easement for Loading Dock. The Lessor grants a non-exclusive easement for the benefit of the Lessee Improvements in and to the area designated "Loading Dock" on Exhibit N attached hereto for the purpose of finishing the construction, reconstruction, inspection, alteration, maintenance, repair, replacement and operation of retail space and to provide a

service corridor for the convenience of those wishing to transport materials to and from the Lessee Improvements and the Loading Dock. Lessor or its designee shall construct the Office Project and turn over the area designated Loading Dock to the Lessee as an unfinished shell with a concrete slab ceiling; concrete slab floor and block walls as shown on the Office Plans and Specifications listed on Exhibit P to the Air Rights Lease so that Lessee can complete these areas in accordance with the Lessee Plans and Specifications listed as Exhibit M to the Air Rights Lease as part of the Lessee Improvements. The Loading Dock shall be available for use at times and under conditions agreed to by the parties from time to time.

3.14(b). Exclusive Easement for Retail and Service Corridor.

The Lessor grants an exclusive easement for the benefit of the Lessee Improvements in and to the area designated "Retail" and "Service Corridor" on Exhibit O attached hereto for the purpose of finishing the construction, reconstruction, inspection, alteration, maintenance, repair, replacement and operation of retail space and to provide a service corridor for the convenience of those wishing to transport materials to and from the Lessee Improvements and the Loading Dock. Lessor or its designee shall construct the Office Project and turn over the area designated "Retail" and "Service Corridor" to the Lessee as an unfinished shell with a concrete slab

ceiling, concrete slab floor and block walls all as shown on the Office Plans and Specifications listed on Exhibit P to the Air Rights Lease so that Lessee can complete these areas in accordance with the Lessee Plans and Specifications listed on Exhibit M to the Air Rights Lease as part of Lessee Improvements.

3.14(c) Cost of Services and Utilities to Office Project, Loading Dock and Retail. Lessee and Lessor agree to make every reasonable effort for separate metering of areas utilized by the several occupants of the Office Project. The cost of services and utilities billed or charged by others to Lessor or incurred by Lessor for the Office Project for services or utilities provided for the benefit of the Loading Dock, Service Corridor and Retail in the Office Project shall be reimbursed by Lessee on a proportionate basis on a formula based on the relationship of the area occupied by the Loading Dock, Service Corridor and Retail to the area of the Office Project or other formula providing for fair division of costs between the parties.

Section 3.15. Non-Exclusive Easement for Use of Playlot. The Lessor grants to Lessee, its tenants and their guests and invitees and the general public a non-exclusive easement for the use of the Playlot at any time when the daycare center in the Office Project is not in operation. Lessor shall be responsible for maintenance of and repairs and replacement to the Playlot in accordance with Section 5.04 of this Agreement unless otherwise agreed pursuant to the Air Rights Lease. The rights created by this Section 3.15 as to the general public may be enforced solely by Montgomery County, Maryland, as a municipal entity.

Section 3.16. Responsibility for Plaza Level and Old Georgetown Road Level. Upon Substantial Completion of the Lessee Improvements, Lessee shall be responsible for all Structural



Repairs and Maintenance (as hereinafter defined) for the Plaza. Lessee shall be responsible for Maintenance of the deck of the Old Georgetown Road level within the Demised Premises. The Lessor shall be responsible for Structural Repairs to the deck of the Old Georgetown Road level within the Demised Premises. Lessee shall provide Lessor with access over the Lessee Improvements from time to time to permit inspections and for work as provided in Section 3.12. For the purposes of this Section, the term "Structural Repairs" shall mean all work structural in nature or acknowledged as capital in nature in accordance with generally accepted accounting principles. For the purposes of this Section, the term "Maintenance" shall mean (i) all work of a general housekeeping nature, (ii) correction of spalling, scaling, delamination or similar situations typified by surface irregularities, (iii) correction of damaged or deteriorated membrane, sealer, caulking surface cracks and joints, (expansion, control or otherwise) and (iv) all work not otherwise properly characterized as Structural Repairs.

#### ARTICLE 4

##### LOCATION, RELOCATION AND USE OF EASEMENTS; OTHER EASEMENTS

###### Section 4.01. More Definite Statement of Easement Areas.

As of the date hereof, the Existing Structure has been fully constructed (except as set forth in Exhibit O of the Air Rights Lease), but the Lessee Improvements have not been constructed. The parties hereto recognize and acknowledge that, until the Lessee Improvements are completed, the locations of the easements granted hereby are subject to change as field conditions or amendments to the Plans and Specifications may require. The parties agree that,

within ninety (90) days after Substantial Completion of the Lessee Improvements (or as soon thereafter as is reasonably practicable), the Lessee will deliver to the Lessor as-built construction drawings for all portions of the Garage relevant to the Lessee's easements therein, and the Lessee shall deliver to the Lessor as-built construction drawings of all portions of the Lessee Improvements relevant to the Garage's easements therein, in each case showing specifically the location of all easements granted hereby or which may have been granted by either party to the other after the date hereof and prior to Substantial Completion. Subject to Section 4.02 hereof, such as-built construction drawings shall be definitive of the locations of the easements granted hereby until modified by written agreement of the parties. Each party shall at all times keep a complete set of such as-built construction drawings of both the Garage Property and the Lessee Improvements in its principal offices for purposes of advising all persons with an interest in the Garage Property or the Lessee Improvements of the locations of the easements granted hereby.

Section 4.02. Relocation of Easements.

The parties recognize that the areas shown on the exhibits attached hereto as the locations of the various easements created herein are approximate and each Servient Owner agrees to cooperate with each Easement Holder in accommodating reasonable requests by the Easement Holder for changing the location of such easements or for granting additional easements (including, without limitation, easements to third parties to the extent necessary for the provisions of customary services to the Garage Project, the County Project and the Lessee Improvements, as set forth in Section 4.05);

provided, however, that the relocation of addition of any such easement shall not adversely affect the operations conducted on the Servient Parcel (except to a de minimis decree). Any such relocation at the request of an Easement Holder and the installation, location, construction, and removal of the Easement Holder's facilities therein, shall be at the sole cost and expense of the Easement Holder. The parties further agree that each Servient Owner shall have the right in its reasonable discretion to relocate the easements granted to an Easement Holder and the facilities located therein; provided, however, that (a) the Servient Owner provides not less than thirty (30) days' prior written notice thereof to the Easement Holder, (b) such relocation does not unreasonably interfere with the Easement Holder's easement rights or the Easement Holder's operations on the Dominant Parcel, (c) the usefulness or function of the Easement Holder's facilities within the applicable easement are not reduced, (d) the Easement Holder shall have the right at its own cost to be present when such relocation occurs, and (e) the Servient Owner shall pay all costs and expenses associated with such relocation. Upon the relocation of any such easements or facilities pursuant to this Section 4.02, the Servient Owner shall grant the Easement Holder a new easement over the area to which such facilities have been relocated, and the prior easement area shall thereupon be extinguished. The parties agree to execute any instrument or agreement reasonably requested by the other party to give effect to the provisions of this Section 4.02. In the event of the relocation of any easement pursuant to this Section 4.02, the Servient Owner will provide the Easement Holder, at the sole cost and expense of the party initiating such

relocation, as-built construction drawings showing the relocated easement areas.

Section 4.03. Easements Non-Exclusive.

All easements granted in Article 3 hereof, other than the easements created by Section 3.02(b), 3.02(c), 3.03(b), (c) and (d), 3.04(a) and (b), 3.05(a), 3.05(c), 307.(a) and (b), 3.08(a) and (b), 3.11, 3.12 and 3.14(b) are non-exclusive, and each Servient Owner shall have the right to share the use of such easements with the applicable Easement Holder; provided however, that such use by the Servient Owner does not interfere with the Easement Holder's use and enjoyment of such easements.

Section 4.04. Damage or Destruction to Servient Parcel.

In the event that all or any portion of the improvements within a Servient Parcel are damaged, destroyed, demolished, removed or otherwise affected in such a way as to interfere with an Easement Holder's easement rights across such Servient Parcel or the ability of such Easement Holder to maintain its facilities within the easement areas granted herein, such Easement Holder shall have the right and non-exclusive temporary easement of necessity to lay its facilities across such portions of the Servient Parcel as shall be reasonably necessary to the Easement Holder's operations (which areas may be reasonably designated by the Servient Owner); provided, however, that such location shall not unreasonably interfere with the Servient Owner's efforts to repair, restore, construct, or reconstruct the improvements within the Servient Parcel; and provided, further, that the Servient Owner shall have the right to relocate such facilities and easement areas, at the Servient Owner's cost and expense, to other areas

within the Servient Parcel reasonably designated by the Servient Owner so long as such location shall not materially interfere with the Easement Holder's operations or use of its facilities.

Section 4.05. Granting Other Easements.

From time to time hereafter, the parties hereto will cooperate in granting other easements necessary for the coordinated operation of the Garage, the County Project and the Lessee Improvements; provided, however, that the presence, location, or use of such easements or the operation, maintenance, installation, repair and replacement of the facilities to be located by the Easement Holder therein, will not (a) materially interfere with the use and operation of the Servient Parcel or (b) adversely affect the structural integrity of the improvements located within the Servient Parcel.

ARTICLE 5

MAINTENANCE, REPAIR,  
ALTERATIONS, RESTORATIONS AND RELOCATIONS

Section 5.01. Maintenance of Garage Property.

The Garage Owner shall at all times maintain the Garage Property, exclusive of any facilities of the Lessee located within the Existing Structure, at its sole cost and expense in a manner which will not (a) materially adversely affect the use and operation of the Lessee Improvements and (b) adversely affect the structural integrity of the Lessee Improvements.

Section 5.02. Maintenance of Lessee Improvements.

5.02(a). Lessee Obligation to Maintain. The Lessee shall at all times maintain the Lessee Improvements, exclusive of any facilities of the Garage within the Lessee Improvements, in a

manner which will not (i) materially adversely affect the use and operation of the Garage or (ii) adversely affect the structural integrity of the Garage.

5.02(b). Cost of Maintenance. The cost of operation, maintenance, repair and replacement of the Lessee Improvements shall be at Lessee's sole expense, except that the portion of those costs fairly related to the elements used in common by the Residential/Retail Building and the Office Project, including the Plaza, Water Plaza, Pedestrian System and Loading Dock, shall be shared by the Lessee and the owner of the Office Project in the proportion by which the gross building area of the respective party is to the sum of the building area of both buildings. (For purposes of illustration, if the building area of the Office Project is 19,040 square feet and the Building Area of the Residential/Retail Building is 336,670 square feet the amount of the total cost of operation, maintenance, repair and replacement of the Lessee Improvements fairly allocated to the elements used in common by the Residential/Retail Building and the Office Project, including the Plaza, Water Plaza, Pedestrian System and Loading Dock and related facilities, shall be multiplied by the fraction  $336,670/355,710$  to calculate the share of such costs to be paid by the Residential/Retail Building and the fraction  $19,040/355,710$  to calculate the share of such costs to be paid by the Office Project.)

5.02(c). Financial Reports. Commencing in the year after Substantial Completion of the Lessee Development, Lessee shall deliver to the owner of the Office Project a detailed audited statement for the prior calendar year, prepared by an independent

certified public accounting firm reasonably acceptable to Lessor. The audited statement shall present fairly the Operating Expense attributable to the operation, maintenance, repair and replacement of the elements used in common by the Residential/Retail Building and the Office Project, including the Plaza, Water Plaza, Pedestrian System and Loading Dock. Within thirty (30) calendar days of receipt of the annual audited statement, the owner of the Office Project shall pay to Lessee the amount identified in the report as the Office Project share of the cost of operation, maintenance, repair and replacement of the Lessee Improvements used in common by the Residential/Retail Building and the Office Project, including the Plaza, Water Plaza, Pedestrian System and Loading Dock and related facilities.

Section 5.03. Easement Holder Pays Maintenance Costs; Non-Interference.

Each Easement Holder will be responsible for the full costs and expenses of installing, operating, repairing, replacing and maintaining the facilities serving its respective improvements including any facilities located in an easement within a Servient Parcel. No such facilities shall be installed, located, constructed, used, operated, maintained, repaired, replaced or relocated in such a way as to materially interfere with the Servient Owners's use and operation of the Servient Parcel.

Section 5.04. Covenant Regarding Maintenance Standards.

All repairs and maintenance shall be made with reasonable dispatch and in a good and workmanlike manner consistent with the quality of a first-class building of similar type in the Bethesda-Chevy Chase area and in compliance with all permits, approvals,

zoning laws and all other applicable laws, rules, regulations and ordinances, and in accordance with the plans and specifications applicable thereto. All repairs and maintenance shall be effected in a manner which will not materially interfere with the use or operation of the Garage, Office Project or the Lessee Improvements. The party making the repair or replacement shall, at its own cost and expense, provide and maintain, all safety measures which may be required by any governmental authority or which the owner of the Garage, Office Project or the Lessee Improvements may reasonably deem necessary during the making of any repair or alteration. Lessee and Lessor agree to cooperate in the scheduling and staging of activities in connection with any repair or alteration in order to minimize any disruption of the operations in the Garage, Office Project or Lessee Improvements.

Section 5.05. Reciprocal Easement Controlling.

While the Air Rights Lease remains in effect, to the extent that the maintenance obligations set forth in the Air Rights Lease are different from or more extensive than the obligations set forth in this Agreement, this Agreement shall be controlling.

Section 5.06. Lessor's Obligations Subject to Annual Appropriations; Annual Budget. Lessee acknowledges that Lessor's obligation to pay to Lessee and to pay (or to reimburse) to Lessee or otherwise incur any portion of the costs and expenses for maintenance provided in §5.02(b) and any sums which would otherwise be payable to Lessee pursuant to the terms and conditions of this Agreement (collectively, the "Lessor Payment Amounts") shall be subject to annual appropriation by Montgomery County Council (the "Council") of funds sufficient to pay such Lessor Payment Amounts.



Lessor agrees to use its best efforts to secure from the Council in each Fiscal Year the appropriation of funds in Lessor Payment Amounts coming due during such Fiscal Year. Lessee acknowledges and agrees that in the event that Lessor fails to pay any Lessor Payment Amounts when due by reason of the failure by Lessor to secure from the Council appropriations sufficient to pay such Lessor Payment Amounts, Lessee's remedies shall be limited in the manner contemplated herein.

Section 5.07. Annual Estimated Budget. Lessee shall submit to Lessor, on or before each July 1 from and after Substantial Completion of the Lessee Development, an estimated budget of all Lessor Payment Amounts for the Fiscal Year commencing on the next anniversary of such July 1, including, without limitation, amounts sufficient to pay all Structural Repairs reasonably believed to be necessary during such Fiscal Year. Lessor and Lessee shall meet to discuss such estimated budget in an effort to agree upon an estimated budget on or before August 1 of the then current year (the "Annual Estimated Budget"). Lessor shall pursue through its budget and appropriation by the Council funds sufficient to pay the amounts set forth therein. If for any reason the Annual Estimated Budget has not been established within the time required to submit an estimated budget to the Council for approval for the Fiscal Year in question, the parties shall submit to the Council for its approval for such Fiscal Year the estimated budget approved by the Council with respect to the immediately preceding Fiscal Year, increased by such amount or amounts as may be necessary to reflect the effects of inflation, if any, from the date of approval of such estimated budget for the immediately preceding Fiscal Year through

the date of submission of such estimated budget for the Fiscal Year in question.

## ARTICLE 6

### COVENANTS AND RESTRICTIONS

#### Section 6.01. Covenant to Maintain in Safe Condition.

Each party hereto covenants and agrees to comply with the obligations imposed on such party by this Agreement, including, without limitation, the maintenance obligations imposed by Article 5 hereof. In addition, each party covenants and agrees that, in the event of any condition in or upon such party's property (i.e., the Garage, the Office Project or the Lessee Improvements, as applicable) poses a hazard or danger to the other party's property, or to the use and operation thereof, or to the occupants thereof, the party in or upon whose property such condition exists shall promptly take all actions necessary to remedy such hazardous or dangerous condition in conformity with the provisions of the Air Rights Lease.

#### Section 6.02. Covenant to Maintain Waterproof Membrane.

Except as otherwise provided in Section 7.01(c) of the Air Rights Lease, the Lessee covenants and agrees at all times to maintain the waterproof membrane between the Lessee Improvements and the Garage, located generally on the Plaza and Old Georgetown Road levels of the Lessee Improvements, at the Lessee's sole cost and expense in a manner which will (a) prevent the leaking of water from the Lessee Improvements into the Garage and (b) otherwise prevent any water damage to the Garage or the Support Members.

## ARTICLE 7

### MISCELLANEOUS

Section 7.01. Meaning of Terms Garage Owner, Office Project Owner and Lessee. The terms "Garage Owner" and "Office Project Owner" as used herein, so far as the Garage Owner's and Office Project Owner's covenants and agreements hereunder are concerned, shall be limited to, mean and include only the owner or owners at the time in question of the fee title to the Garage or the Office Project, acting in their capacity as such. The term "Lessee" as used herein, so far as the Lessee covenants and agreements hereunder are concerned, shall be limited to mean and include only the owner or owners at the time in question of the Lessee Improvements acting in their capacity as such. So long as Montgomery County, Maryland is the Garage Owner or Office Project Owner hereunder, the terms Garage Owner or Office Project Owner shall mean Montgomery County, Maryland only in its capacity as owner of the Garage or Office Project and not in its capacity as a governmental entity. This Agreement is intended as a contract between neighboring landowners and is not intended to affect the rights and obligations of the parties hereto independent of this Agreement as governmental entities. In the event of any conveyance of title, to the estate owned by the Garage Owner, the Office Project Owner, or the Lessee, respectively, the "Garage Owner," "Office Project Owner" or the "Lessee" herein named, as the case may be, and each subsequent grantor, shall be automatically relieved, from and after the date of such conveyance, of all personal liability as respects the performance of any of the covenants and agreements thereafter to be performed by the Garage

Owner, Office Project Owner, or the Lessee, as the case may be and such grantee shall be bound by all such covenants and agreements, it being intended that the covenants and agreements shall be binding on the Garage Owner, the Office Project Owner and the Lessee named herein and such party's successors and assigns only during and in respect of their successive periods of ownership.

Section 7.02. Modifications, Waivers and Consents.

This Agreement shall not be modified, amended or supplemented in any way, and no provision hereof shall be deemed to have been waived, and no consent hereunder shall be deemed to have been given except by a writing signed by the party against whom such modification, waiver or consent is sought to be enforced.

Section 7.03. Binding Effect; Covenants Running With the Land.

The provisions of this Agreement shall be deemed covenants running with the land and shall (except as otherwise provided herein) be binding upon and inure to the benefit of all persons who shall succeed to any interest (other than a security interest or similar interest) in all or any portion of the Land, the Garage, the Office Project, the Demised Premises, or the Lessee Improvements, whether by Lease, deed or other conveyance, by succession upon default, by foreclosure, or by operation of law until such time as this Agreement shall terminate in accordance with its own terms or until every person, entity, agency or corporation having or holding any interest in the Land, the Garage, the Office Project, the Demised Premises, or the Lessee Improvements shall execute and acknowledge a declaration of termination of this Agreement and shall cause such declaration to

be duly recorded in the Land Records of Montgomery County, Maryland.

Section 7.04. Notices.

All notices and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed by certified mail, return receipt requested, postage prepaid, if to the Lessee to The Housing Opportunities Commission of Montgomery County, 10400 Detrick Avenue, Kensington, Maryland 20895-2484 if to the Lessor or the owner of the Office Project, to the Montgomery County Department of Transportation, 101 Monroe Street, Rockville, Maryland 20850, Attention: Director, Department of Transportation.

Section 7.05. Severability.

Every provision of this Agreement is hereby declared to be independent of, and separable from, every other provision of this Agreement, and if any such provision shall at any time be held to be invalid or unenforceable, such invalid or unenforceable provisions shall be considered not to be a part of this Agreement and such holding shall be without effect upon the validity or enforceability of any other provision of this Agreement.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf by its duly authorized representatives.

HOUSING OPPORTUNITIES COMMISSION  
OF MONTGOMERY COUNTY

By: \_\_\_\_\_  
Bernard L. Tetreault  
Executive Director

MONTGOMERY COUNTY, MARYLAND

By: \_\_\_\_\_  
Douglas M. Duncan  
County Executive

RECOMMENDED FOR APPROVAL:

\_\_\_\_\_  
Graham Norton, Director  
Department of Transportation

\_\_\_\_\_  
Thomas Huff  
Office of Parking Management

STATE OF MARYLAND:  
COUNTY OF MONTGOMERY:

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 1995, before me, the subscriber, a Notary Public in and for the aforesaid state and county, personally appeared Bernard L. Tetreault, Executive Director, of the Housing Opportunities Commission and did acknowledge that he executed the Reciprocal Easement Agreement and Declaration of Covenants, Conditions and Restrictions of the Housing Opportunities Commission of Montgomery County, Maryland for the purpose therein contained, and further acknowledged the foregoing Reciprocal Easement Agreement and Declaration of Covenants, Conditions and Restrictions to be the act of the Housing Opportunities Commission of Montgomery County, Maryland.

As witness my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

STATE OF MARYLAND :  
COUNTY OF MONTGOMERY:

On this \_\_\_\_\_ day of \_\_\_\_\_, 1995, before me, the undersigned officer, personally appeared Douglas M. Duncan, County Executive, of Montgomery County, Maryland, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he as such County Executive executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

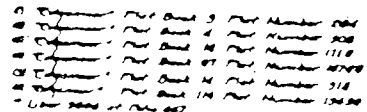
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Notary Public  
My Commission Expires:

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## EXHIBITS

A	Land
B	Support Members and Capabilities
C	Modification to Support Members
D-1 - D-3	Utilities Easements - Gas and Water
E-1 - E-3	Fire Protection System Easements
F-1 - F-4	Utilities Easements - Electric, Telephone and Telecommunication
G-1 - G-4	Storm and Sanitary Sewer Easement
H-1 - H-2	Mechanical Room Easement
I-1 - I-2	Ventilation Easements
J-1 - J-7	Elevator Easements
K-1 - K-2	Ingress and Egress Easements
L-1 - L-2	Open Space System
M	Easement for Support of Pedestrian Bridges
N	Loading Dock Easement
O	Retail and Service Corridor Easement





38700010416148013152002020735

EXHIBIT "8"  
page 1 of 2

METROPOLITAN PARK DRAWING LIST

STRUCTURAL DRAWINGS PRODUCED  
BY SKIDMORE, OWINGS & MERRILL

	<u>TITLE</u>	<u>STATUS/DATE</u>
S-1	PARKING LEVEL 5 FRAMING PLAN - NORTH	BU-2 8/24/88
S-2	PARKING LEVEL 5 FRAMING PLAN - SOUTH	BU-2 8/24/88
S-3	PARKING LEVELS 2 THRU 4 FRAMING PLAN - NORTH	BU-2 8/24/88
S-4	PARKING LEVELS 2 THRU 4 FRAMING PLAN - SOUTH	BU-3 10/18/88
S-5	EDGEMOOR LANE FRAMING PLAN - NORTH	BU-4 10/24/88
S-6	EDGEMOOR LANE FRAMING PLAN - SOUTH	BU-5 1/6/89
S-7	OLD GEORGETOWN ROAD LEVEL FRAMING PLAN - NORTH	BU-6 4/13/89
S-7A	OLD GEORGETOWN ROAD LEVEL FRAMING PLAN - NORTH	BU-9 7/7/89
S-8	OLD GEORGETOWN ROAD LEVEL FRAMING PLAN - SOUTH	BU-6 4/13/89
S-8A	OLD GEORGETOWN ROAD LEVEL FRAMING PLAN - SOUTH	BU-9 7/7/89
S-9	PARKING RAMP FRAMING PLANS	AD-11 4/8/88
S-10	RAMP SECTIONS AND DETAILS	BU-5 16/89
S-11	FOOTING & CAISSON SCHEDULES, SECTIONS, DETAILS AND NOTES	BU-5 1/6/89
S-12	FOUNDATION WALL SECTIONS AND DETAILS	BU-1 8/4/88
S-13	POST-TENSIONED SCHEDULE DETAILS AND NOTES	BU-7 5/2/88
S-13A	POST-TENSIONED SCHEDULE AND DETAILS	BU-4 10/24/88
S-13B	POST-TENSIONED SCHEDULE AND DETAILS	BU-7 5/2/88
S-14	PLAZA LEVEL FRAMING PLAN NORTH	BU-7 5/2/88
S-14A	PLAZA LEVEL FRAMING PLAN NORTH	BU-9 7/7/88
S-15	PLAZA LEVEL FRAMING PLAN - SOUTH	BU-7 5/2/88
S-15A	PLAZA LEVEL FRAMING PLAN - SOUTH	BU-9 7/7/88
S-16	APARTMENT LEVEL 2 FRAMING PLAN	AD-13 4/25/88
S-17	APARTMENT LEVELS 3-6 FRAMING PLANS	AD-11 4/8/88
S-18	LEVELS 7 THRU 9 APARTMENT FRAMING PLAN	AD-11 4/8/88
S-19	LEVELS 10 THRU 12 APARTMENT FRAMING PLAN	AD-14 5/24/88
S-20	ROOF LEVEL FRAMING PLAN	AD-11 4/8/88
S-21	BEAM/SLAB SCHEDULE DETAILS AND NOTES	BU-5 1/6/89
S-22	SECTIONS & DETAILS	AD-11 4/8/88
S-22A	SECTIONS & DETAILS	BU-9 7/7/89
S-23	COLUMN SCHEDULE AND DETAILS	BU-1 8/4/88
S-24	SHEAR WALL SCHEDULE, DETAILS & NOTES	AD-11 4/8/88
S-25	OFFICE LEVEL 2, 3 & ROOF FRAMING PLAN	AD-10 3/25/88
S-25A	STRUCTURAL STEEL DETAILS	AD-11 4/8/88
S-25B	FRAMING PLANS, SECTIONS AND DETAILS	BU-9 7/7/89
S-26	STRUCTURAL STEEL AND METAL DECK SECTIONS, DETAILS AND NOTES	AD-10 3/25/88
S-27	DAYCARE FRAMING PLANS, SECTIONS AND DETAILS	AD-10 3/25/88

EXHIBIT "B"  
page 2 of 2

METROPOLITAN PARK

BACK-UP CORRESPONDENCE RELATED TO STRUCTURAL INTEGRITY, REMEDIAL  
MEASURES, AND SUPPORT MEMBER LOADS FOR EXISTING GARAGE #49

FROM	TO	DATE
SOM	DOP	12/12/90
SKA	ARTERY	11/21/90
SKA	ARTERY	11/15/90
SOM	DOP	10/23/90
SKA	ARTERY	9/19/90
SOM	DOP	9/10/90
SOM	DOP	8/31/90
SKA	ARTERY	8/30/90
SKA	ARTERY	8/14/90
SKA	ARTERY	7/13/90
SOM	DOP	7/7/90
SKA	ARTERY	7/23/90
SKA	ARTERY	7/13/90
SOM	DOP	6/21/90
SKA	ARTERY	6/13/90
SOM	DOP	6/6/90 *

\* (Above letter includes all repair/strengthening details provided by SOM in response to SK&A's review comments up to 6/6/90, which were subsequently implemented.)

DOP	ARTERY	5/2/90
SKA	ARTERY	4/2/90
SKA	ARTERY	3/26/90
SKA	ARTERY	3/19/90
ARTERY		
(Transmittal)	SKA	11/13/89

DRAWINGS PROVIDED BY SOM ANNOTATING LOADS

S-7A	OLD GEORGETOWN ROAD LEVEL FRAMING PLAN - NORTH	7/17/90
S-8A	OLD GEORGETOWN ROAD LEVEL FRAMING PLAN - SOUTH	7/17/90
S-14A	PLAZA LEVEL FRAMING PLAN NORTH	7/17/90
S-15A	PLAZA LEVEL FRAMING PLAN - SOUTH	7/17/90





EXHIBIT "C"

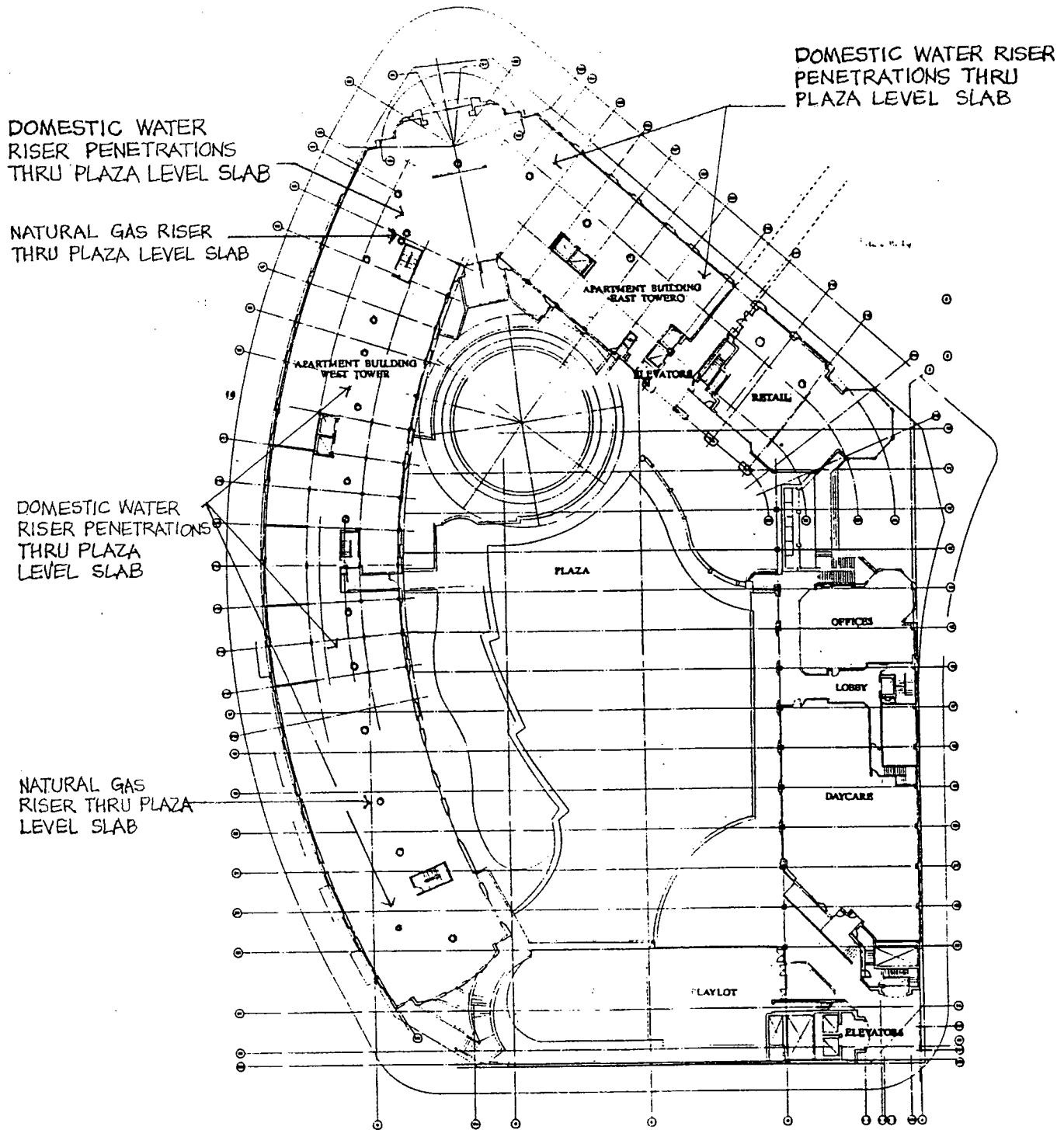
METROPOLITAN PARK DRAWING LIST  
BY SK&A

	<u>TITLE</u>	<u>STATUS/DATE</u>
S-1	OLD GEORGETOWN ROAD LEVEL FRAMING PLAN-NORTH	TO BE FURNISHED AFTER DRAWINGS ARE ISSUED FOR CONSTRUCTION
S-2	PLAZA LEVEL FRAMING PLAN-NORTH	
S-3	PLAZA LEVEL FRAMING PLAN-SOUTH AND PARTIAL PLANS	
S-4	SECOND FLOOR FRAMING PLAN, HIGHRISE RESIDENTIAL	
S-5	TYPICAL FLOOR FRAMING PLAN, HIGHRISE RESIDENTIAL	
S-6	PARTIAL FLOOR FRAMING PLANS, HIGHRISE RESIDENTIAL	
S-7	MAIN ROOF AND PENTHOUSE FLOOR FRAMING PLAN, HIGHRISE RESIDENTIAL	
S-8	PENTHOUSE ROOF AND UPPER PENTHOUSE FRAMING PLAN, HIGHRISE RESIDENTIAL	
S-9	COLUMN SCHEDULE, HIGHRISE RESIDENTIAL	
S-10	TYPICAL CONCRETE DETAILS AND BEAM SCHEDULE	
S-11	FRAMING PLANS, LOWRISE RESIDENTIAL	
S-12	STAGE-STRESSED POST-TENSIONED BEAM SCHEDULE AND STRUCTURAL NOTES	
S-13	SECTIONS	
S-14	SECTIONS	
S-15	SECTIONS	
S-16	SECTIONS	
OS-17	OFFICE BUILDING FRAMING PLANS	
OS-18	OFFICE BUILDING - COLUMN SCHEDULE, TYPICAL DETAILS & STRUCTURAL NOTES	
OS-19	OFFICE BUILDING - SECTIONS & DETAILS	
OS-20	OFFICE BUILDING - SECTIONS & DETAILS	

4/25/96

## LEGEND

-  EXCLUSIVE USE OF LESSEE IMPROVEMENT
-  JOINT USE
-  EXCLUSIVE USE OF GARAGE
-  EXCLUSIVE USE OF OFFICE



The Metropolitan

Utilities, Gas  
and Water Easements

Plaza Level

D-1

DOMESTIC WATER  
SUPPLY FOR RETAIL

DOMESTIC WATER DISTRIBUTION PIPING  
AND RISER PENETRATIONS UP THRU PLAZA  
LEVEL SLAB

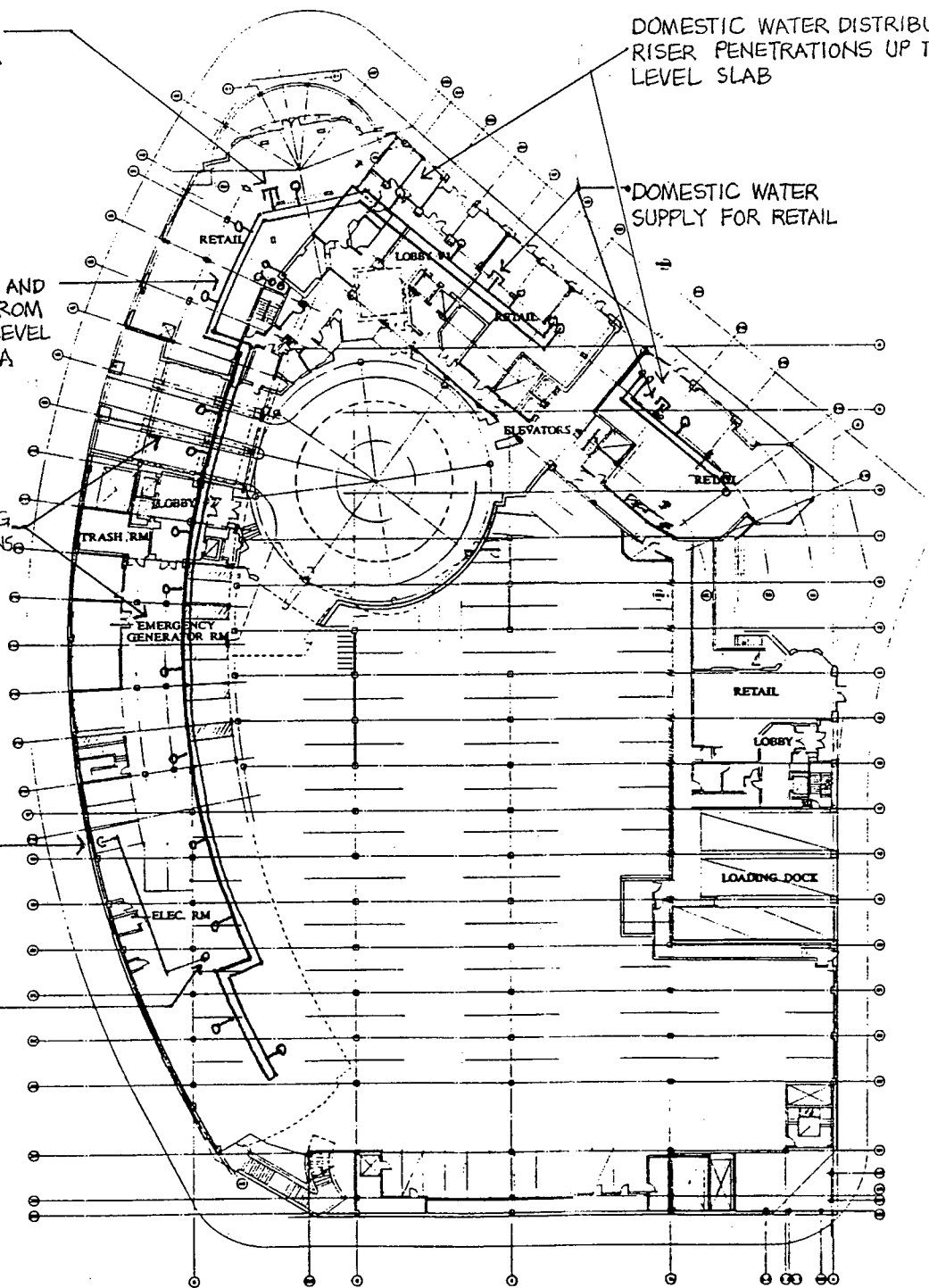
DOMESTIC WATER AND  
NATURAL GAS UP FROM  
EDGEMORE LANE LEVEL  
AND UP THRU PLAZA  
LEVEL SLAB

DOMESTIC WATER  
SUPPLY FOR RETAIL

DOMESTIC WATER  
DISTRIBUTION PIPING  
& RISER PENETRATIONS  
UP THRU PLAZA  
LEVEL SLAB

NATURAL GAS UP  
FROM EDGEMORE  
LANE LEVEL

NATURAL GAS  
UP THRU PLAZA  
LEVEL SLAB

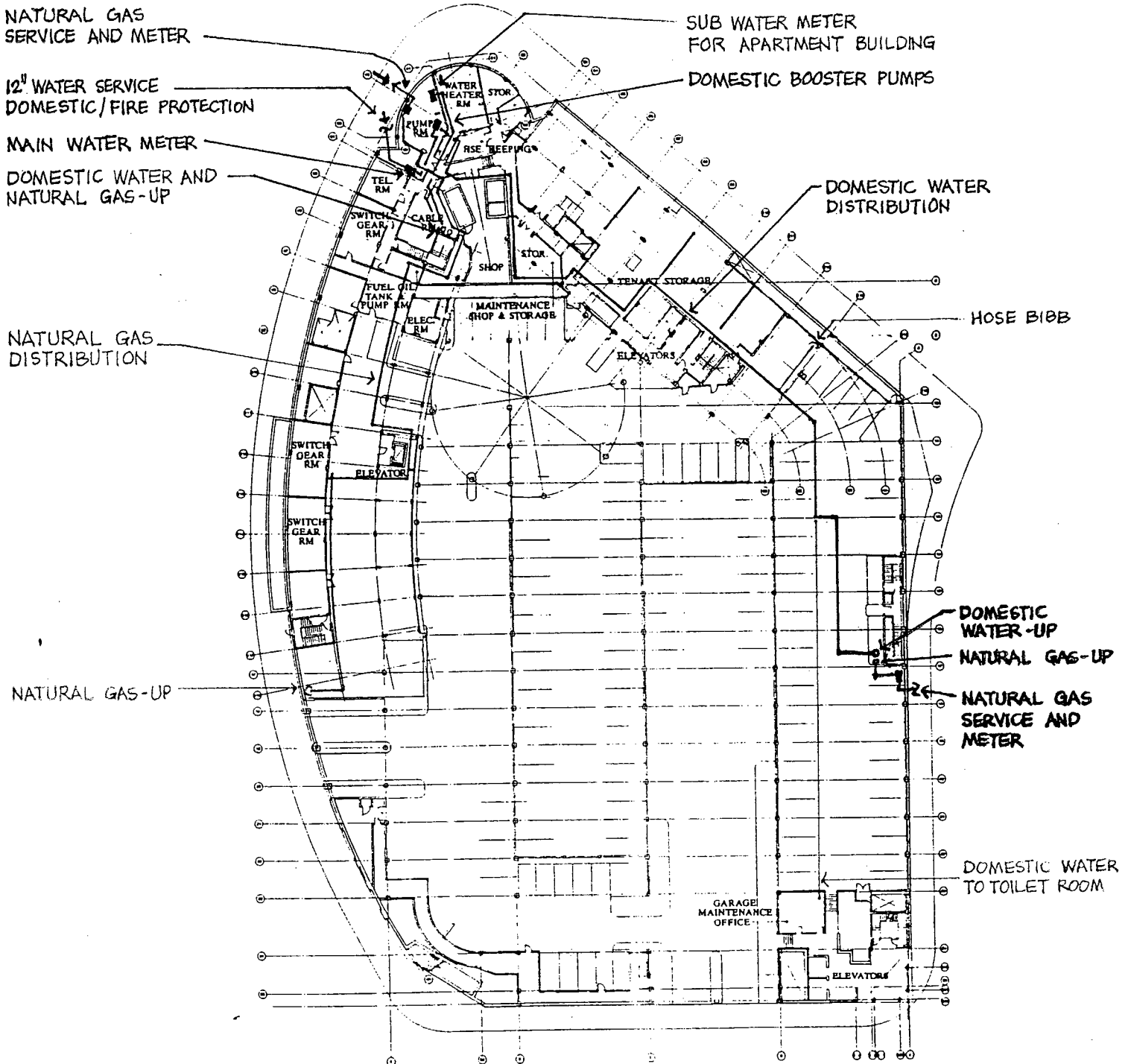


The Metropolitan

Utilities  
Gas and Water Easements

Old Georgetown Road Level

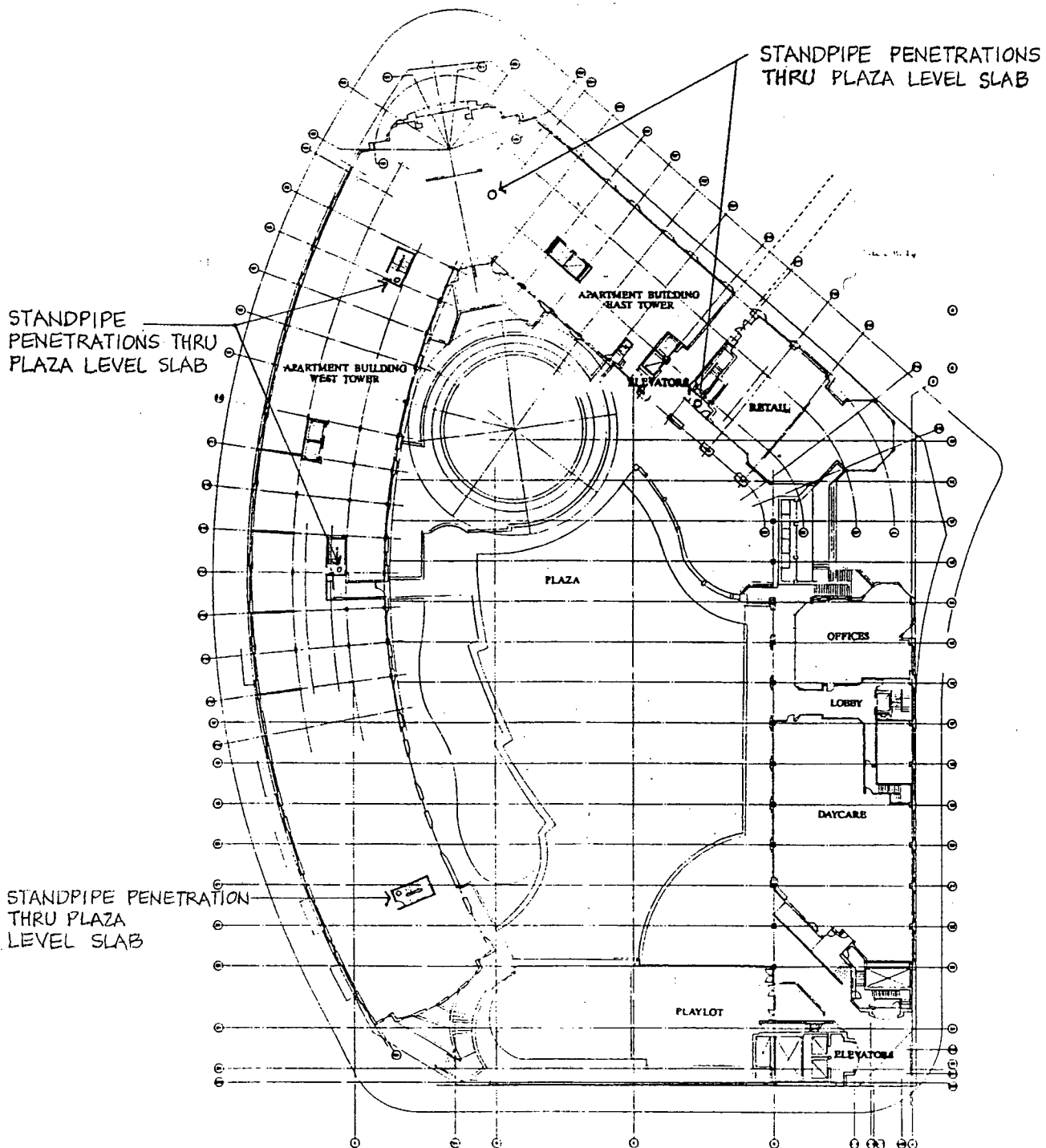
D-2



The Metropolitan  
Edgemoor Lane Level

Utilities  
Gas and Water Easements

D-3



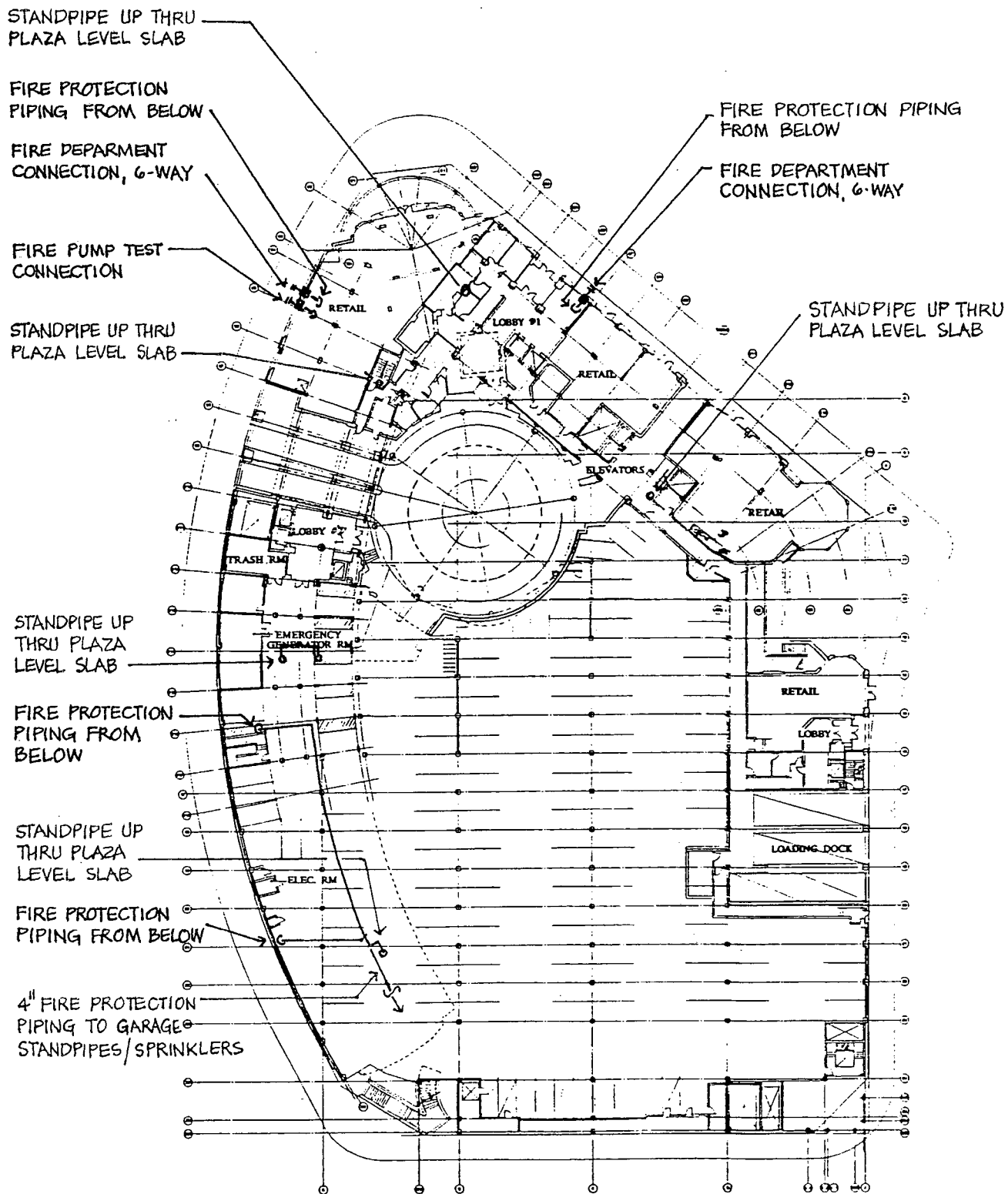
The Metropolitan

Fire Protection  
System Easements

Plaza Level

E-1



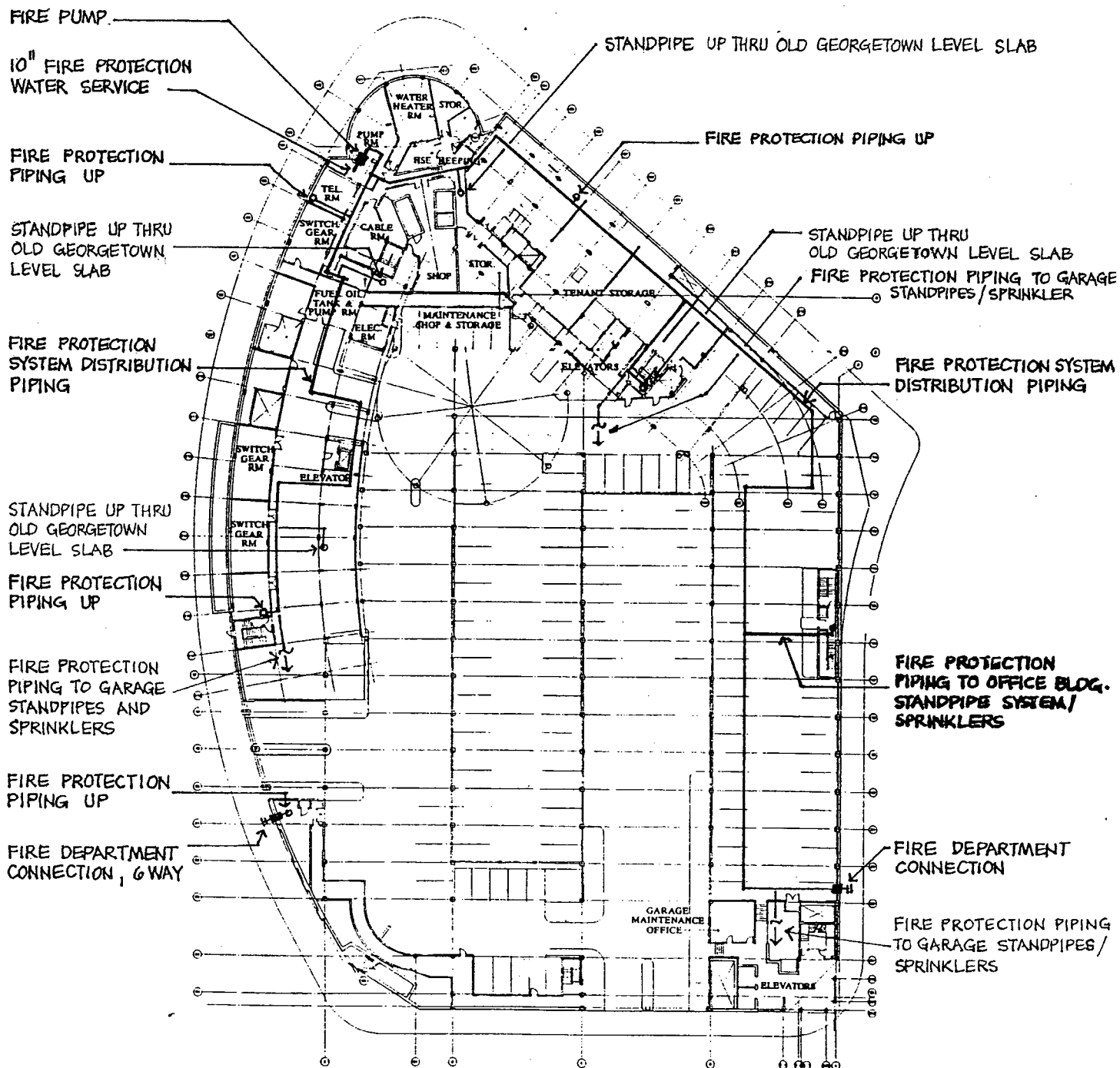


The Metropolitan

Old Georgetown Road Level

Fire Protection  
System Easements

E-2

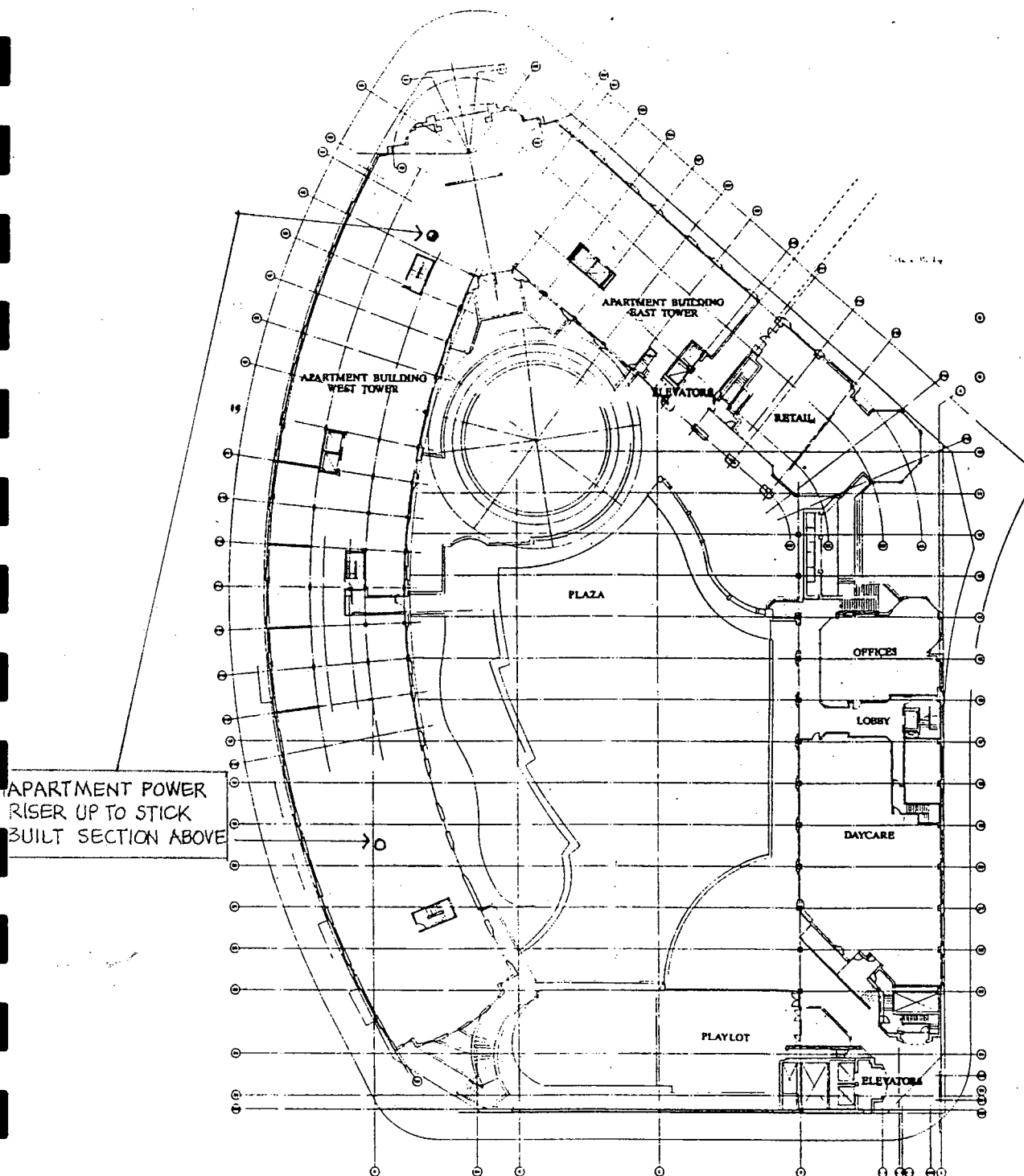


The Metropolitan

Edgemoor Lane Level

Fire Protection  
System Easements

E-3



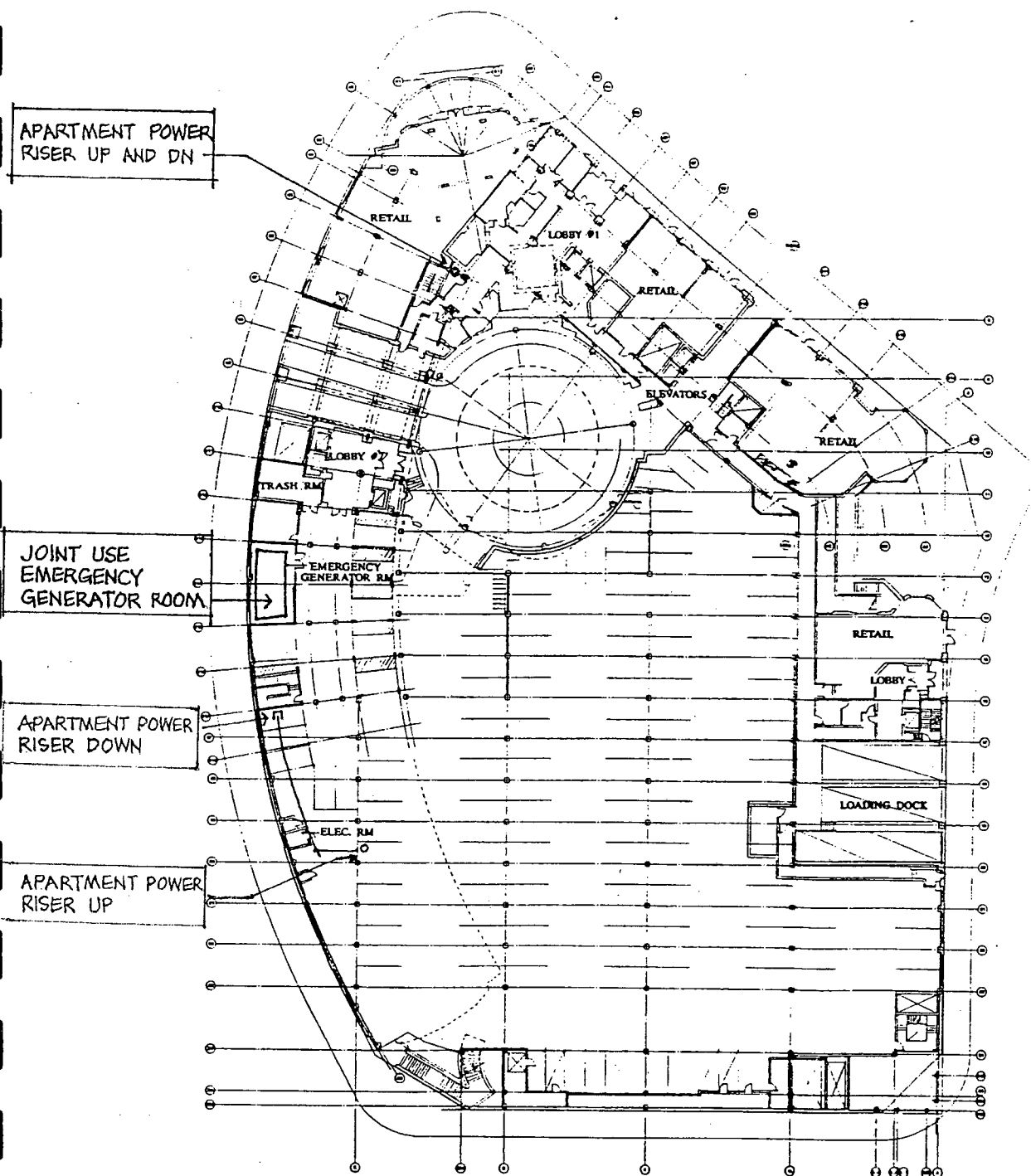
# The Metropolitan

Plaza Level

Utilities Easements

Electric, Telephone & Telecommunication Systems

F-1



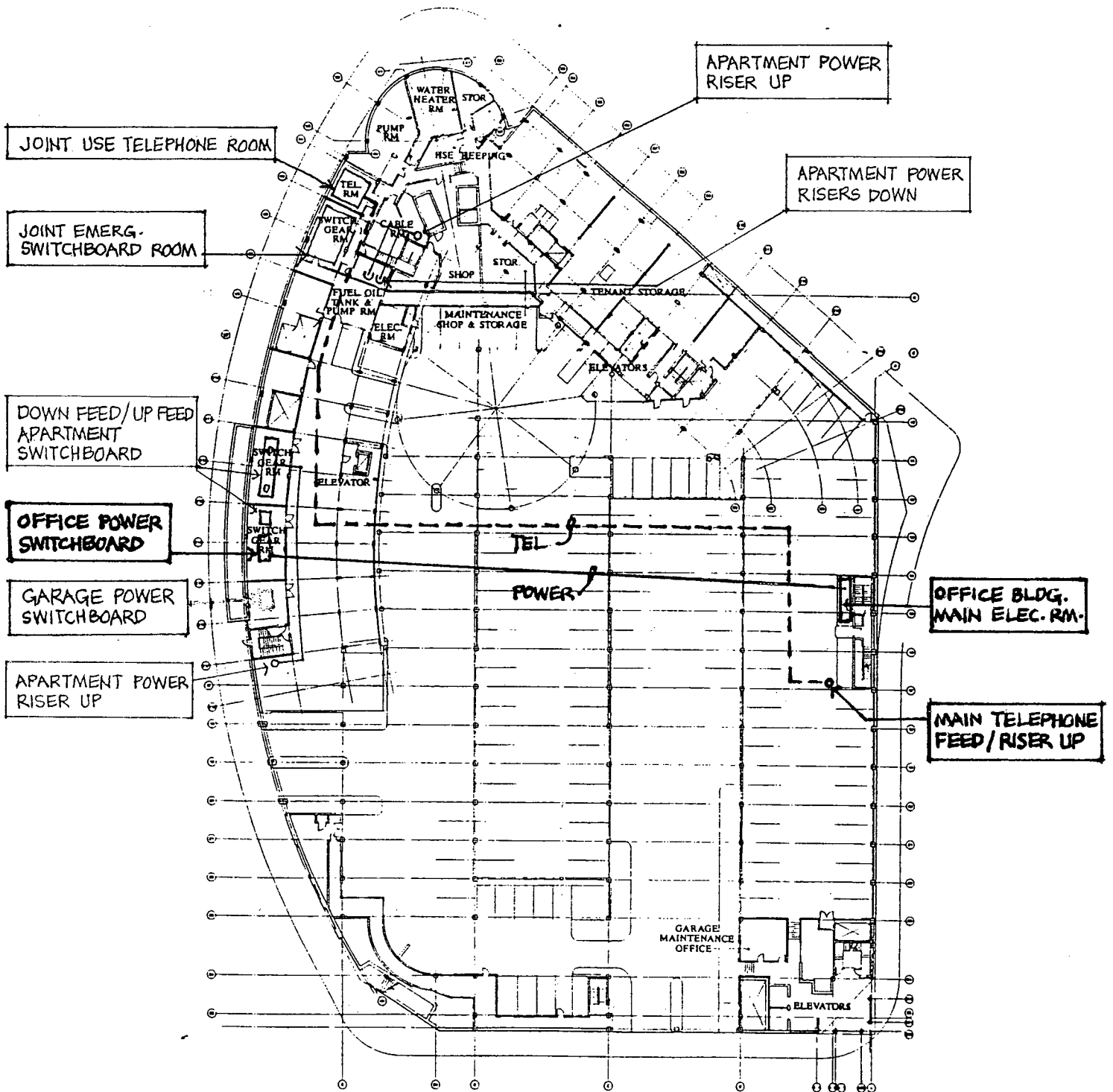
The Metropolitan

Old Georgetown Road Level

Utilities Easements

Electric, Telephone &  
Telecommunication Systems

F-2



The Metropolitan

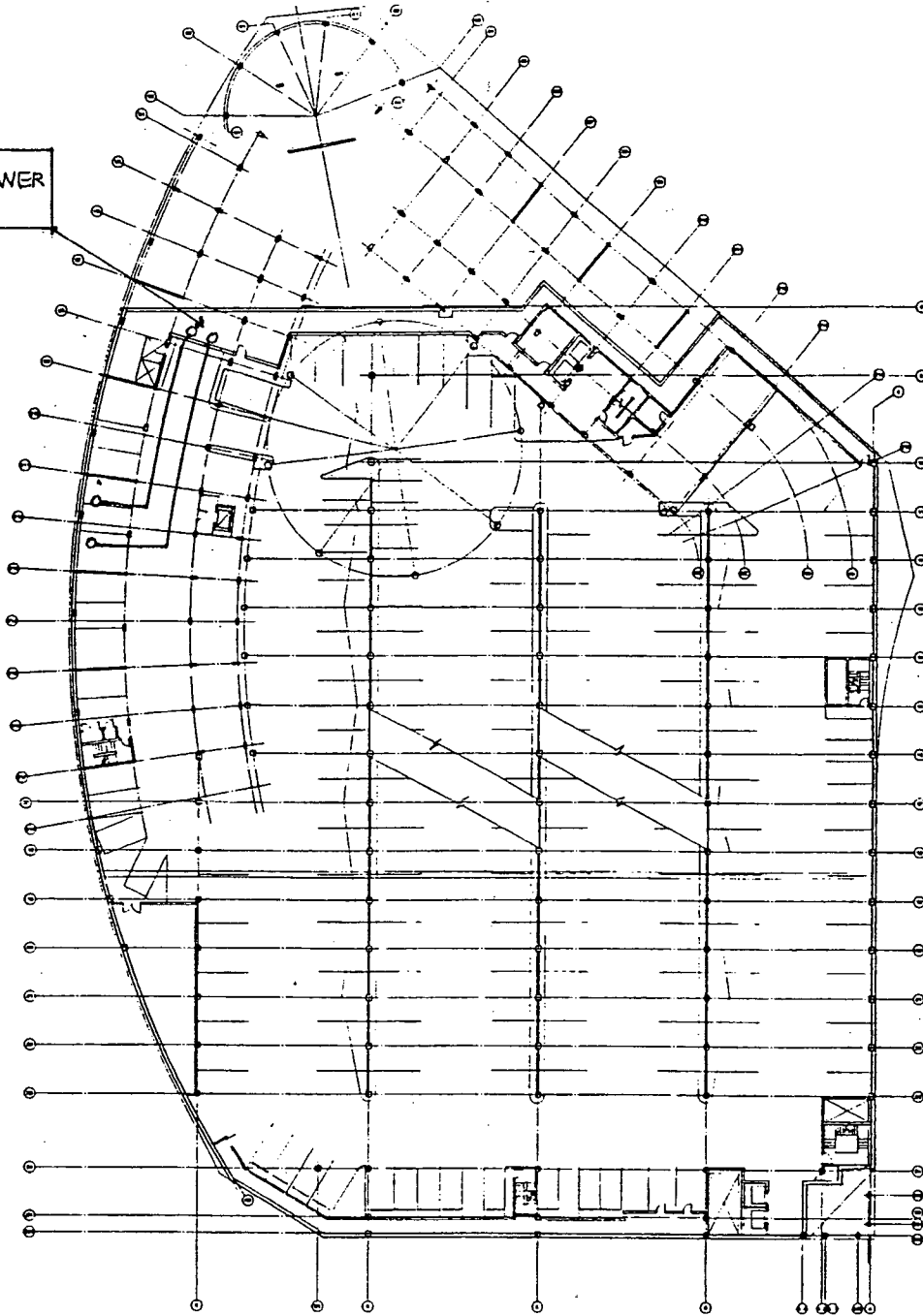
Edgemoor Lane Level

Utilities Easements

Electric, Telephone &  
Telecommunication Systems

F-3

APARTMENT POWER  
RISERS UP



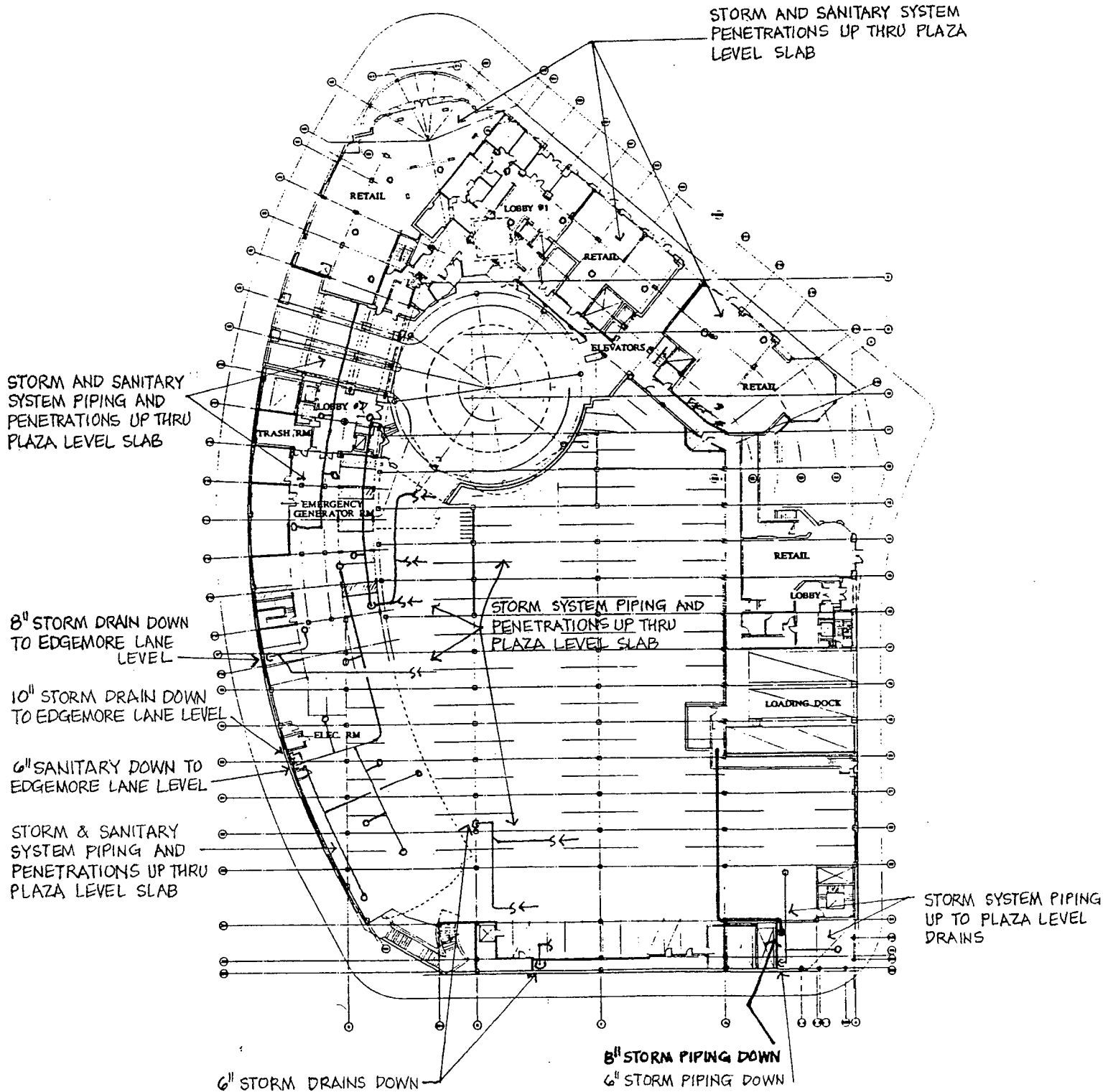
The Metropolitan

P2 Parking Level

Utilities Easements  
Electric, Telephone &  
Telecommunication Systems

F-4





The Metropolitan

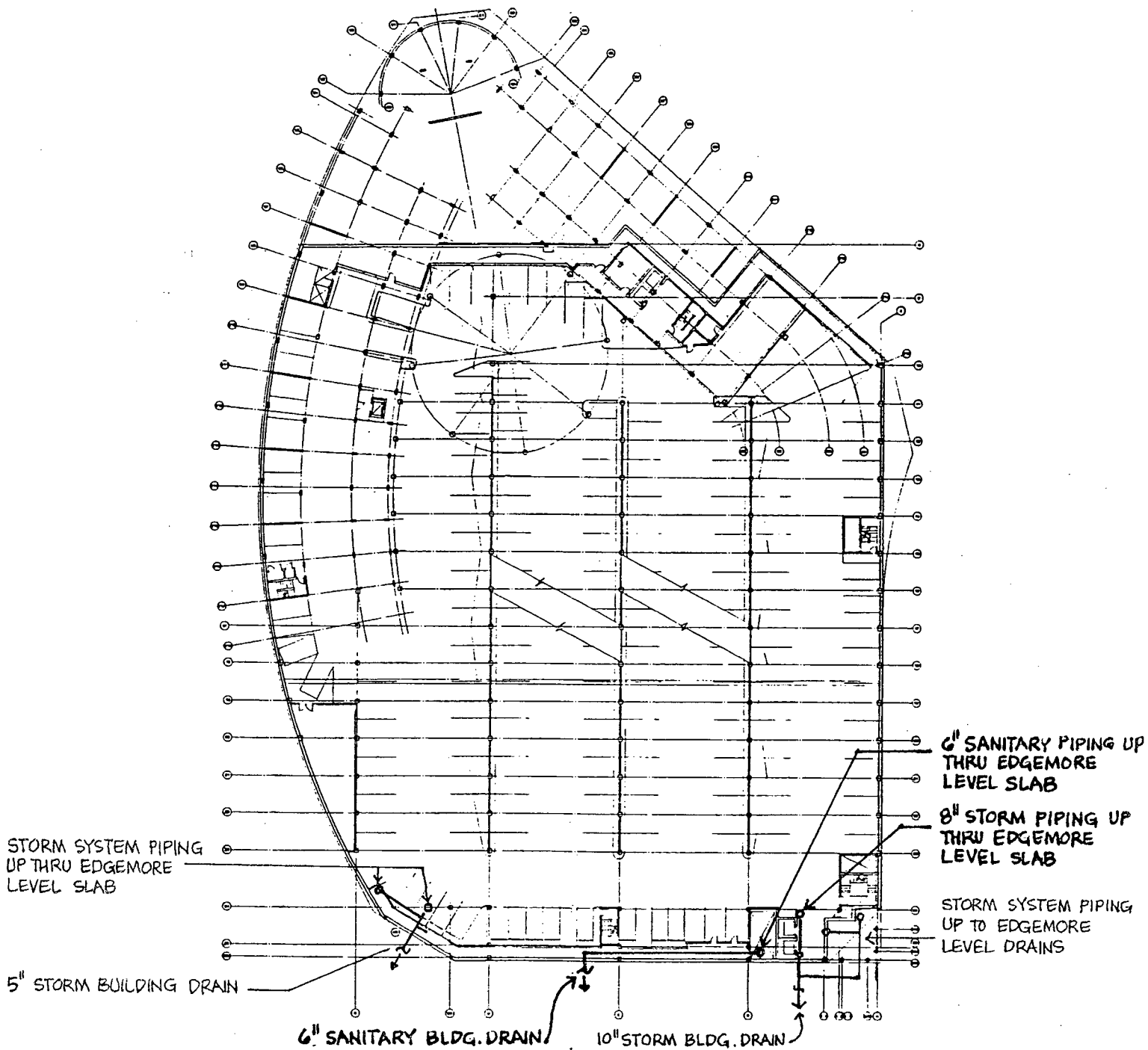
Old Georgetown Road Level

Storm and Sanitary  
Sewer Easements

G-2





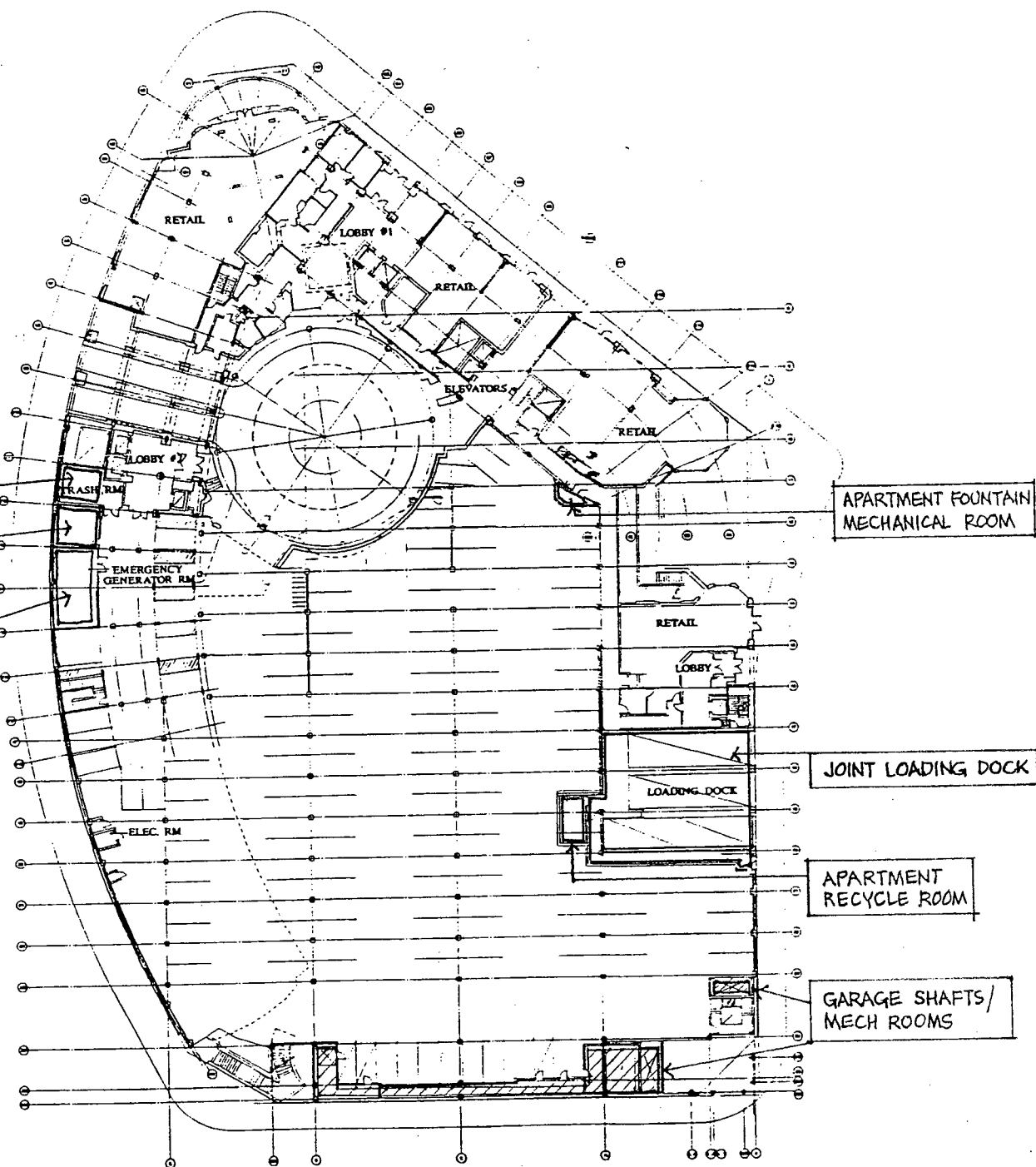


The Metropolitan

Storm and Sanitary Easements

P2 Parking Level

G-4

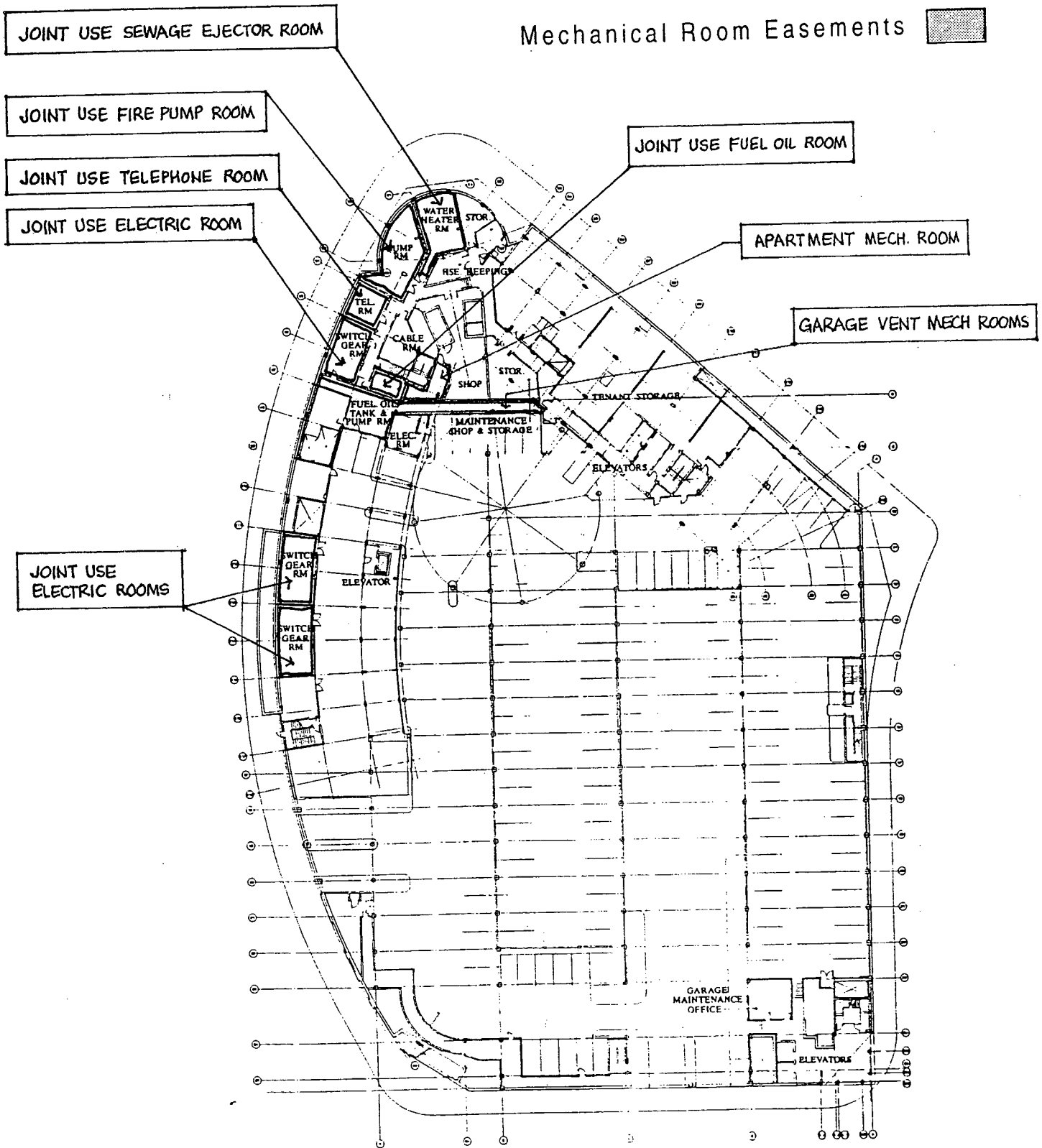


The Metropolitan

Mechanical Room Easements

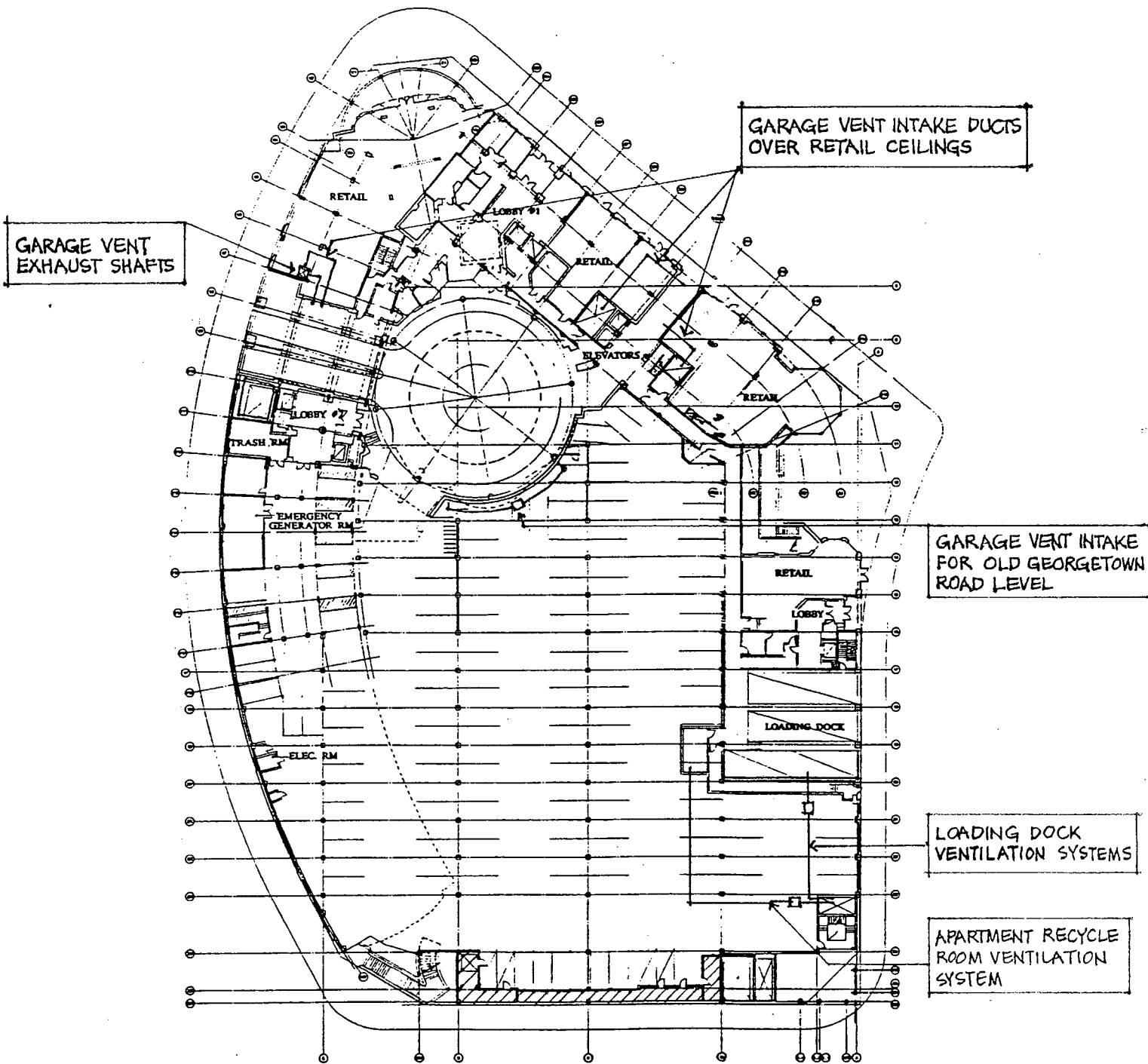
Old Georgetown Road Level

H-1



The Metropolitan  
Edgemoor Lane Level

Mechanical Room Easements

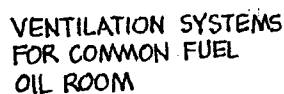


The Metropolitan

Ventilation Easements

Old Georgetown Road Level

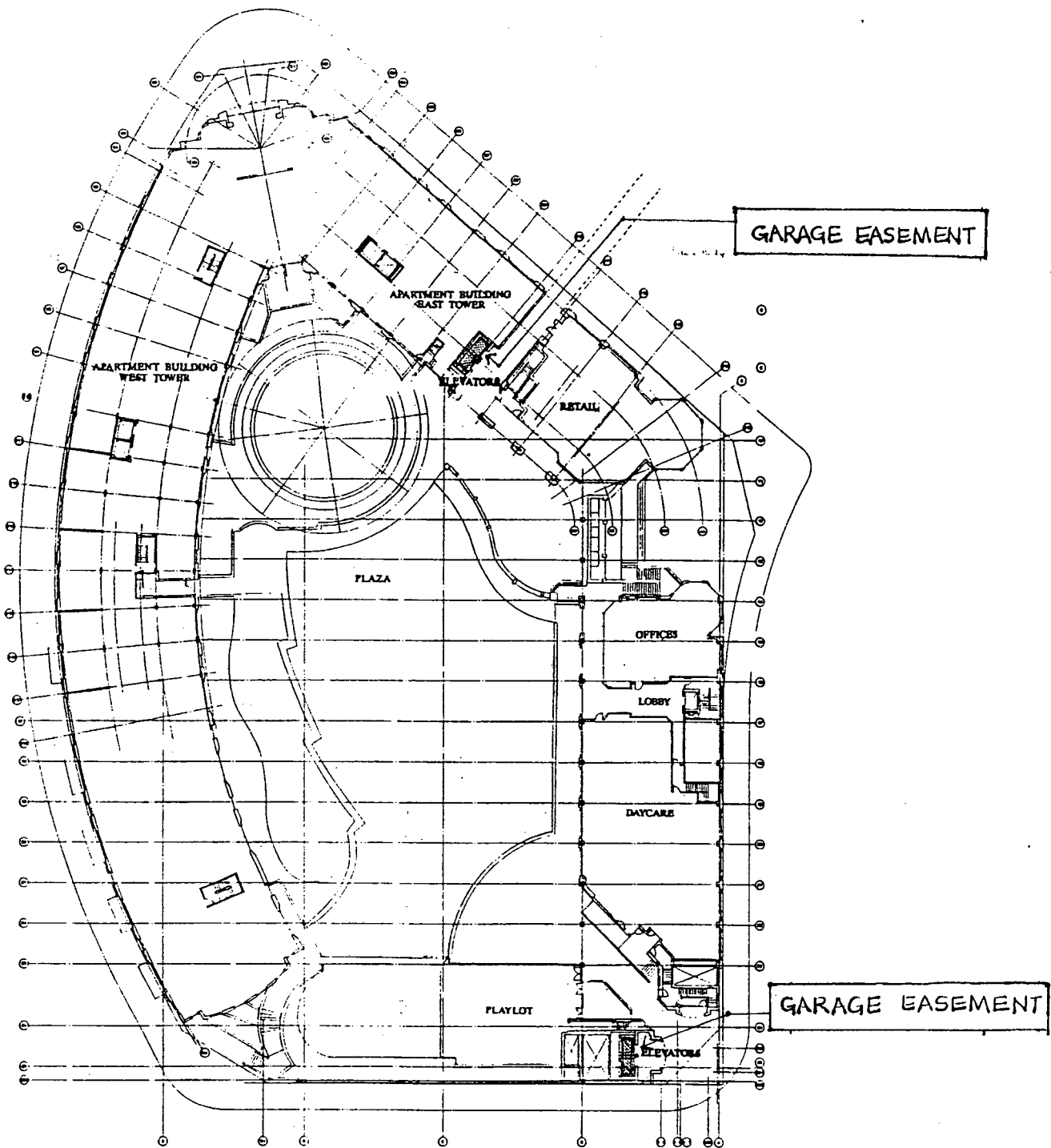
I-1



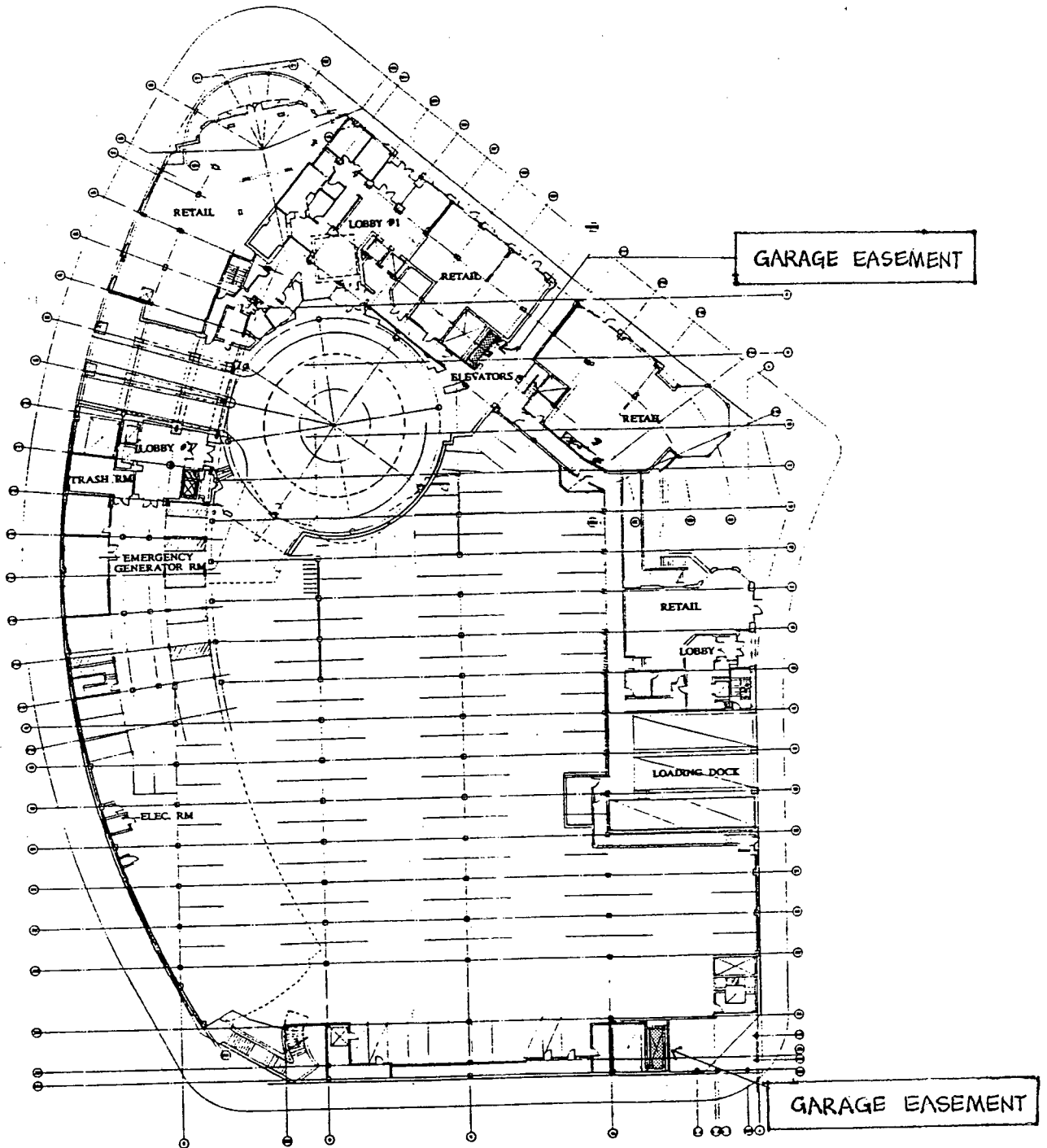
ELEVATOR LOBBIES  
SUPPLY RISER

## EXHAUST VENT SYSTEMS

Elevator Easements



Elevator Easements



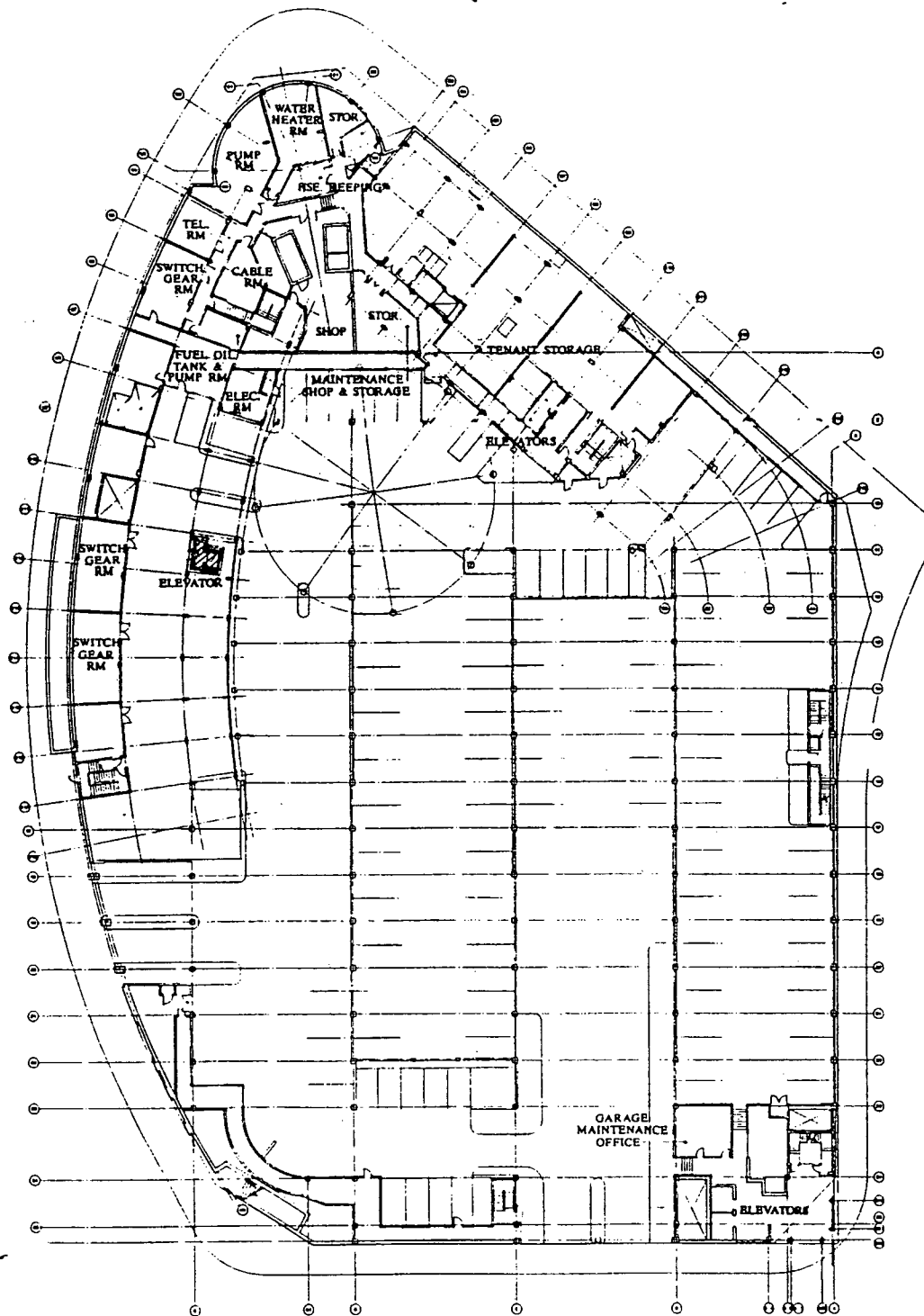
The Metropolitan  
Old Georgetown Road Level

Elevator Easements

J-2



# Elevator Easements



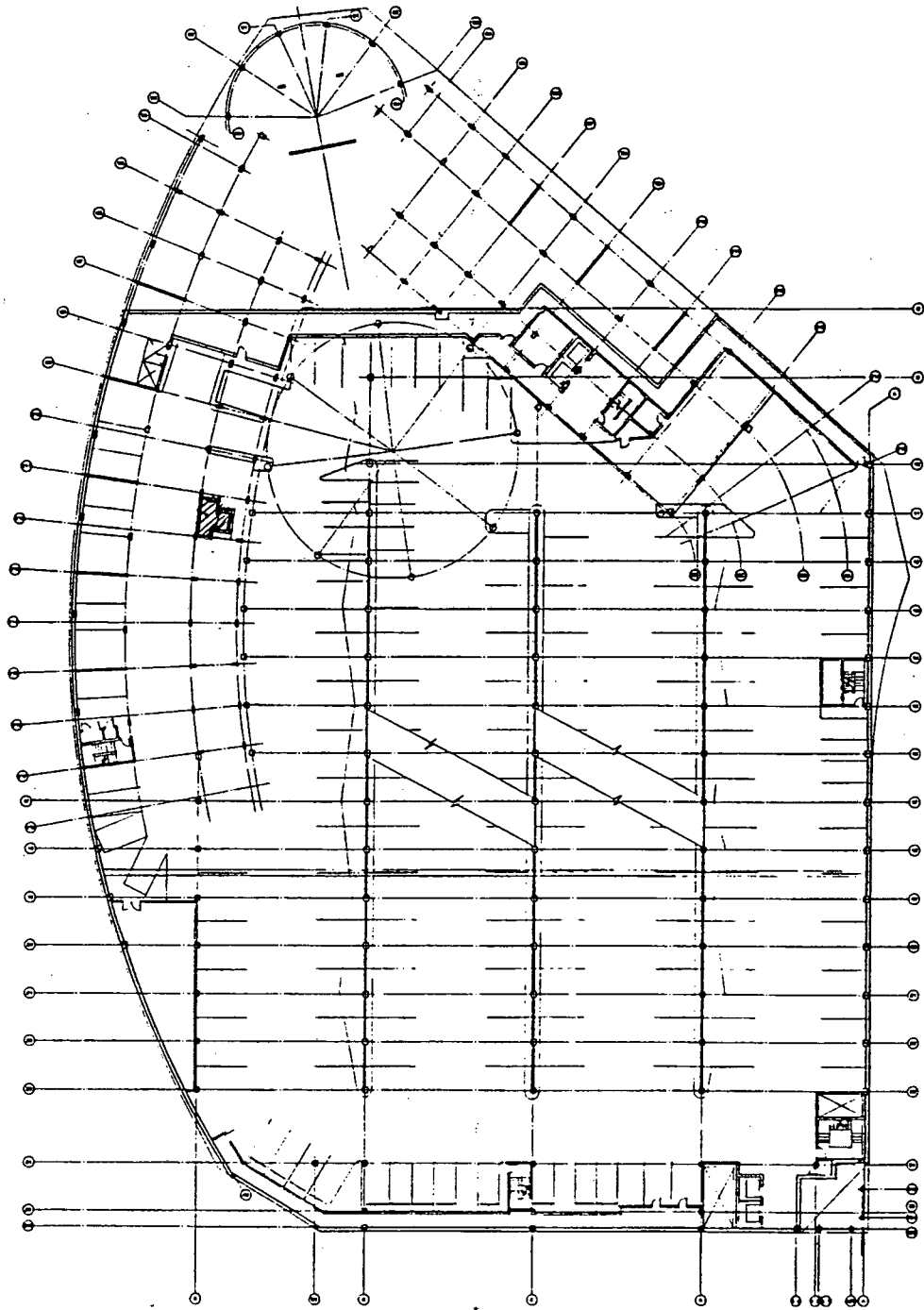
The Metropolitan

Edgemoor Lane Level

Elevator Easements

to Lessee

J-3



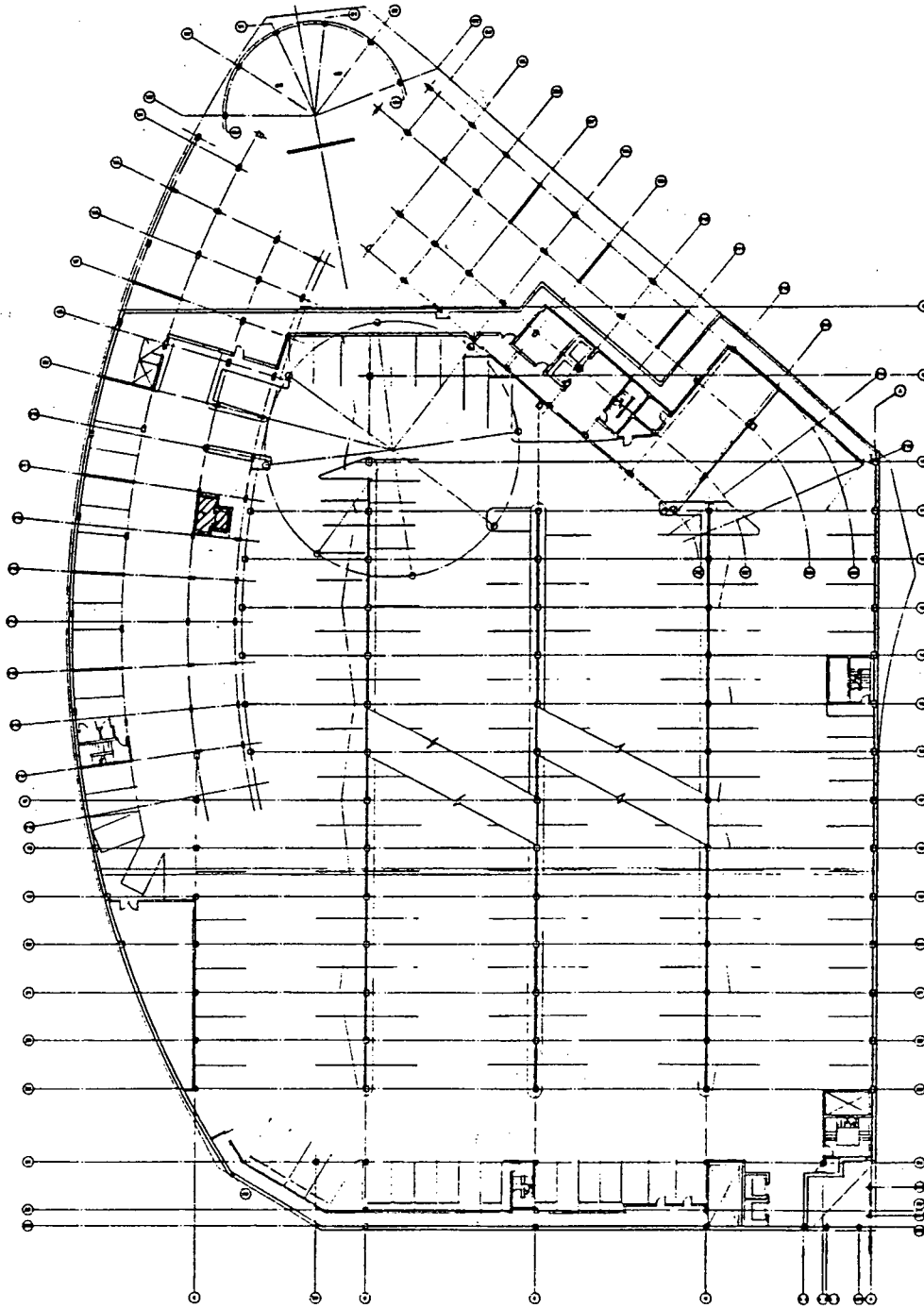
The Metropolitan

P2 Parking Level

Elevator Easements

to Lessee

J-4

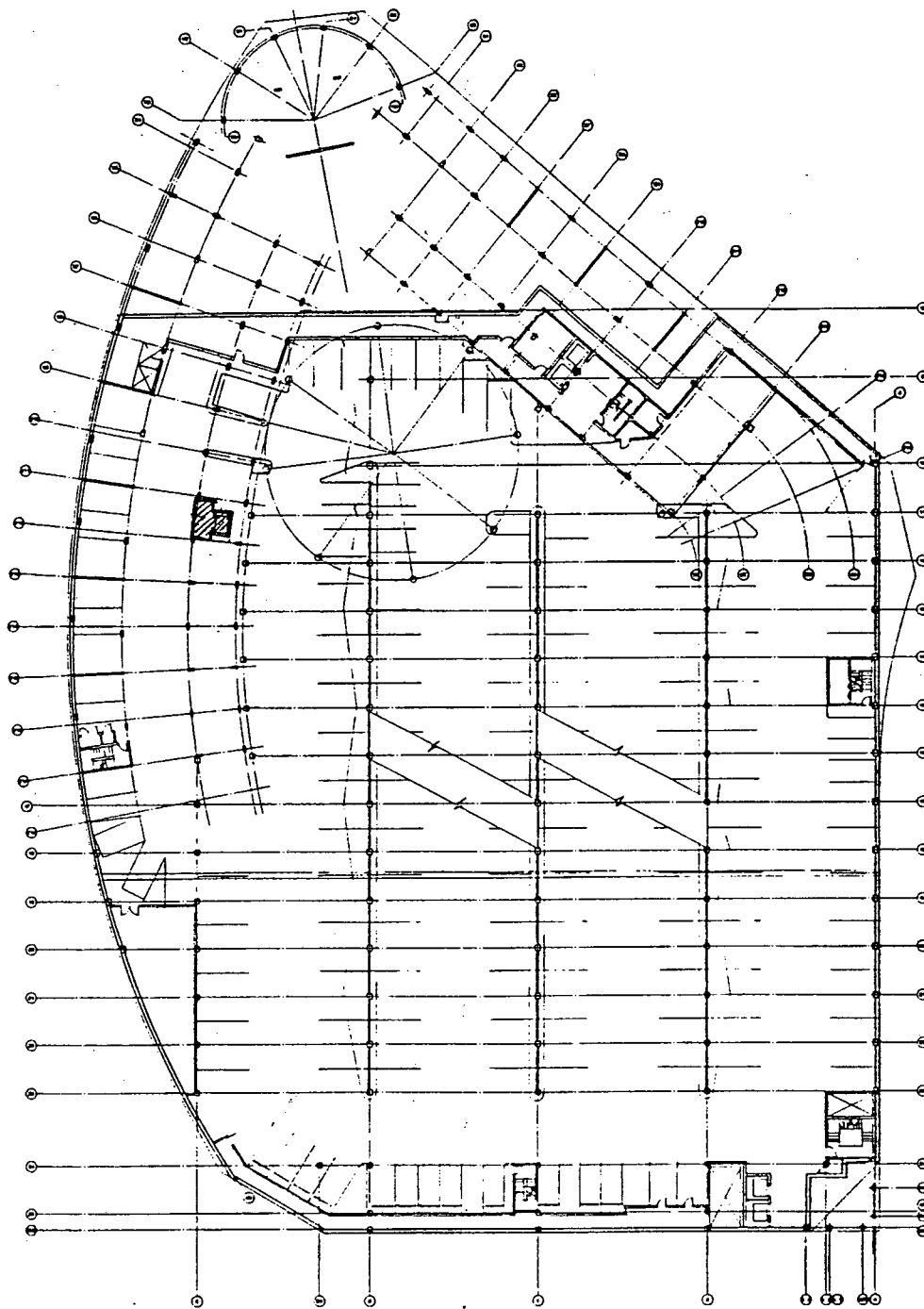


The Metropolitan

P3 Parking Level

Elevator Easements  
to Lessee

J-5



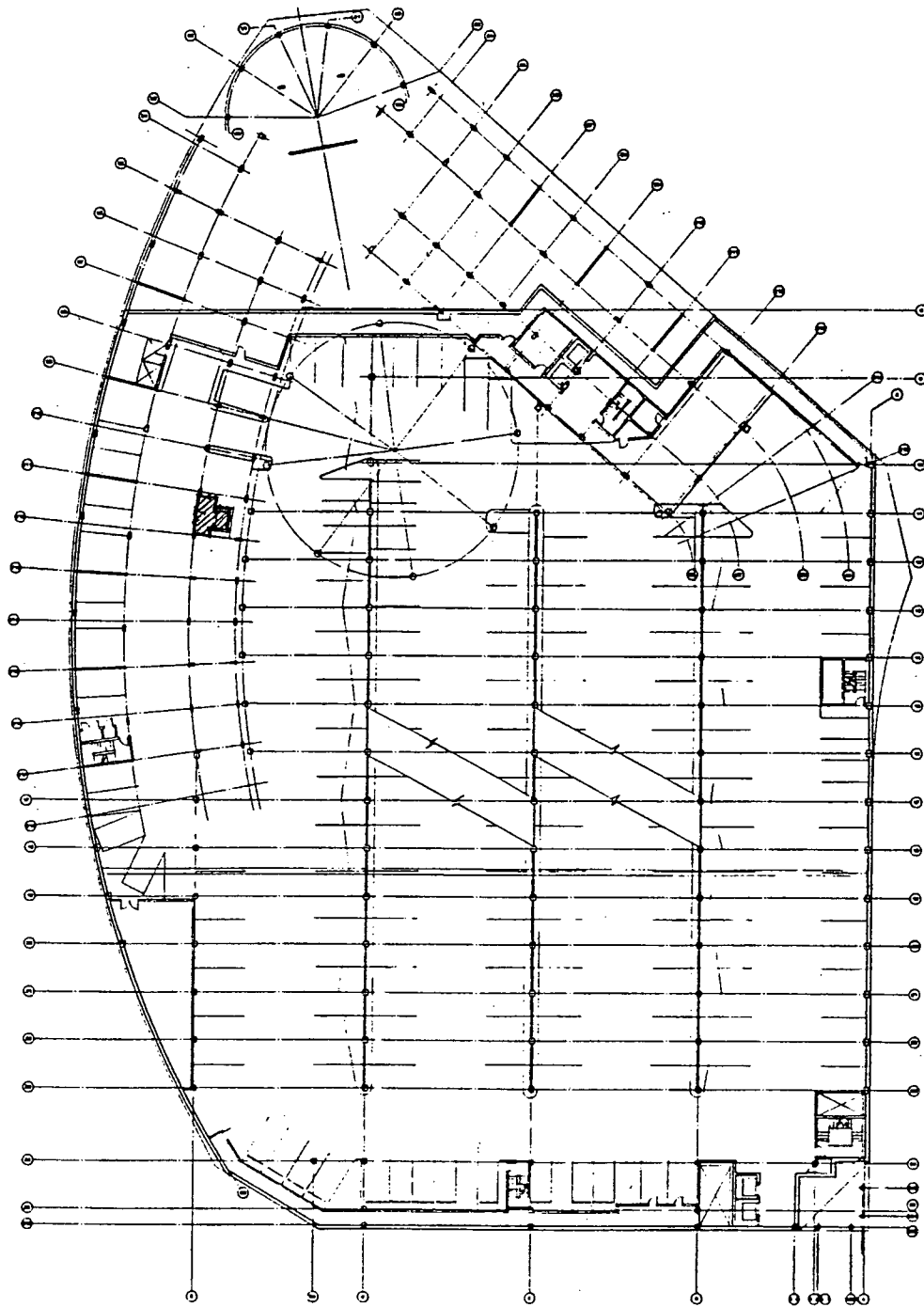
The Metropolitan

P4 Parking Level

Elevator Easements

to Lessee

J-6



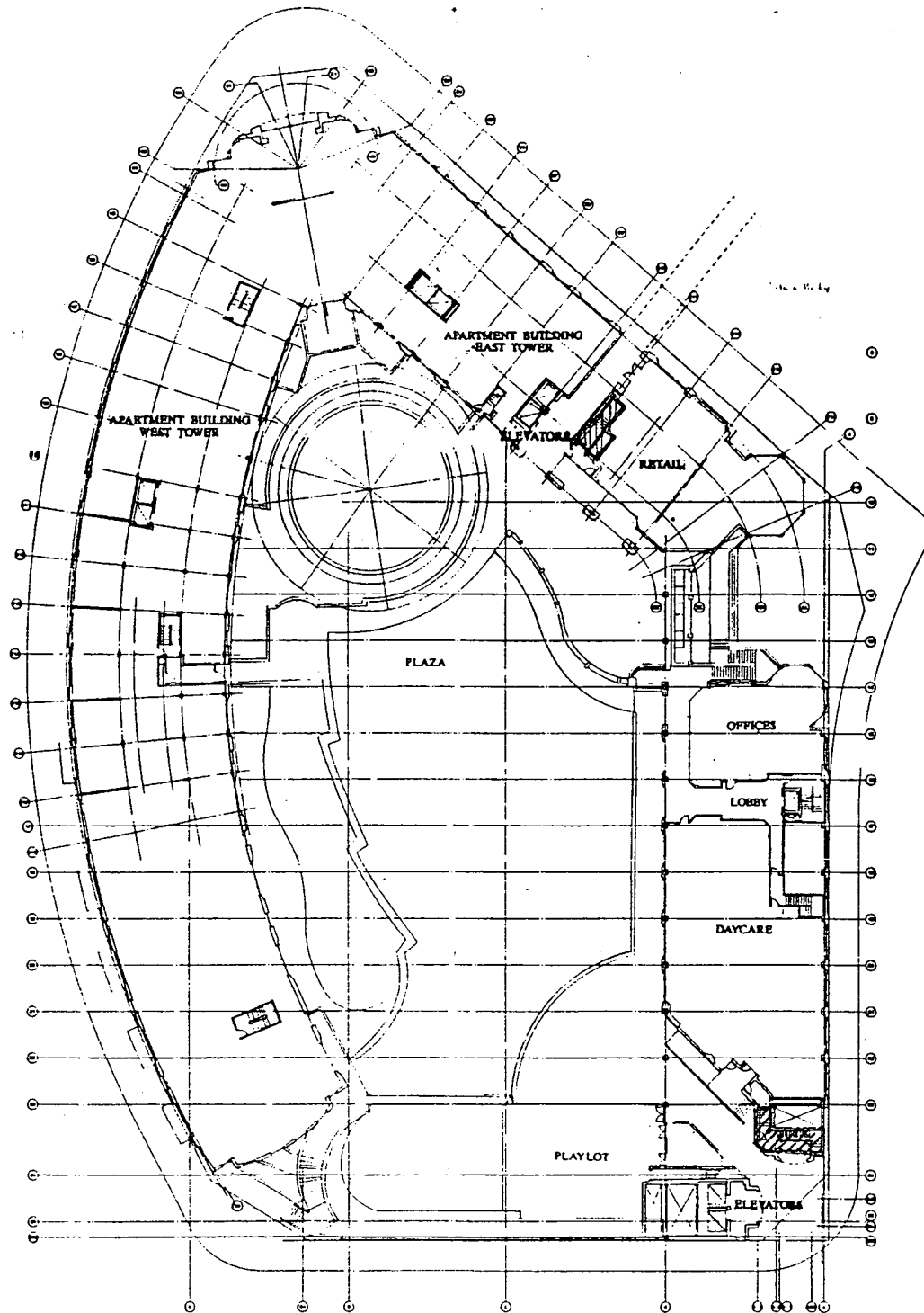
The Metropolitan

P5 Parking Level

Elevator Easements  
to Lessee

J-7

# Ingress and Egress Easements



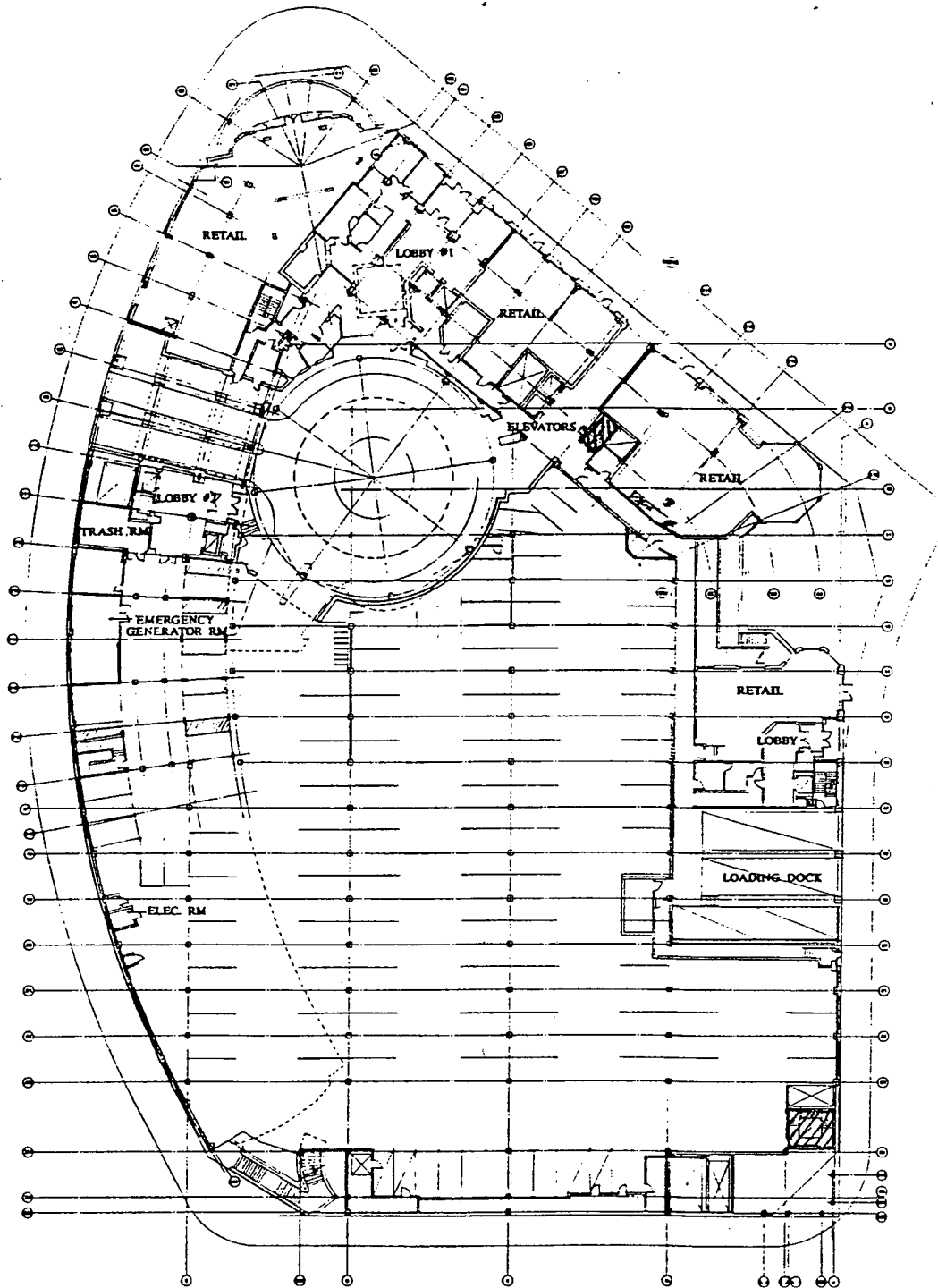
The Metropolitan

Ingress and Egress Easements

Plaza Level

K-1

## Ingress and Egress Easements



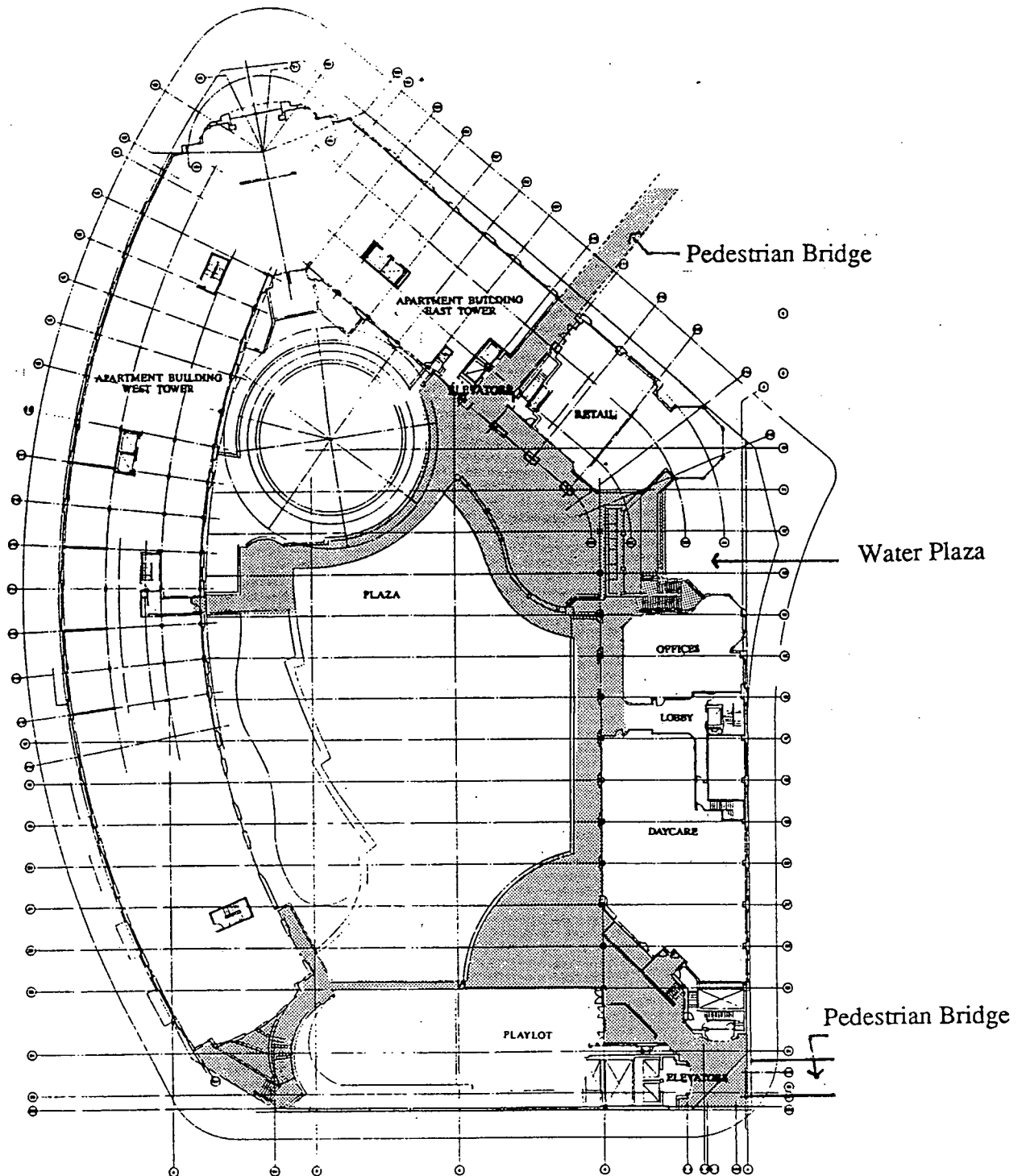
The Metropolitan

Ingress and Egress Easements

Old Georgetown Road Level

K-2

Pedestrian System




The Metropolitan

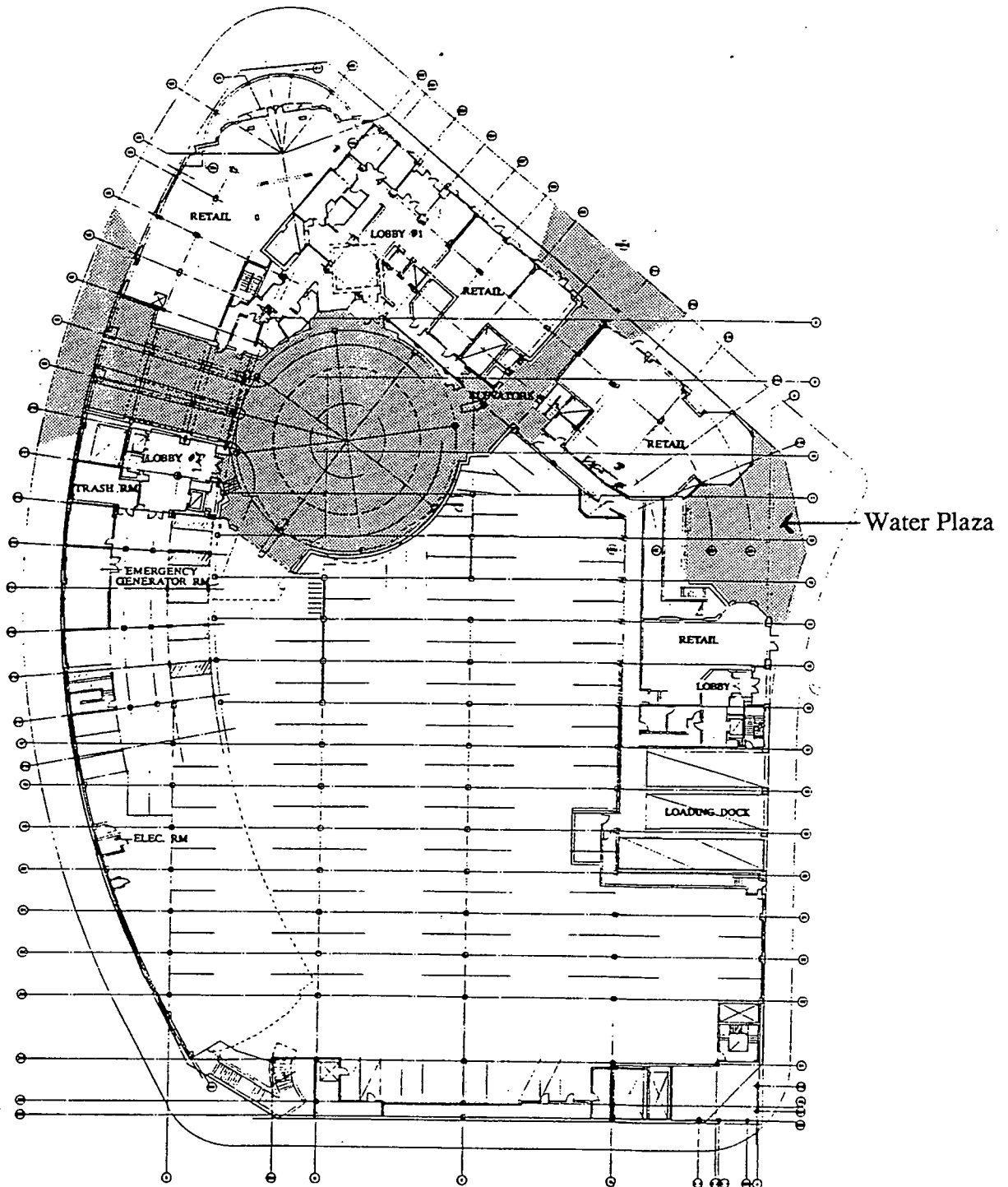
Open Space System

Site Plan

L-1



Pedestrian System 



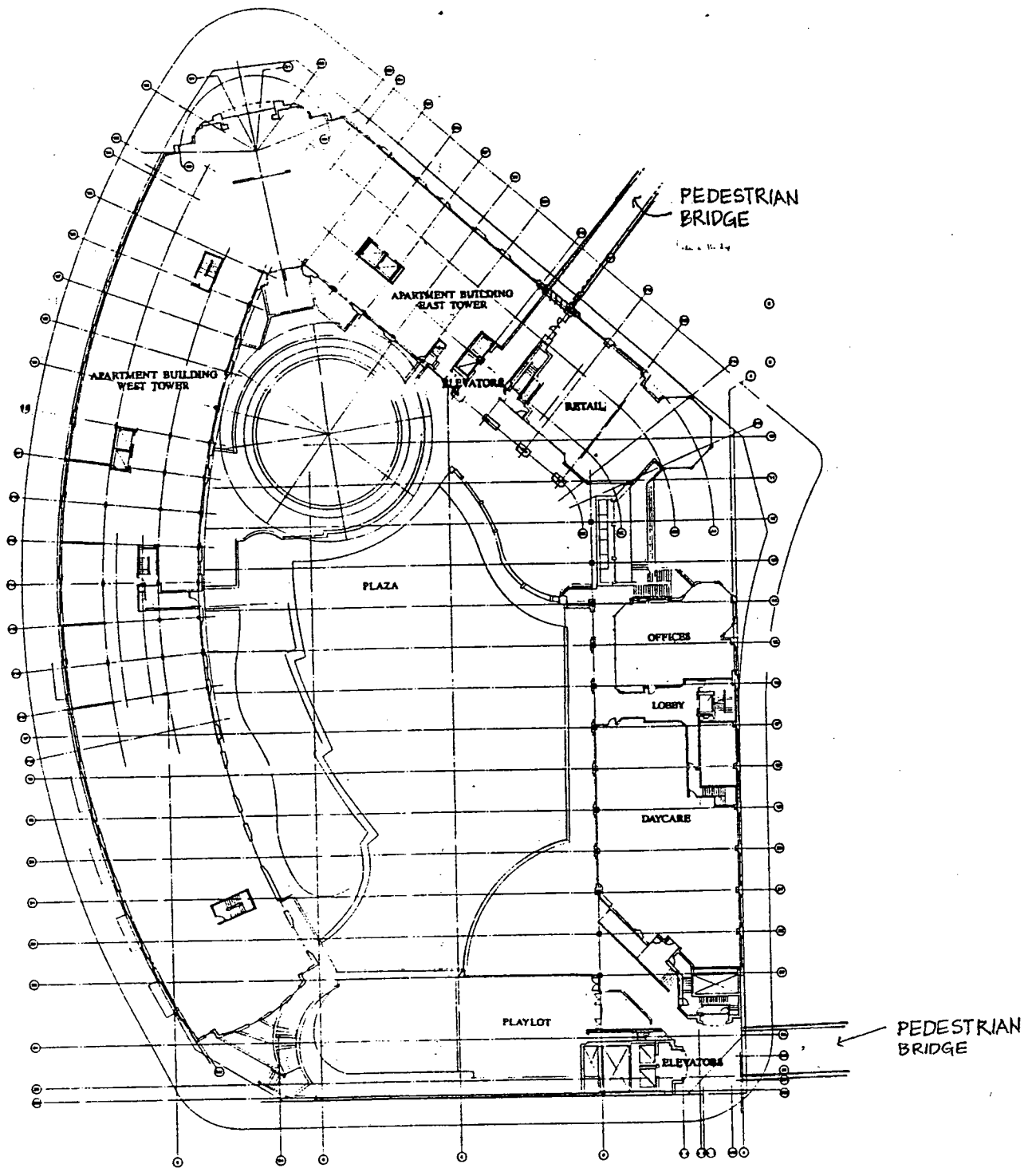
The Metropolitan

Open Space System

Old Georgetown Road Level

L-2

# Bridge Support Easements

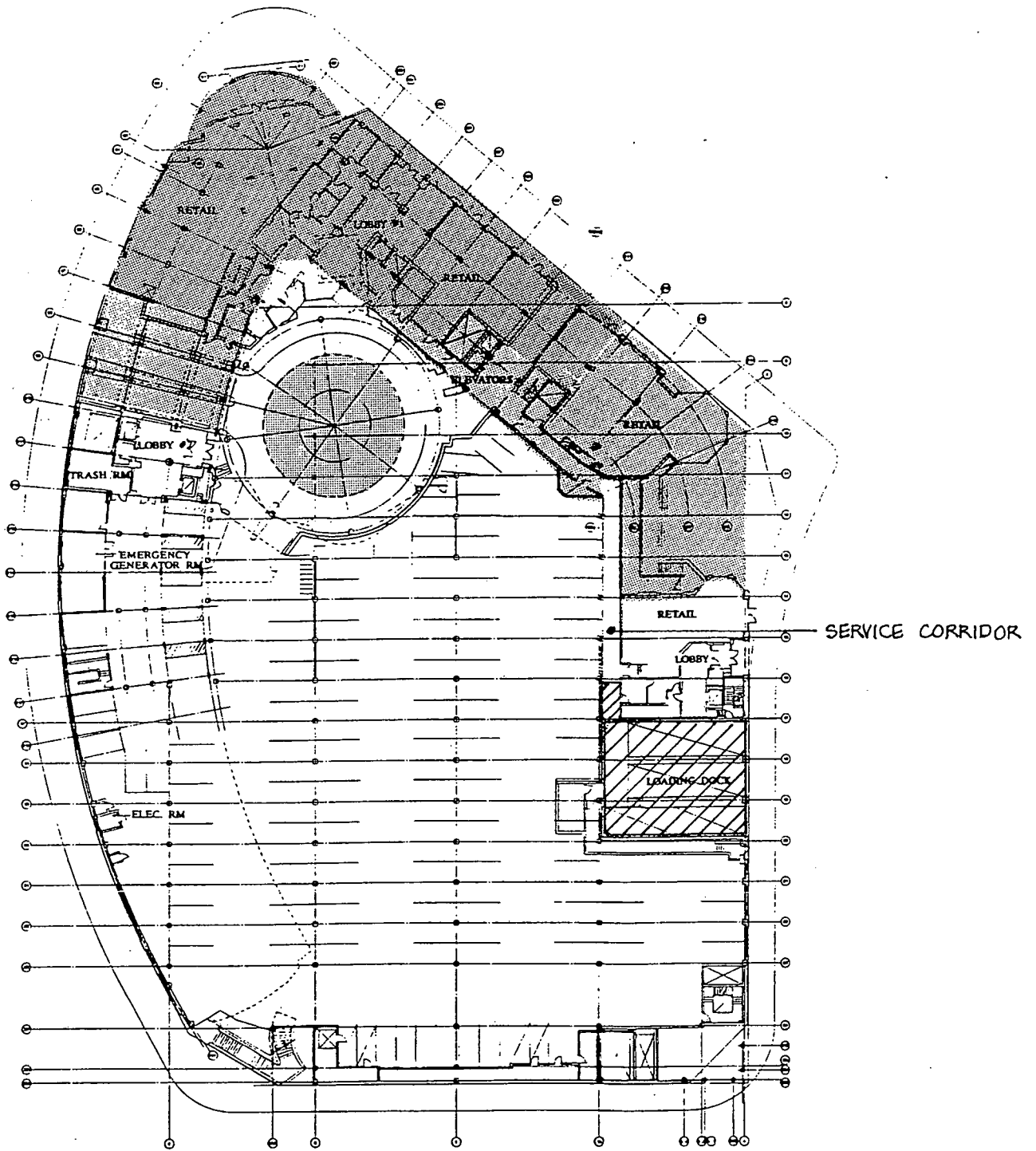


Metropolitan Park

Easements for support of  
Pedestrian Bridges

Plaza Level

M

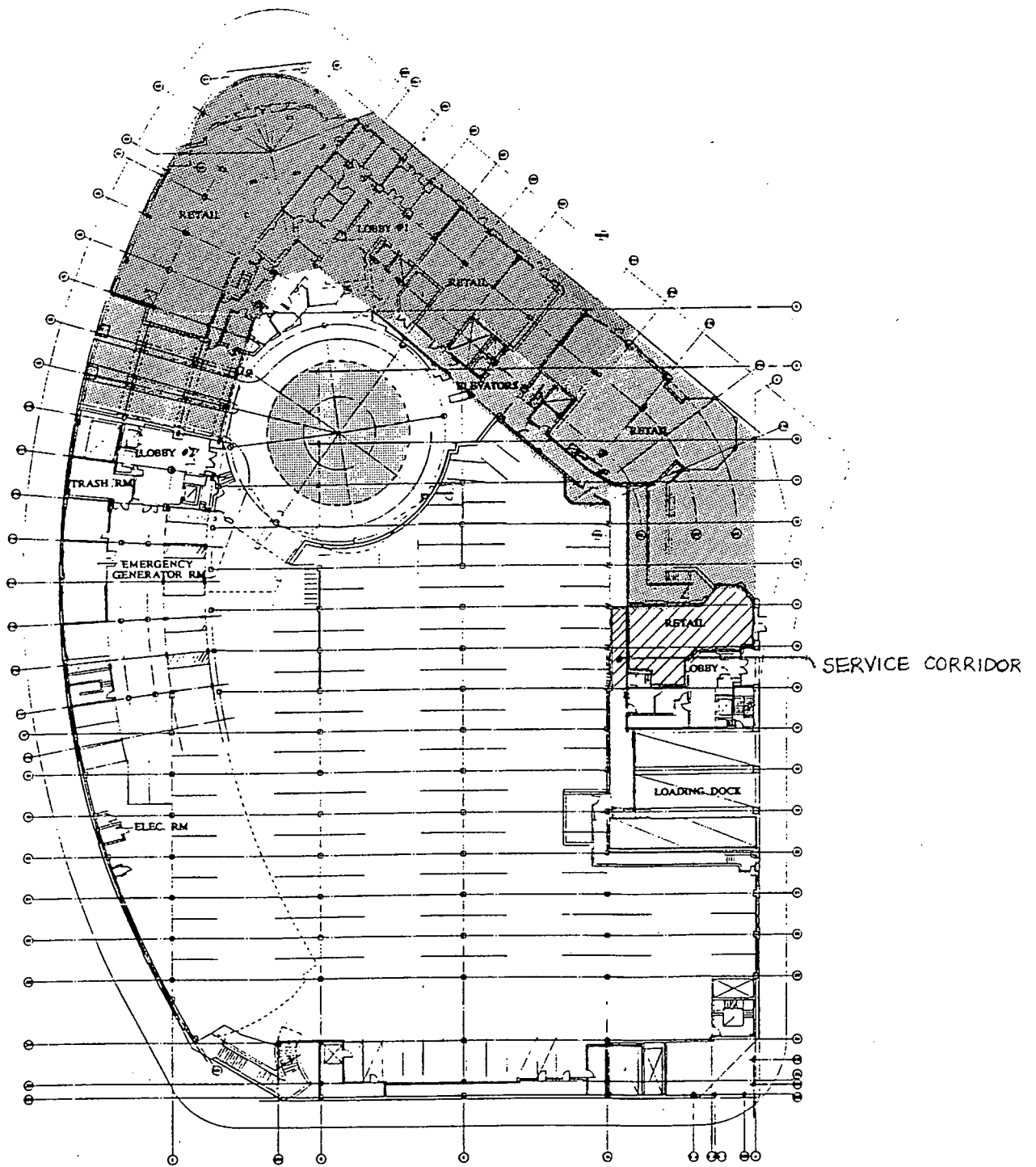


The Metropolitan

Loading Dock Easement

Old Georgetown Road Level

N



The Metropolitan

Retail and Service Corridor

Old Georgetown Road Level

Easements

O

EXHIBIT K

STATEMENT OF OPERATING INCOME  
AND EXPENSES

Period \_\_\_\_\_, 19\_\_ to  
\_\_\_\_\_, 19\_\_

Operating Income (OI):

- Residential Rent
- Retail Rent
- Parking Receipts
- Rent Loss Insurance Receipts
- Occupant Deposits Retained  
and Applied to Rent, Repairs, Etc.
- Credit Check Fees and Other Payments by Applicants
- Late Payment Penalties
- Community Room Rental Income
- Vending Machine Income
- Public Telephone Income
- Telecommunications Income
- Insurance Proceeds Not Required to Make Repairs
- Return or Refunds of Impositions or Capital Expenditures
- Contribution to cost of operating Open Space, Loading  
Dock, etc.
- Other Income:
- Subtotal: Operating Income (OI)

Operating Expenses (OE): 1/

- Advertising and Marketing Expenses
- Administrative Expenses Including:
  - Payroll (Administrative)
  - Third Party Contracts
  - Legal
  - Audit
  - Management and Leasing Fees
  - Asset Management Fees
  - Postage
  - Printing
  - Telephone
  - Copying
  - Employee training

---

1/ A separate report will be prepared to show the fairly show the cost of operating the parking on the Old Georgetown Road Level and the Additional Parking.

EXHIBIT K Continued

Maintenance Expenses Including:

- Payroll (Maintenance)
- Third Party Contracts
- General Maintenance Expenses
- Turnover Expenses (Including Third Party Contracts)
- Parking Garage Expenses
- Pool Operating Expenses
- Refuse
- Pest Control
- Refuse
- Rental of Equipment
- Uniforms

Taxes

Insurance

Permits and Fees

Water and Sewer

Utilities

Subtotal: Operating Expenses

Operating Income - Operating Expenses =  
Net Operating Income

Debt Service (DS)

Required Reserve Contributions (RRC)

Non-Reserved Capital Expenditures (NRCE)

Working Capital Reserve (WCR)

Montgomery County Investment (MCI)

and

Housing Opportunities Commission of  
Montgomery County Investment (HOI)

=

Remaining Cash Flow

PILOT Payments to Lessor

Payments of Net Parking Revenue to Lessor

EXHIBIT K Continued

CALCULATION AND DISTRIBUTION OF  
REMAINING CASHFLOW

Operating Income (OI) - Operating Expenses (OE) =  
Net Operating Income (NOI)

and

Net Operating Income (NOI) - Debt Service (DS) -  
Required Reserve Contributions (RRC) -  
Non-Reserved Capital Expenditures (NRCE) -  
Working Capital Reserve (WCR) -  
Montgomery County Investment (MCI) and  
Housing Opportunites Commission of Montgomery County  
Investment (HOCI)  
=  
Remaining Cashflow (RCF)

Distribution of Remaining Cashflow

First, to Lessor until Lessor has received an amount equal to the payment made pursuant to the PILOT Agreement plus Net Parking Revenue

Second, fifty percent (50% to Lessee and fifty percent (50%) to Lessor

provided, in any year in which the Lessee distribution is less than 25% of the amount to be distributed to Lessor under the first distribution, Remaining Cashflow shall be distributed eighty percent (80%) to Lessor and twenty percent (20%) to Lessee.

EXHIBIT L

INVESTMENT DEPOSIT AGREEMENT

THIS INVESTMENT DEPOSIT AGREEMENT dated this \_\_\_\_\_ day of \_\_\_\_\_, 1995, by and between Montgomery County, a body politic and corporate (the "County") and the Housing Opportunities Commission of Montgomery County, a body politic and corporate ("HOC").

WHEREAS, HOC is the housing authority for Montgomery County established pursuant to Article 44A of the Annotated Code of Maryland; and

WHEREAS, HOC is authorized to provide housing for person of low and moderate qualified incomes in Montgomery County; and

WHEREAS, the County, through its Department of Transportation, has constructed a parking garage ("Garage 49") located in the Bethesda Central Business District; and

WHEREAS, Garage 49 is designed to permit the construction on and above it of additional facilities; and

WHEREAS, HOC is desirous of developing the air rights above Garage 49 by constructing a twelve (12) story residential rental facility with retail space, a separate office building and a day care center; and

WHEREAS, to accommodate the proposed development by HOC, the parties have entered into an Air Rights Lease ("Air Rights Lease") granting HOC the right to use the air rights for the purposes of constructing a residential rental facility thereon; and



WHEREAS, in order to assist HOC in securing its financing to meet its public purposes of providing housing for persons of low and moderate income, the County has agreed to contribute the sum of Two Million Dollars (\$2,000,000.00) (the "Investment Fund") for the payment if necessary of certain expenses associated with the construction and operation of the Residential/Retail Building; and

WHEREAS, HOC has issued its 1995 Housing Development Bonds, Issue A, B and C (the "Bonds") pursuant to a Resolution dated May 4, 1995, (the "Bond Resolution") and a Trust Indenture dated as of May 1, 1995, by and between HOC and Crestar Bank (the "Trustee"); and

WHEREAS, the Bonds were issued to provide funds for the construction and permanent financing of the Residential/Retail Building to be constructed pursuant to the Air Rights Lease; and

WHEREAS, the Commission has executed on this date Notes in the aggregate principal amount of Thirty-Three Million Nine Hundred Five Thousand Dollars (\$33,905,000.00) evidencing its obligation to repay the funds for the development provided by the Bonds (the "Loan"); and

WHEREAS, the Notes are secured by 2 Parity Leasehold Deeds of Trust, Security Agreements and Assignments of Leases (the "Deeds of Trust") of even date herewith for the benefit of the

Trustee.

WHEREAS, HOC and the County desire to set forth in this Agreement the understandings, each with the other, relating to the disbursement of the Investment Fund and their respective rights and obligations pertaining thereto.

NOW THEREFORE, for and in consideration of the mutual promises and mutual covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and intending to be legally bound, the parties to this Agreement hereby represent and agree with one another as follows:

1. Upon the execution of this Agreement, the County shall deposit the Investment Fund in a subaccount of the General Purposes Account of the Bethesda Parking Lot District Enterprise Fund. Once deposited in the General Purposes Account, the Investment Fund shall be applied for the purposes of this Agreement subject to the requirements of Resolution No. 12-241 of the Montgomery County Council and Executive Order No. B160-92 dated February 28, 1992, amended by Executive Order No. B161-92 dated April 16, 1992.

2. The Investment Fund shall be maintained and invested by the County in any investments which at the time are legal investments for the County Interest earned on the Investment Fund

may be withdrawn by the County from the Investment Fund; provided, however, the County shall always maintain a Two Million Dollar (\$2,000,000.00) principal balance less any withdrawals made in accordance with paragraph 3 or 4.

3. HOC shall be authorized to request the withdrawal of sums from the Investment Fund, solely for the payment of (i) cost overruns for construction of the Development, provided HOC shall have first used one-half (1/2) of the HOC Financing Fee pursuant to the Air Rights Lease, or (ii) Debt Service, funding of Reserve Accounts and Operating Expense shortfalls during operations of the Residential/Retail Building, which shall be paid equally with funds from one-half (1/2) of the HOC Financing Fee until no longer available. Funds shall be withdrawn by issuance to the County of a request of withdrawal (the "Request of Withdrawal"), on the form attached hereto as Exhibit A. Withdrawals from the Investment Fund for construction cost overruns shall only be permitted if HOC certifies that the actual costs for any line item of construction cost exceeds the budgeted amount as identified in the Building Loan Agreement, surpluses from other line items have been depleted, the entire contingency reserve line item has been spent for previously accrued line item cost overruns and there are no other funds available for payments of such cost.

4. Upon the occurrence of an Event of Default under either or both of the Deeds of Trust, the Trustee shall notify the County and HOC in writing of such an event. Thereafter, disbursements from the Investment Fund shall be made only upon receipt of the form attached hereto as Exhibit B (a "Direction for Payment") completed by the Trustee.

5. The County shall have no obligation to replenish the Investment Fund in the event that any sums are withdrawn therefrom pursuant to the terms of this Agreement.

6. If not sooner terminated by withdrawals, the Investment Fund shall be terminated when ninety-five percent (95%) of all the residential units in the Residential/Retail Building are occupied under lease. The balance in the Investment Fund, including interest, shall be returned to the County free of any restriction hereunder.

7. Any advances made pursuant to this Agreement shall be repaid by HOC as provided in Section 3.06 of the Air Rights Lease with interest accruing at the Weighted Average County Yield on the unpaid principal sum. Payments shall be applied first to accrued and unpaid interest and then applied to principal. If not sooner paid, the entire principal sum and accrued interest shall be due and payable on the date of the termination of the Air Rights Lease. The failure to pay any sum due under this

Agreement pursuant to the terms of the Air Rights Lease shall constitute a default under the terms of the Air Rights Lease.

8. In the event that any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

9. This Agreement shall bind the County and HOC and their respective successors and assigns and shall inure to the benefit of each party hereto and the Trustee, their respective successors and assigns.

10. All capitalized terms not defined herein shall have the meanings ascribed to them in the Air Rights Lease.

11. This Agreement is to be construed in accordance with and governed by the laws of the State of Maryland.

12. This Agreement is intended for the sole benefit of the County and HOC.

13. This Agreement sets forth the entire agreement between the parties regarding the Investment Fund and there is no verbal or other written agreement regarding this matter between them.

This Agreement may only be amended by an instrument in writing executed by all of the parties hereto and approved by the Trustee.

HOUSING OPPORTUNITIES COMMISSION  
OF MONTGOMERY COUNTY

WITNESS

\_\_\_\_\_

By: \_\_\_\_\_

MONTGOMERY COUNTY, MARYLAND

\_\_\_\_\_

By: \_\_\_\_\_  
Timothy Firestine  
Department of Finance

B:\INVESTMENT\DEP

Exhibit A

Request for Withdrawal by HOC  
Investment Deposit Agreement

Request No: \_\_\_\_\_  
Amount Requested: \_\_\_\_\_  
Date: \_\_\_\_\_

To: Montgomery County, Maryland  
Department of Finance

The Housing Opportunities Commission of Montgomery County ("HOC") hereby requests withdrawal of \$\_\_\_\_\_ (the "Withdrawal") from the Investment Deposit (the "Investment Deposit") created pursuant to the Investment Deposit Agreement dated \_\_\_\_\_ by and among HOC and Montgomery County, Maryland (the "County").

The Withdrawal will be used to pay the following invoices, copies of which are attached hereto: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A. If the Withdrawal is for construction, HOC certifies that:

1. None of the costs to be paid by the Withdrawal were part of the Development Budget approved for construction of Lessee Development including a three hundred eight (308) unit highrise apartment building to be located on air rights above a public parking garage in the area bounded by Woodmont Avenue, Old Georgetown Road and Edgemoor Lane in Bethesda, Maryland, to be known as The Metropolitan (the "Development") pursuant to an Air Rights Lease dated \_\_\_\_\_ between HOC and the County (the "Lease");

2. The architect and general contractor for the Development have approved a change order authorizing the costs necessitating the Withdrawal (the "Change Order");

3. HOC has utilized one-half (1/2) of the HOC Financing Fee for payment of construction costs;

4. The contingency reserve line item in the construction cost section of the Development Budget has been exhausted;

5. There are no "Events of Default" under any of the documents evidencing, securing or otherwise relating to the loan in the amount of \$\_\_\_\_\_ providing construction and permanent financing for the Development or the Lease.

B. If the Withdrawal is for payment of operating deficits, HOC certifies that:

1. The operating deficits have been incurred.

2. To the extent available one-half (1/2) of the operating deficits have been or will be paid from the funds remaining available from one-half (1/2) of the HOC Financing Fee and no other funds exist to pay these costs.

3. There are no "Events of Default" under any of the documents evidencing, securing or otherwise relating to the loan in the amount of \$\_\_\_\_\_ providing construction and permanent financing for the Development or the Lease.

WITNESS:

HOUSING OPPORTUNITIES COMMISSION  
OF MONTGOMERY COUNTY

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



Exhibit B

Certification for Direction for Payment by Trustee  
Investment Deposit Agreement

Request No: \_\_\_\_\_  
Amount Requested: \_\_\_\_\_  
Date: \_\_\_\_\_

To: Montgomery County, Maryland  
Department of Finance

Pursuant to the Deed of Trust dated \_\_\_\_\_, 1995, by and among the Housing Opportunities Commission of Montgomery County ("HOC") and \_\_\_\_\_ (the "Trustee"), the undersigned certifies that it currently has the exclusive right to exercise all rights and remedies under documents relating to the Loan in the amount of \$\_\_\_\_\_ made to provide construction and permanent financing for the Lessee Development known as The Metropolitan.

The undersigned directs Montgomery County under the Investment Deposit Agreement dated \_\_\_\_\_ by and between HOC and Montgomery County to pay the following invoices, copies of which are attached hereto: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WITNESS:

TRUSTEE:

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_

OMNI Construction, Inc.  
EXHIBIT M  
Lessee  
Plans and Specifications  
June 12, 1995

1. Contract Drawings prepared by the Weihe Partnership as follows:

I. ARCHITECTURAL DRAWINGS

<u>DRAWING</u>	<u>TITLE</u>	<u>DATE</u>
A-1.1	Cover Sheet	September 30, 1994
A-1.1A	Index of Drawings	May 25, 1995
A-1.2	Site Plan, Site Geometry, & Location Plan	May 25, 1995
A-1.3	Column Location Plan & Slab Edge Plan	September 30, 1994
A-2.1	As-Built and New Construction Garage Level P-5 and P-4 Thru P-2	October 31, 1994
A-2.2	As-Built and Demolition Edgemoor Lane Level North Plan	September 30, 1994
A-2.3	As-Built and Demolition Edgemoor Lane Level South Plan	September 30, 1994
A-2.4	As-Built and Demolition Old Georgetown Road Level North Plan	May 25, 1995
A-2.5	As-Built and Demolition Old Georgetown Road Level South Plan	September 30, 1994
A-2.6	As-Built and Demolition Plaza Level North	September 30, 1994
A-2.7	As-Built and Demolition Plaza Level South	September 30, 1994
A-3.1	New Construction Edgemoor Lane Level North Plan	May 25, 1995
A-3.2	New Construction Edgemoor Lane Level South Plan	May 25, 1995
A-3.3	New Construction Old Georgetown Road Level North Plan	May 25, 1995
A-3.4	New Construction Old Georgetown Road Level South Plan	May 25, 1995
A-3.5	New Construction Plaza Level North Plan	May 25, 1995
A-3.6	New Construction Plaza Level South Plan	May 25, 1995
A-3.7	Plaza Level Composite Plan-Apartment Building	May 25, 1995

OMNI Construction, Inc.

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June 12, 1995

A-3.8	2nd Floor Composite Plan-Apartment Building	May 25, 1995
A-3.9	3rd Floor Composite Plan-Apartment Building	May 25, 1995
A-3.10	4th Floor Composite Plan-Apartment Building	May 25, 1995
A-3.11	5th Floor Composite Plan-Apartment Building	May 25, 1995
A-3.12	6th Floor Composite Plan-Apartment Building	May 25, 1995
A-3.13	7th Floor Composite Plan-Apartment Building	May 25, 1995
A-3.14	8th Floor Composite Plan-Apartment Building	May 25, 1995
A-3.15	9th Floor Composite Plan-Apartment Building	May 25, 1995
A-3.16	10th Floor Composite Plan-Apartment Building	May 25, 1995
A-3.17	11th Floor Composite Plan-Apartment Building	May 25, 1995
A-3.18	12th Floor Composite Plan-Apartment Building	May 25, 1995
A-3.19	Main Roof Composite Plan Pool/Community/Fitness Room- Apartment Building	September 30, 1994
A-3.20	Upper Roof Plan-Apartment Building	May 25, 1995
A-4.1	Old Georgetown Road Elevation Apartment Building	May 25, 1995
A-4.2	Woodmont Avenue Partial Elevation Apartment Building	May 25, 1995
A-4.3	Partial Elevations Apartment Building	May 25, 1995
A-4.4	Plaza East Elevation	May 25, 1995
A-4.5	Plaza West Elevation Apartment Building	May 25, 1995
A-4.6	Edgemoor Lane Elevations and Partial Elevations	May 25, 199588
A-5.0	Old Georgetown Road Partial Plan	May 25, 1995
A-5.1	Plaza Level Apartment Plan Area "A"	May 25, 1995
A-5.2	Plaza Level Apartment Plan Area "B"	May 25, 1995
A-5.3	Plaza Level Apartment Plan Area "C"	May 25, 1995
A-5.4	Plaza Level Apartment Plan Area "D"	May 25, 1995
A-5.5	Plaza & 2nd Floor Apartment Plan Area "E"	May 25, 1995
A-5.6	2nd-4th Floor Apartment Plan Area "A"	May 25, 1995
A-5.7	2nd-4th Floor Apartment Plan Area "B"	May 25, 1995
A-5.8	2nd-8th Floor Apartment Plan Area "C"	May 25, 1995
A-5.9	2nd-12th Floor Apartment Plan Area "D"	May 25, 199588
A-5.10	3rd-8th Floor Apartment Plan Area "E"	May 25, 1995
A-5.11	5th-8th Floor Apartment Plan Area "B"	May 25, 1995
A-5.12	9th-12th Floor Apartment Plan Area "C"	May 25, 1995
A-5.13	9th-12th Floor Apartment Plan Area "E"	May 25, 1995

OMNI Construction, Inc.  
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June 12, 1995

A-5.14	Penthouse/Main Roof Plan	May 25, 1995
	Apartment Building Area "C"	
A-5.15	Penthouse/Community & Fitness Room	May 25, 1995
	Apartment Building Area "D"	
A-5.16	Rooftop Pool & Deck Plan	May 25, 1995
	Apartment Building Area "E"	
A-5.17	Upper Penthouse & Roof Plan	May 25, 1995
	Apartment Building Area "D"	
A-5.18	Upper Roof Plan Apartment Building Area "D"	September 30, 1994
A-6.1	Stair No. 1,2 & 4 Plans and Sections	May 25, 1995
A-6.2	Stair No. 3 & 5 Plans & Sections	September 30, 199488
A-6.3	Elevators East Bank and West Bank Plans and Sections	September 30,1994
A-6.4	Elevator Shuttle Plans and Sections	May 25, 1995
A-6.4A	Elevator Cab Details	May 25, 1995
A-6.5	Kitchen Floor Plan	May 25, 1995
A-6.6	Kitchen and Toilet Floor Plans	May 25, 1995
A-6.7	Toilet Floor Plans	May 25, 1995
A-6.8	Kitchen Elevations	May 25, 1995
A-6.9	Kitchen Elevations	May 25, 1995
A-6.10	Toilet Elevations	May 25, 1995
A-6.11	Toilet Elevations	May 25, 1995
A-6.12	Typical Floor Corridors	May 25, 1995
A-6.13	Typical Floor Corridor Details	May 25, 1995
A-6.14	Community Room and Fitness Center Elevations	May 25, 1995
A-6.15	Community Room and Fitness Center R.C.P.	September 30, 1994
A-6.16	South East Core Plans	October 31, 1994
A-6.17	Temporary Leasing Office & Loading Dock Plans	September 30, 1994
A-7.1	Exterior Elevation Details	May 25, 1995
A-7.2	Exterior Elevation Details	May 25, 1995
A-7.3	Exterior Elevation Details	May 25, 1995
A-7.3A	Exterior Elevation Details	May 25, 1995
A-7.3B	Exterior Elevation Details	May 25, 1995
A-7.3C	Pool Area Elevations & Sections	May 25, 1995
A-7.3D	Balcony Railing Plans, Elevations & Sections	May 25, 1995
A-7.4	Wall Sections	May 25, 1995
A-7.5	Wall Sections	May 25, 1995

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A-7.6	Plan Details	May 25, 1995
A-7.7	Plan Details	May 25, 1995
A-7.8	Section Details	May 25, 1995
A-7.9	Section Details	May 25, 1995
A-7.9A	Section Details	May 25, 1995
A-7.9B	Section Details	May 25, 1995
A-7.10	Window Details	May 25, 1995
A-8.1	Door Schedule & Notes	May 25, 1995
A-8.2	Finish Schedule & Notes	May 26, 1995
A-8.3	Partition Types & Dry Wall Notes	September 30, 1994
A-9.1	Main Lobby Floor Plan Apartment Building	May 25, 1995
A-9.2	Main Lobby Floor Pattern and Reflected Ceiling Plan	May 25, 1995
A-9.3	Main Lobby Elevations	May 25, 1995
A-9.4	Main Lobby Elevations & Details	May 25, 1995
A-9.5	Main Lobby Partial Elevations & Details	May 25, 1995
A-9.6	Main Lobby Details	May 25, 1995
A-9.7	Auxiliary Lobby Apartment Building Floor Plan, Reflected Ceiling Plan	May 25, 1995
A-9.8	Auxiliary Lobby Elevations & Details	May 25, 1995
A-9.9	Custom Light Fixture Details	May 25, 1995
A-9.10	Oculus Reflected Ceiling Plan	May 25, 1995
A-9.11	Oculus Elevations	May 25, 1995
A-9.12	Oculus Elevations and Details	May 25, 1995
A-10.1	Misc. Details	May 25, 1995
A-10.2	Miscellaneous Details	May 25, 1995

II. STRUCTURAL DRAWINGS

<u>DRAWING</u>	<u>TITLE</u>	<u>DATE</u>
88		
S-1	Old Georgetown Road Level Framing Plan-North	May 25, 1995
S-2	Plaza Level Framing Plan-North	May 25, 1995
S-3	Plaza Level Framing Plan-South and Partial Plans	May 25, 1995

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S-4	Second Floor Framing Plan-High Rise Residential	October 26, 1994
S-5	Typical Floor Framing Plan-High Rise	May 25, 1995
S-5A	Twelve Floor Framing Plan - High Rise Residential	May 25, 1995
S-6	Partial Floor Framing Plans-High Rise Residential	May 25, 1995
S-7	Main Roof and Penthouse Floor Framing Plan High Rise Residential	October 26, 1994
S-8	Penthouse Roof and Upper Penthouse Framing Plan High Rise Residential	October 31, 1994
S-9	Column Schedule High Rise Residential	October 26, 1994
S-10	Typical Concrete Details and Beam Schedule	September 30, 1994
S-11	Framing Plans-Low Rise Residential	May 25, 1995
S-11A	4th Floor and Roof Framing Plans - Low Rise Residential	May 25, 1995
S-12	Stage Stressed Post-Tensioned Beam Schedule and Structural Notes	May 25, 1995
S-13	Sections	May 25, 1995
S-14	Sections	May 25, 1995
S-15	Sections	May 25, 1995
S-16	Sections	May 25, 1995

III. MECHANICAL DRAWINGS

<u>DRAWING</u>	<u>TITLE</u>	<u>DATE</u>
M-1	Garage Level P2 thru P5 - Mechanical	September 30, 1994
M-2	Edgemoor Lane Level North Plan-Mechanical	May 25, 1995
M-3	Old Georgetown Road Level North Plan-Mechanical	May 25, 1995
M-4	Old Georgetown Level South Garage Plan & Plaza Level Stick-Built Crawlspace Plan-Mechanical	May 25, 1995

OMNI Construction, Inc.  
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M-5	Plaza Level Apartment Reference Plans-Mechanical	September 30, 1994
M-6	2nd Floor Apartment Reference Plans-Mechanical	September 30, 1994
M-7	3rd & 4th Floor Apartment Reference Plans-Mechanical	September 30, 1994
M-8	5th-8th Floor Apartment Reference Plans Mechanical	September 30, 1994
M-9	9th-12th Floor Apartment Reference Plans-Mechanical	September 30, 1994
M-10	Penthouse Plan, Lower Level-Mechanical	October 31, 1994
M-11	Penthouse Plan, Upper Level & Roof Mezzanine-Mechanical	October 31, 1994
M-12	Roof Plans-Mechanical	October 26, 1994
M-13	Plaza & 2nd Floor, Apartments, Section A-Mechanical	October 31, 1994
M-14	Plaza & 2nd Floor, Apartments, Section B-Mechanical	May 25, 1995
M-15	Plaza & 2nd Floor Apartments, Section E-Mechanical	May 25, 1995
M-16	3rd & 4th Floor Apartments, Section A-Mechanical	May 25, 1995
M-17	3rd & 4th Floor Apartments, Section B-Mechanical	May 25, 1995
M-18	Plaza-8th Floor Apartments, Section C-Mechanical	May 25, 1995
M-19	Plaza-12th Floor Apartments, Section D-Mechanical	May 25, 1995
M-20	5th thru 8th Floor Apartments, Section B-Mechanical	May 25, 1995
M-21	3rd thru 8th Floor Apartments, Section E-Mechanical	May 25, 1995
M-22	9th thru 12th Floor Apartments, Section C-Mechanical	May 25, 1995
M-23	9th thru 12th Floor Apartments, Section E-Mechanical	May 25, 1995

OMNI Construction, Inc.  
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Plans and Specifications  
June 12, 1995

M-24	Mechanical Plenum Plans-For Stick Built and High Rise	May 25, 1995
M-25	Mechanical Riser Diagrams Part A Heat Pump Loop Risers	September 30, 1994
M-26	Mechanical Riser Diagrams Part B Heat Pump Loop Risers	September 30, 1994
M-27	Mechanical Riser Diagrams Part C Kitchen and Dryer Exhaust Risers	October 31, 1994
M-28	Mechanical Riser Diagrams Part D Toilet Exhaust and Miscellaneous Risers	May 25, 1995
M-29	Mechanical Riser Diagrams Part E Corridor Vent Risers and Schematic Flow Diagrams	October 31, 1994
M-30	Mechanical Schedules	May 25, 1995
M-31	Mechanical General Notes, Symbols and Abbreviations	October 31, 1994
M-32	Mechanical Details	October 31, 1994

IV. PLUMBING DRAWINGS

<u>DRAWING</u>	<u>TITLE</u>	<u>DATE</u>
P-1	Garage Level P-5, and P-4 thru P-2	October 26, 1994
P-2	Edgemoor Lane Level North Plan Plumbing	May 25, 1995
P-3	Egdemoor Lane Level South Plan-Plumbing	May 25, 1995
P-4	Old Georgetown Road Level North Plan Plumbing	May 25, 1995
P-5	Old Georgetown Road Level South Plan Plumbing	May 25, 1995
P-5A	Plaza Plan Plumbing	May 25, 1995
P-6	Plaza Level Apartment Reference Plans-Plumbing	September 30, 1994
P-7	2nd Floor Apartment Reference Plans-Plumbing	September 30, 1994
P-8	3rd & 4th Floor Apartment Reference Plans-Plumbing	October 31, 1994
P-9	5th-8th Floor Apartment Reference Plans Plumbing	September 30, 1994



OMNI Construction, Inc.  
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P-10	9th-12th Floor Apartment Reference Plans- Plumbing	September 30, 1994
P-11	12th Floor Plenum Plan-Plumbing	October 31, 1994
P-12	Low Roofs and Penthouse Rock Plan-Plumbing	October 31, 1994
P-13	Penthouse Floor and Main Roof Plan-Plumbing	October 31, 1994
P-14	Plaza & 2nd Floor Apartments Section A Plumbing	October 26, 1994
P-15	Plaza & 2nd Floor Apartments, Section B- Plumbing	October 26, 1994
P-16	Plaza-12th Floor Apartments, Section C- Plumbing	October 26, 1994
P-17	Plaza & 12th Floor Apartments, Section D- Plumbing	October 26, 1994
P-18	Plaza & 2nd Floor Apartments, Section E- Plumbing	October 26, 1994
P-19	3rd & 4th Floor Apartments, Section A- Plumbing	October 31, 1994
P-20	3rd & 4th Floor Apartments, Section B - Plumbing	October 31, 1994
P-21	3rd-8th Floor Apartments Section E - Plumbing	October 31, 1994
P-22	5th thru 8th Floor Apartments, Section B - Plumbing	October 31, 1994
P-23	9th-12th Floor Apartments Section C - Plumbing	October 26, 1994
P-24	9th-12th Floor Apartments Section E - Plumbing	October 26, 1994
P-25	Domestic Water Riser Diagrams	September 30, 1994
P-26	Domestic Water Riser Diagrams	September 30, 1994
P-27	Domestic Water Riser Diagrams	September 30, 1994
P-28	Domestic Water Riser Diagrams	September 30, 1994
P-29	Sanitary/Waste Riser	September 30, 1994
P-30	Sanitary/Waste Riser	September 30, 1994
P-31	Sanitary/Waste Riser	September 30, 1994
P-32	Sanitary/Waste Riser	September 30, 1994
P-33	Sanitary/Waste Riser	October 31, 1994
P-34	Sanitary/Waste Riser	October 31, 1994
P-35	Sanitary/Waste Riser	October 31, 1994
P-36	Sanitary/Waste Riser	October 31, 1994
P-37	Sanitary/Waste Riser	October 31, 1994

OMNI Construction, Inc.  
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June 12, 1995

P-38	Sanitary/Waste Riser	October 31, 1994
P-39	Sanitary/Waste Riser	September 30, 1994
P-40	Sanitary/Waste Riser	October 31, 1994
P-41	Fire Protection Riser	September 30, 1994
P-42	Natural Gas Riser Diagram	September 30, 1994
P-43	Symbols, Schedules, Notes and Details	October 31, 1994

V. ELECTRICAL DRAWINGS

<u>DRAWING</u>	<u>TITLE</u>	<u>DATE</u>
E-1	Electrical Symbols, Notes and Fixture Schedule	May 25, 1995
E-2	New Construction Edgemoor Lane Level North Plan Electrical	May 25, 1995
E-2A	Garage Level P-5, and P-4 thru P-2 Electrical Plan	May 25, 1995
E-3	New Construction Old Georgetown Road Level North Plan Electrical	May 25, 1995
E-4	New Construction Old Georgetown Road Level South Plan Electrical	October 31, 1994
E-5	Plaza Plan Electrical	May 25, 1995
E-6	Plaza Level Plan Electrical	May 25, 1995
E-7	2nd Floor Plan-Electrical	May 25, 1995
E-8	Typical 3rd & 4th Floor Plan Electrical	May 25, 1995
E-9	Typical 5th-8th Floor Plan Electrical	May 25, 1995
E-10	Typical 9th-12th Floor Plan Electrical	May 25, 1995
E-11	Penthouse, Pool & Health Club Level Plan Electrical	October 31, 1994
E-12	Upper Penthouse/Roof Plan Electrical	October 31, 1994
E-13	Plaza Level Section A Apartment Plan Electrical	May 25, 1995
E-14	Plaza Level Section B Apartment Plan Electrical	May 25, 1995
E-15	Typical Plaza-8th Floor Section C Apartment Plan Electrical	May 25, 1995
E-16	Typical Plaza 12th Floor Section D Apartment Plan Electrical	May 25, 1995

OMNI Construction, Inc.  
**EXHIBIT M**  
 Lessee  
**Plans and Specifications**  
**June 12, 1995**

E-17	Typical Plaza 2nd Floor Section E Apartment Plan Electrical	May 25, 1995
E-18	Typical 2nd-4th Floor Section A Apartment Plan Electrical	May 25, 1995
E-19	Typical 2nd-4th Floor Section B Apartment Plan Electrical	May 25, 1995
E-20	Typical 3rd-8th Floor Section E Apartment Plan Electrical	May 25, 1995
E-21	Typical 5th-8th Floor Section B Apartment Plan Electrical	May 25, 1995
E-22	Typical 9th-12th Floor Section C Apartment Plan Electrical	May 25, 1995
E-23	Typical 9th-12th Floor Section E Apartment Plan Electrical	May 25, 1995
E-24	Power Riser Diagram	May 25, 1995
E-25	Switchboard and Motor Control Center Schedules	May 25, 1995
E-26	Fire Alarm Riser Diagram	May 25, 1995
E-27	Fire Alarm Matrix Annunciator	May 25, 1995
E-28	TV/Telephone Riser Diagram	May 25, 1995
E-29	Panelboard Schedules	May 25, 1995

**VI. SECURITY**

<u>DRAWING</u>	<u>TITLE</u>	<u>DATE</u>
	SEC Drawing #1	August 1, 1994
	SEC Drawing #2	August 1, 1994
	SEC Drawing #3	August 1, 1994
	SEC Drawing #4	August 1, 1994
	SEC Drawing #5	August 1, 1994
	SEC Drawing #6	Not dated but stamped "Received OMNI Construction, Inc. October 17, 1994"
	SEC Drawing #7	August 12, 1994

OMNI Construction, Inc.  
EXHIBIT M  
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June 12, 1995

VII. LANDSCAPE DRAWINGS

<u>DRAWING</u>	<u>TITLE</u>	<u>DATE</u>
L-1	Street Level Plan Planting & Paving	May 25, 1995
L-2	Plaza Plan - Planting	May 25, 1995
L-3	Grading Drainage Plan	May 25, 1995
L-4	Plaza Plan - Irrigation	May 25, 1995
L-5	Plaza Plan - Dimension, Detail Key	May 25, 1995
L-5A	Plaza Plan - Paving	May 25, 1995
L-5B	Plaza Plan - Subsurface Paving & Support Wall	May 25, 1995
L-6	Wall Elevations and Sections	May 25, 1995
L-7	Wall Elevations and Sections	May 25, 1995
L-8A	S.W. Stair Elevation	May 25, 1995
L-9	Water Plaza Enlargement Plan & Elevations	May 25, 1995
L-10	Water Plaza Details	May 25, 1995
L-11	Water Plaza Details	May 25, 1995
L-12	Water Plaza Arcade Details	May 25, 1995
L-13	Arcade Plan Elevations & Details	May 25, 1995
L-14	Amphitheater Details	September 30, 1994
L-15	Wall and Gazebo Brick Detail	May 25, 1995
L-16	Gazebo & Bulletin Board Details	September 30, 1994
L-17	Streetscape Standard Details	May 25, 1995
L-18	Handrail Details	May 25, 1995
L-19	Gate/Fence Details	May 25, 1995
L-20	Light Pylon and Bench Details	May 25, 1995
L-21	Pavement & Support Wall Details	May 25, 1995
L-22	Planting Details	May 25, 1995

OMNI Construction, Inc.  
EXHIBIT M  
Lessee  
Plans and Specifications  
June 12, 1995

2. Contract Drawings prepared by the Loiderman Associates, Inc. as follows:

I. CIVIL DRAWINGS

<u>DRAWING</u>	<u>TITLE</u>	<u>DATE</u>
1 of 6	Storm Drainage and Paving Plan	November 1, 1994
2 of 6	Storm Drain and Paving Plan	May 25, 1995
3 of 6	Storm Drain and Paving Plan	November 1, 1994
4 of 6	Storm Drain and Paving Plan	November 1, 1994
5 of 6	Storm Drain and Paving Plan	May 25, 1995
6 of 6	Storm Drain and Paving Plan	May 25, 1995
1 of 2	Traffic Control Plan	September, 1994
2 of 2	Traffic Control Plan	September, 1994

3. Addenda as follows:

	<u>TITLE</u>	<u>DATE</u>
I.	Addendum Number 1	October 19, 1994
II.	Addendum Number 2	October 25, 1994
III.	Addendum Number 3	October 31, 1994
IV.	Addendum Number 4	November 8, 1994
V.	Addendum Number 5	May 25, 1995

4. Project Specifications prepared by the Weihe Partnership as follows:

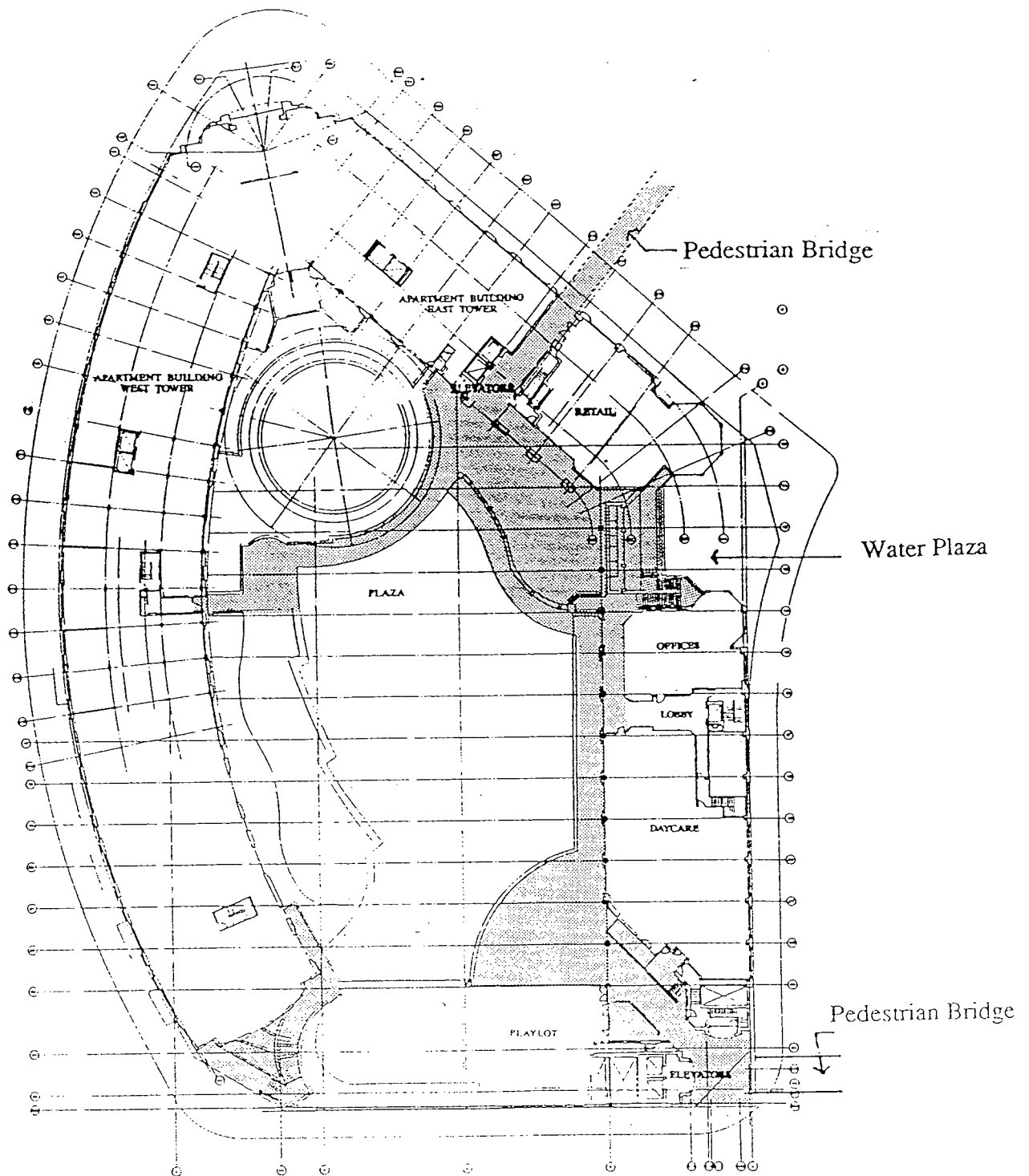
- I. Project Manual Volume 1 for Metropolitan Park dated September 30, 1994
- II. Project Manual Volume 2 for Metropolitan Park dated September 30, 1994.
- III. Owner's Bid Documents and Conditions of the Contract for Metropolitan Park dated September 30, 1994.
- IV. Information for Bidders revised October 19, 1994.

OMNI Construction, Inc.  
EXHIBIT M  
Lessee  
Plans and Specifications  
June 12, 1995

5. Letters as follows:

1. OMNI Construction, Inc. letter dated June 12, 1995 concerning Metropolitan Park Drawing Review.

Pedestrian System



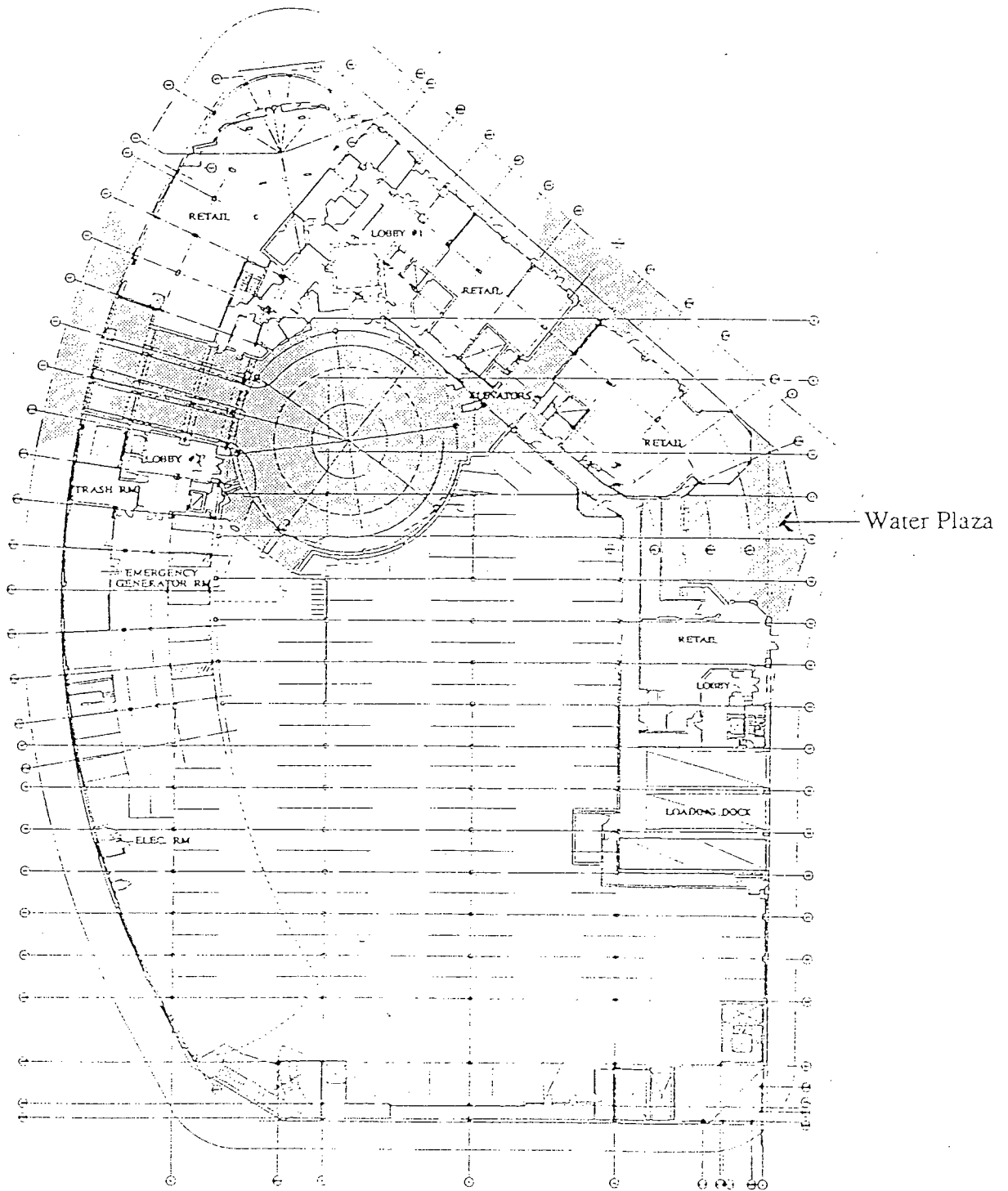
The Metropolitan

Site Plan

Open Space System

N-1

Pedestrian System



The Metropolitan

Old Georgetown Road Level

Open Space System

N



EXHIBIT O

WORK TO BE PERFORMED BY LESSEE FOR THE COMPLETION OF  
GARAGE NO. 49

A. Lessee shall complete the following items as shown on the Lessee Plans and Specifications or the Garage Plans and Specifications as part of the Lessee Development:

1. Stage Stressing of Old Georgetown Road and Plaza Level Slabs.

Stage stressing shall be performed by the Lessee's post-tensioning Contractor. Stage stressing shall be phased to correspond with the application of loads as the project progresses. The stage stressing shall be coordinated by Lessee's structural engineer.

2. Fire Protection System and Fire Control Room.

Fire control room and fire control panel to be constructed by Lessee are to be connected by Lessee to Garage's fire control system. Temporary fire control panel for garage is built and mounted on Column DD E10 at Edgemoor Level. Annunciation Panel for sprinkler system and firepump is built and located in Garage Maintenance Office.

3. Exhaust Fans E58 and E59.

Shaft for exhaust fans E58 and E59 shall be built and the fans installed. The Lessor will furnish the fans.

4. Shaft for Elevators 3 and 4.

Lessee shall construct elevator shafts and install the elevators. The Lessor will supply the elevators and related equipment.

5. Plaza Level Drains.

Lessee shall provide required piping and material and make connections to plaza level drains.

6. FAN S5.

The Lessor has installed supply Fan S5 on Old Georgetown level. Lessee shall install sound attenuator and necessary duct work. The Lessor shall provide sound attenuator.

7. Water Supply for Standpipes.

Lessee shall install independent water supply piping (standpipes) through heated space for the fire protection system.

8. Elevator Cylinder Shaft (near stair P3).

The Lessee shall close openings in the garage deck at all levels covered with temporary roof and wood cover.

9. Crane Opening in Garage Deck.

Crane openings in the Garage slabs adjacent to column W9 HH and column W10 HH level 5 to OGT were kept open for the Lessee's convenience and shall be filled by Lessee.

10. Heated Plenum.

Insulated and heated plenum on the Edgemoor Level along column line BB beneath the structural slab of retail space above (Drawing A6-A) shall be installed by Lessee.

11. Enclosures and Temporary Roof at OGT Level (Drawing 8-A).

Enclosures for stair A2 column lines W5 and HH and for Stair P1 at column lines shall be constructed by Lessee. E11-CC were constructed by Lessor with temporary wood roofs, doors and louvers; Lessee shall replace and finish with permanent structure.

12. Shafts at OGT level (Drawing 8-A)

Shafts for elevators 5, 6, 7 east of column lines W5 and HH, the shaft near Stair P1 near column lines E9 and CC, and the shaft near Elevator 3 and 4, column lines E12 and CC were constructed by the Lessor with temporary roof and louvers. Elevators 5, 6 and 7 are part of the Residential/Retail Project. The Lessee shall modify, complete and finish these shafts with permanent wall, louvers and roofs per its requirements.

13. Enclosure at Stair P3 OGT Level (Drawing A-9).

Lessee shall complete and finish Stair P3 with a permanent structure to replace the temporary enclosure.

14. Brick Facade.

The brick facade around the perimeter walls, elevator lobbies and all the locations shown on the Lessee Drawings and Specifications not completed by Lessor shall be completed by Lessee.

15. Site Development.

Lessee shall complete the site development, streetscaping, and streetlighting shown on the Lessee Plans and Specifications.

16. PVC Conduits.

Lessee shall install two 2" pvc conduits on the west side of Old Georgetown Road; one for traffic signals and a second streetlights. Lessee shall provide streetlights, foundations and wire for all streetlights shown on Lessee Plans and Specifications.

17. Additional Duct Work for Garage.

Lessee shall supply and install all of the duct work, including fans and sound attenuator located north of Garage air plenum (column E7 and W7) and shared rooms E16, E17 and E18 (Drawing M5-A) in accordance with Lessee Plans and Specifications.

18. Light Fixture F19.

Lessee shall install and supply light fixture F19 shown at entrance to Oculus on drawing E8-A.

19. Light Fixture Passageways.

Lessee shall supply and construct any passageways required for the installation of the following light fixtures:

Passageways leading to stair A2 for each of five (5) 48" fluorescent fixtures;

Passageways leading to elevators 3 and 4 for each of the nine (9) F9 light fixtures (Drawing E-8A); and

Passageways at air shaft 28 feet left of line E12 and BB for the one (1) F15 light fixture.

20. Fire Control System.

Lessee shall supply and install central control station, fire alarm and life safety panes for Garage and Residential/Retail Building.

B. The Garage is presently in operation, meeting all the code requirements as a stand alone Garage. When Lessee constructs the structure above the Garage, it may have to make alterations, additions or deletions, etc to facilitate that development. Lessee shall be responsible for the cost of any such modifications of the Garage.

C. Lessee shall complete the following items. Upon satisfactory completion, the Lessor agrees to pay the following cost.

1. Five Thousand Dollars (\$5,000.00) for survey work performed in connection with the preparation of Exhibits to this Air Rights Lease.

2. Five Thousand Dollars (\$5,000.00) for Architectural and Engineering Services for the preparation of Exhibits to this Air Rights Lease and the Reciprocal Easement Agreement.

3. Fifty percent (50%) of the cost for the inspection report of the Existing Structure which Lessee procures pursuant to Section 4.12 hereof.

4. Actual cost incurred by Lessee of redesign and installation of Garage Fan System adjacent to Stair P5 and the Office Building.

5. Actual cost incurred by Lessee of redesign and replacement of hand rails in Garage stairways as directed by and approved by Lessor.

6. Actual cost incurred by Lessee associated with any work related to the Garage which is directed and approved by the Lessor.

OMNI Construction, Inc.  
EXHIBIT P  
Office Plans and Specifications  
June 12, 1995

1. Contract Drawings prepared by the Weihe Partnership as follows:

**I      ARCHITECTURAL DRAWINGS**

<u>DRAWING</u>	<u>TITLE</u>	<u>DATE</u>
	Title Sheet	May 27, 1995
OA11.0	Site Plan	May 27, 1995
OA11.1	Floor Plans	May 27, 1995
OA11.2	Floor Plans	
OA11.3	Reflected Ceiling Plans	May 27, 1995
OA11.4	Telephone and Electrical Layout Plans	May 27, 1995
OA11.5	Interior Finish Plan	May 27, 1995
OA12.1	Elevations	May 27, 1995
OA12.2	Elevation Details	May 27, 1995
OA12.3	Elevation Details	May 27, 1995
OA13.1	Lobby Plans/Elevations	May 27, 1995
OA13.2	Core Plans/Elevations	May 27, 1995
OA13.3	Interior Details	May 27, 1995
OA13.4	Interior Details	May 27, 1995
OA14.1	Stair #1/Elevator A Plans & Sections	May 27, 1995
	Stair #3 - Section	
OA14.2	Stair #2 - Plans & Sections	May 27, 1995
OA14.3	Garage Exhaust Tower Plans & Sections	May 27, 1995
OA15.1	Section Details	May 27, 1995
OA15.2	Section Details	May 27, 1995
OA15.3	Section Details	May 27, 1995
OA15.4	Plan Details	May 27, 1995
OA15.5	Plan Details	May 27, 1995
OA15.6	Plan Details	May 27, 1995
OA17.1	Partition Schedule	May 27, 1995
OA17.2	Finish Schedule	May 27, 1995
	Door Schedule	
	Notes	

OMNI Construction, Inc.  
EXHIBIT P  
Office Plans and Specifications  
June 12, 1995

II. STRUCTURAL DRAWINGS

<u>DRAWING</u>	<u>TITLE</u>	<u>DATE</u>
OS17	Framing Plan	May 27, 1995
OS18	Column Schedule, Typical Details & Typical Notes	May 27, 1995
OS19	Sections and Details	May 27, 1995
OS20	Sections and Details	May 27, 1995

III. MECHANICAL DRAWINGS

<u>DRAWING</u>	<u>TITLE</u>	<u>DATE</u>
OM-1	Edgemoor Lane Level Plan	May 27, 1995
OM-2	Old Georgetown Road Level Plan Plaza Level Plan	May 27, 1995
OM-3	Roof, Penthouse and Office Level Plans	May 27, 1995
OM-4	Mechanical Schedules	May 27, 1995
OM-5	Mechanical Details	May 27, 1995
OM-6	Mechanical Details	May 27, 1995
OM-7	Mechanical Symbols, Abbreviations & General Notes	May 27, 1995

OMNI Construction, Inc.  
EXHIBIT P  
Office Plans and Specifications  
June 12, 1995

IV. PLUMBING DRAWINGS

<u>DRAWING</u>	<u>TITLE</u>	<u>DATE</u>
OP-1	Symbols, Schedules, and Edgemore Lane Level Floor Plan	May 27, 1995
OP-2	Day Care/Plaza Level Floor Plan Old Georgetown Level Floor Plan	May 27, 1995
OP-3	Office/Upper Level Floor Plan Penthouse Floor Plan	May 27, 1995
OP-4	Riser Diagrams	May 27, 1995

V. ELECTRICAL DRAWINGS

<u>DRAWING</u>	<u>TITLE</u>	<u>DATE</u>
OE-1	Symbols, Abbreviations, and General Notes	May 27, 1995
OE-2	Edgemoor Lane Level Plan - (Lighting and Power)	May 27, 1995
OE-3	Old Georgetown Road Level and Plaza/Daycare Level Plans - (Lighting)	May 27, 1995
OE-4	Old Georgetown Road Level and Plaza/Daycare Level Plans - (Power)	May 27, 1995
OE-5	Office/Upper Level and Roof/Penthouse Plans - (Power)	May 27, 1995
OE-6	Office/Upper Level and Roof/Penthouse Plans - (Power)	May 27, 1995
OE-7	Power Riser and Panel Schedules	May 27, 1995
OE-8	Fire Alarm and Telephone Risers	May 27, 1995

OMNI Construction, Inc.  
EXHIBIT P  
Office Plans and Specifications  
June 12, 1995

2. Specifications prepared by the Weihe Partnership as follows:

I. Specifications for Metropolitan Park Office/Daycare Building, including Sections

01440 - Contractor Quality Control  
01900 - Color Schedule dated May 27, 1995.  
16995 - Commissioning of Electrical System.  
15995 - Commissioning of HVAC System.

II. Outline Specification Metropolitan Park Garage 49 Office Building Project dated October 7, 1994.

III. General Conditions of the Contract for Construction and Supplemental General Conditions.

IV. Minority Owned Business Addendum to General Conditions of Contract between County and Contractor.

3. Addenda as follows:

	<u>Title</u>	<u>Date</u>
I.	Addendum #7	May 27, 1995

4. The Weihe Partnership letters as follows:

- I. Metropolitan Park Office/Daycare Building dated October 31, 1994.
- II. Metropolitan Park Office/Daycare Building dated November 2, 1994.
- III. Metropolitan Park Office/Daycare Building dated December 21, 1994.
- IV. Metropolitan Park Office/Daycare Building dated January 3, 1994.



# LIST OF DRAWINGS FOR PEDESTRIAN BRIDGES

Edgemoor Lane Pedestrian Bridge  
Old Georgetown Road Pedestrian Bridge

## Edgemoor Lane Pedestrian Bridge

Drawings produced by Delon, Hampton and Associates, Chartered

	<u>Title</u>	<u>Status</u>	<u>Date</u>
C-1	SitePlan/Traffic Plan	As-Built	12/31/94
A-1	Plans	"	"
A-2	Elevation and Plan	"	"
A-3	Sections	"	"
A-4	Sections and Details	"	"
S-1	Notes	"	"
S-2	Sections and Details	"	"
E-1	Lighting Plan	"	"
E-2	Fixture Schedule and Control Schematic	"	"

## Old Georgetown Road Pedestrian Bridge

Drawings produced by Smislova, Kehnemui and Associates, P.A.

	<u>Title</u>	<u>Status</u>	<u>Date</u>
C-1	Site Plan		2/95
C-2	Traffic Control Details & Notes		2/95
A-1	Architectural Bridge Plan	Progress Drawing	
A-2	Architectural Bridge Elevations	"	
A-3	Architectural Bridge Sections	"	
A-4	Architectural Bridge Details	"	
A-5	Architectural Bridge Details	"	
S-1	Structural Bridge Elevation and Plans	"	4/94
S-2	Structural Typical Truss, Geometry and Sections	"	4/94
S-3	Structural Sections, Details and Structural Notes	"	4/94
P-1	Plumbing Plan & Detail	"	6/7/95
E-1	Electrical Lighting Plan & Details	"	6/7/95

EXHIBIT R

COLLATERAL ASSIGNMENT OF PLANS AND AGREEMENTS

THIS COLLATERAL ASSIGNMENT OF PLANS AND AGREEMENTS (the "Collateral Assignment") is made this \_\_\_\_\_ day of \_\_\_\_\_, 1995, by the Housing Opportunities Commission of Montgomery County (the "Assignor"), to and for the benefit of Montgomery County, Maryland (the "Assignee").

WHEREAS, the Assignor and Assignee have entered into an Air Rights Lease (the "Lease"), of even date herewith, pursuant to which the Assignor has agreed to design and construct, at its own cost and expense a (the "Improvements") in a portion of the airspace above, upon and along the sides of a parking garage owned by the Assignee;

WHEREAS, the Assignee is willing to permit the Assignor to construct such Improvements only upon the condition that the obligations of the Assignor under the Lease be secured by, among other things, a collateral assignment of certain plans and agreements in order to permit the Assignee to cause the completion of such Improvements in the event of a default by the Assignor under the Lease;

WHEREAS, the Assignor desires to make such assignment to the Assignee as additional security for the obligations of the Assignor under the Lease; and

WHEREAS, all capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to them in or pursuant to the Lease.

NOW, THEREFORE, in consideration of the foregoing and of the

mutual covenants and agreements set forth herein and in the Lease, the Assignor, as additional security for its obligations under the Lease, hereby transfers, sets over and assigns to the Assignee all of the Assignor's right, title and interest in and to, and all of its remedies, but none of its obligations, under, (a) the Plans and Specifications, all development work and materials prepared in connection with the design and construction of the Improvements or any part thereof, including, without limitation, all surveys, all engineering, drainage, traffic and soil tests, all utility, water, sewer, gas, electrical and telephone approvals, taps and agreements and fees, all working drawings, plans and specifications, and all zoning materials and approvals, together with all additions thereto, modifications thereof and substitutions for any of the foregoing, whether now or hereafter existing or in effect (the Plans and Specifications and all such development work and materials, together with all such additions thereto, modifications thereof and substitutions therefor, being hereinafter collectively referred to as the "Plans"), and (b) all agreements, leases or contracts now or hereafter in effect between or among the Assignor and any other party or parties relating to the construction, improvement or lease of the Improvements, or any part thereof, including, without limitation, all security deposits, profits and revenue now due to the Assignor or hereafter to become due, together with all additions to, products, proceeds and modifications of and substitutions for any of the foregoing (all

such agreements, leases and contracts, together with all such additions to, modifications of and substitutions for any of the foregoing, being hereinafter individually referred to as an "Agreement" and collectively referred to as the "Agreements"), upon the following terms and conditions:

1. Neither this Collateral Assignment nor any action taken or failed to be taken by the Assignee shall constitute an assumption by the Assignee of any obligations under the Plans or under any Agreement, and the Assignor shall continue to be liable for all obligations of the Assignor thereunder. The Assignor hereby agrees to perform all of its obligations thereunder.

2. The Assignor represents and warrants that it has not assigned, conveyed, transferred, pledged, sold or otherwise disposed, and covenants that it will not, without the prior written consent of the Assignee, assign, convey, transfer, pledge, sell or otherwise dispose, of all or any part of its right, title or interest in and to, or remedies under, any Plans or Agreement.

3. The Assignee shall have the right (but not the obligation) at any time to take in its name or in the name of the Assignor such action as the Assignee may at anytime reasonably determine to be necessary or advisable to cure any default or Agreement to protect the rights of the Assignor or the Assignee thereunder.

4. The Assignor covenants that, promptly after approval by the Assignee of each Agreement, the Assignor shall deliver to the

Assignee a consent to the assignment of such Agreement executed by the contractor thereunder, substantially in the form attached hereto.

5. The Assignor hereby irrevocably constitutes and appoints the Assignee as the Assignor's attorney-in-fact, in the Assignor's name or in the Assignee's name, to enforce all rights of the Assignor under or with respect to any Plans or any Agreement. Such appointment of the Assignee as the Assignor's attorney-in-fact is effective as of the date hereof, but the Assignee agrees not to exercise its rights pursuant to this Section 4 prior to the occurrence of an Event of Default under the Lease.

6. Prior to the occurrence of an Event of Default under the Lease, the Assignor shall have the right to exercise its rights under and with respect to the Plans and the Agreements. The Assignee shall be entitled to exercise any and all of its rights hereunder only upon the occurrence of such Event of Default, and the Assignor hereby authorizes and directs all third parties to perform their respective obligations under or in connection with the Plans and Agreements and to complete their performance thereunder for the benefit of the Assignee upon the occurrence of any such Event of Default.

7. Subject to the terms and conditions of the Lease, the Assignor shall not, without the prior written consent of the Assignee, modify or amend any Plans, or modify, amend or terminate any Agreement.

8. This Collateral Assignment shall be binding upon the Assignor and its heirs, legal representatives, successors and assigns, and shall inure to the benefit of the Assignee, its successors and assigns.

9. This Collateral Agreement shall be governed by and construed in accordance with the laws of the State of Maryland (but not including the choice of law rules thereof).

IN WITNESS WHEREOF, the Assignor had caused this Collateral Assignment to be duly executed on its behalf as of the day and year first set forth hereinabove.

ASSIGNOR:

HOUSING OPPORTUNITIES COMMISSION  
OF MONTGOMERY COUNTY

By: \_\_\_\_\_

Bernard L. Tetreault  
Executive Director

ASSIGNEE:

MONTGOMERY COUNTY, MARYLAND.

By: \_\_\_\_\_

Douglas M. Duncan  
County Executive

## CONSENT AND AGREEMENT OF CONTRACTOR

(Attached to Collateral Assignment of Plans and Agreements from \_\_\_\_\_)

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, \_\_\_\_\_ (the "Contractor"), the Contractor that executed or will execute one or more of the Agreements referred to in the foregoing Collateral Assignment, hereby consents to and agrees to be bound by all provisions of such Collateral Assignment. The terms used in this Consent and Agreement shall have the same meanings specified in the Collateral Assignment. The Contractor further agrees with and represents and warrants to the Assignee as follows:

1. Upon receipt of written notice from the Assignee that an Event of Default has occurred under the Lease, the Contractor shall continue performance on the Assignee's behalf under the Agreements to which the Contractor is a party in accordance with the terms thereof, provided that the Contractor shall be reimbursed in accordance with such Agreements for all work, labor and materials rendered on the Assignee's behalf following such request.

2. If the Assignor defaults in making any payment or in performing any other obligation under such Agreements, the Contractor shall promptly give the Assignee written notice thereof.

3. Subject to the terms and conditions of the Lease, the Contractor shall not perform work under any change order or agree

to any amendment, supplement or modification of such Agreements without first securing the Assignee's written consent thereto, which consent shall not constitute an assumption by the Assignee of any obligations under such Agreements.

4. The Contractor acknowledges that the Assignee is not obligated to the Contractor under the Lease. The Contractor is executing this Consent and Agreement to induce the Assignee to permit construction of the Improvements under the Lease, and the Contractor understands that the Assignee would not do so but for the Contractor's execution and delivery of this Consent and Agreement.

EXECUTED as of \_\_\_\_\_.

CONTRACTOR:

\_\_\_\_\_



CONSENT AND AGREEMENT OF ARCHITECT/ENGINEER

(Attached to Collateral Assignment of Plans and Agreements from \_\_\_\_\_)

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, \_\_\_\_\_, the architects/engineers that executed or will execute one or more of the Agreements referred to in the foregoing Collateral Assignment (the "Architect/Engineer"), hereby consents to and agrees to be used in this Consent and Agreement shall have the same meanings specified in the Collateral Assignment. The Architect/Engineer further agrees with and represents and warrants to the Assignee as follows:

1. Upon receipt of written notice from the Assignee that an Event of Default has occurred under the Lease, the Architect/Engineer shall continue performance on the Assignee's behalf under the Agreements to which the Architect/Engineer is a party in accordance with the terms thereof, provided that the Architect/Engineer shall be reimbursed in accordance with such Agreements for all work, labor, and materials rendered on the Assignee's behalf following such request.

2. If the Assignor defaults in making any payment or in performing any other obligation under such Agreements, the Architect/Engineer shall promptly give the Assignee written notice thereof.

3. Subject to the terms and conditions of the Lease, the Architect/Engineer shall not perform work under any change order or agree to any amendment, supplement or modification of such

Agreements without first securing the Assignee's written consent thereto, which consent shall not constitute an assumption by the Assignee of any obligations under such Agreements.

4. The Architect/Engineer acknowledges that the Assignee is not obligated to the Architect/Engineer under the Lease. The Architect/Engineer is executing this Consent and Agreement to induce the Assignee to permit construction of the Improvements under the Lease, and the Architect/Engineer understands that the Assignee would not do so but for the Architect/Engineer's execution and delivery of this Consent and Agreement.

EXECUTED as of \_\_\_\_\_.

ARCHITECT/ENGINEER

\_\_\_\_\_

CONSENT AND AGREEMENT OF ENGINEER  
(Attached to Collateral Assignment of Plans and Agreements  
\_\_\_\_\_)

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, \_\_\_\_\_, the engineers that executed or will execute one or more of the Agreements referred to in the foregoing Collateral Assignment (the "Engineer"), hereby consents to and agrees to be bound by all provisions of such Collateral Agreement. The terms used in this Consent and Agreement shall have the same meanings specified in the Collateral Assignment. The Engineer further agrees with and represents and warrants to the Assignee as follows:

1. Upon receipt of written notice from the Assignee that an Event of Default has occurred under the Lease, the Engineer shall continue performance on the Assignee's behalf under the Agreements to which the Engineer is a party in accordance with the terms thereof, provided that the Engineer shall be reimbursed in accordance with such Agreements for all work, labor, and materials rendered on Assignee's behalf following such request.
2. If the Assignor defaults in making any payment or in performing any other obligation under such Agreements, the Engineer shall promptly give the Assignee written notice thereof.
3. Subject to the terms and conditions of the Lease, the Engineer shall not perform work under any change order under such Agreements or agree to any amendment, supplement or modification of such Agreements without first securing the Assignee's written

by the Assignee of any obligations under such Agreements.

4. The Engineer acknowledges that the Assignee is not obligated to the Engineer under the Lease. The Engineer is executing this Consent and Agreement to induce the Assignee to permit construction of the Improvements under the Lease, and the Engineer understands that the Assignee would not do so but for the Engineer's execution and delivery of this Consent and Agreement.

EXECUTED as of \_\_\_\_\_.

ENGINEER:

\_\_\_\_\_

arl\engr.agr

EXHIBIT S

6/20/95

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
MONTGOMERY COUNTY  
AND  
MONTGOMERY COUNTY HOUSING OPPORTUNITIES COMMISSION  
FOR  
THE METROPOLITAN OFFICE BUILDING AND  
RESIDENTIAL DEVELOPMENT

OFFICE BUILDING AND RESIDENTIAL DEVELOPMENT

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the MOU) dated this \_\_\_\_\_ day of \_\_\_\_\_, 1995 is entered into by and between Montgomery County Maryland, a political subdivision of the State of Maryland (Montgomery County), acting through its Department of Facilities and Services (DFS), and the Housing Opportunities Commission of Montgomery County (HOC), a housing authority established under the provisions of Article 44A of the Annotated Code of Maryland.

RECITALS

WHEREAS, the parties wish to act jointly for the purpose of constructing a facility to be known as The Metropolitan to house a residential complex to be owned and operated by HOC and a County building to be owned and operated by Montgomery County.

WHEREAS the scope of the HOC and County project and requirements for operations and maintenance are contained in the Air Rights Lease.

WHEREAS, HOC has advertised an invitation to bid (IFB) through their regular procurement procedures for a general contractor (the General Contractor) to construct the project, and Omni Construction Company has been declared the low bidder by HOC.

WHEREAS the County's procurement regulations allow the County to enter into a construction contract using bids resulting from the HOC IFB.

WHEREAS the scope of the County's project contained in the IFB is not the same as the scope contained in the Air Rights Lease.

WHEREAS the low bid exceeded budget estimate.

WHEREAS, the parties each entered into separate contracts with Weihe Partnership for architectural/engineering services in connection with the design of their respective projects.

WHEREAS, HOC has entered into a contract with Warner Construction Consultants (Warner) for construction management services.

NOW, THEREFORE, Montgomery County and HOC do hereby agree as follows:

1. HOC and Montgomery County will enter into separate contracts with Omni Construction Company for construction of their respective projects. It is anticipated that each party will execute contracts on or before July 1, 1995; however the County will not enter into contract with Omni until (1) HOC has signed a construction contract for construction of the residential/retail project and (2) Omni meets County procurement requirements e.g. bonding, insurance.

2. The Parties shall cooperate fully with one another to accomplish timely and successful completion of the project. Each party shall appoint a project management staff to manage construction. The project management staff shall meet jointly with each other and the Project Architect as detailed in paragraph 5 below in order to review progress and outstanding issues relating to 1) the office project, 2) the plaza and other common areas, and 3) The Metropolitan. The County's Project Manager and the construction supervisor of HOC are designated as the heads of the respective project management staffs.
3. Day Care Play Lot - HOC will design the play lot that will meet the license requirements of the day care. The lot will include separate play areas for pre-schoolers and infants/toddlers. County project includes surfacing the play lot and the labor for installing the play equipment. HOC's project will provide play equipment required to license the day care and perimeter fencing.
4. The contract time for each party's construction contract will be 15 months.
5. Construction Management. Construction management will be carried out as follows:
  - a. Construction Consulting Services. HOC has hired Warner to provide construction consulting services for both projects in accordance with contract, a copy of which has been made available to DFS. This work will be performed without cost to DFS or liability of HOC, provided, DFS will be responsible for any payments due Warner as a result of changes in scope or level of effort requested by DFS.
  - b. On-Site Clerk. Warner will provide on site clerk to monitor progress of both projects in accordance with their contract with HOC.
  - c. Regular Meetings. Parties will attend a regularly scheduled meeting every two weeks to meet with contractor, Warner, and the architects to review and discuss:
    - i. Construction schedules prepared by the contractor and any modifications thereto;
    - ii. Construction Draws;
    - iii. Change Orders;
    - iv. Claims for extension of time and/or extras;

- v. Construction progress.
- d. Special Meetings. Parties will attend such special meetings as shall be reasonably required to discuss progress of work, claims made by contractor or claims which HOC or the County may have against the contractor.
- e. Inspection and Testing.
  - i. The parties will be responsible for payment for the inspection and testing of the work for their respective projects. HOC will solicit the inspection and testing consultant.
  - ii. The respective parties will be responsible for compliance with Montgomery County Complex Structure regulations for their respective projects.
- 6. Either party may initiate a change proposal or change directive affecting only its portion of the Project so long as the General Contractor agrees, without reservation, that there shall be no extension of the contract time as the result thereof. The party initiating such a change proposal or change directive shall be solely responsible to the contractor for the cost thereof. The party initiating the change proposal shall give notice to the other party.
- 7. Any change proposal or change directive initiated by either party that would either affect both the HOC's and the County's portions of the project or result in an extension to the construction period shall be initiated only after coordination of the parties and impact of the change has been assessed. The party initiating such a change proposal or change directive shall be solely responsible to the contractor for the cost thereof.
- 8. The contractor's construction schedule for the office project will be provided to HOC upon submission to the County by the general contractor. The event schedule will include the concrete floor and ceiling of the Loading Dock, Retail and Service Corridor areas of the Old Georgetown Road level of the office project. Upon completion of the aforesaid floor and ceilings, the County agrees that HOC and its contractors and the contractor of the tenant of the retail space in the Office Building shall, on a schedule approval by the County general contractor, have access to the Loading Dock, Retail and Service Corridor areas of the office project to complete construction of those areas. HOC agrees such construction shall be conducted so as not to disrupt the work of the County's contractor.



9. The following items in Omni's bid price will in effect be financed by HOC to account for HOC's project elements as part of the County's project.

Loading Dock	\$40,000
Exterior wall facade of Loading Dock	16,700
Masonry wall separating the Loading Dock and Service Corridor from the Garage	10,296
Masonry Wall of the Retail Space	1,170
Exterior Wall and Storefront of the Retail Space	11,320
South Masonry Wall of the Loading Dock Stair	7,020
HOC Overcharge for Street (if in County contract)	<u>8,642</u>
Total Estimate	\$95,148

Additional items serving the HOC's project elements that have been added to County's project will be tabulated by OMNI Construction, Inc. and financed by HOC. These items shown on County's project documents include:

- a. Recycling Room Ventilation Ductwork (Intake and Exhaust Duct) Modification.
  - b. Recycling Room Unit Heater and Recycling Corridor Wall Heater.
  - c. New Corridor and Exit Door serving the Recycling Room.
  - d. Fire Dampers and Openings added to the rated partition serving the Recycling Corridor.
  - e. New Electric Conduit serving the Retail Space to HOC's Retail Trough.
  - f. New lights including emergency lighting, power outlets and equipment electrical connections serving the Recycling Room.
  - g. Plumbing Lines (Sanitary/Vent/Cold Water) for the Retail rough-in.
10. The County agrees to reimburse HOC up to \$115,000 for the cost of any architecture and engineering services or expenses incurred in connection with the Office/Day Care project including the prorated cost of general design, landscape architecture, civil engineering, as well as the

direct cost of the several office building and day care building designs and the direct costs of redesigning the plaza to accommodate moving the play lot from the roof of the day care building to the plaza to accommodate the elimination of the separate day care facility and moving the day care facility to the office building. County shall make payment within thirty (30) days of receipt of copies of a voucher and supporting billings and completion of verification/audit of vouchers; provided however \$95,148 and any costs from items added by the HOC project elements will be deducted from the payment to finance HOC's obligation listed in paragraph 9 above. HOC, in term, will reimburse the County if a credit is due.

11. The County will reimburse up to \$95,000 for reasonable administrative expenditures incurred by HOC in the project, upon completion of construction of the County building, subject to available funds.
12. The parties agree that this Memorandum of Understanding was drafted jointly by the parties and it shall not be construed strictly against one or the other as the drafter thereof.

SIGNATURE PAGE FOLLOWS

FCE:jnt\METROPK.MOU

IN WITNESS WHEREOF, this Memorandum of Understanding has been duly executed by all parties hereto, or the parties hereto have caused this Memorandum of Understanding to be duly executed on their behalf, as of the date first set forth hereinabove.

MONTGOMERY COUNTY MARYLAND

\_\_\_\_\_  
Bruce F. Romer  
Chief Administrative Officer

\_\_\_\_\_  
Date

RECOMMENDED BY:

\_\_\_\_\_  
Jack Houghton, Acting Director  
Department of Facilities and Services

\_\_\_\_\_  
Date

APPROVED AS TO FORM AND LEGALITY  
OFFICE OF THE COUNTY ATTORNEY:

\_\_\_\_\_  
Christopher Hitchens  
Associate County Attorney

\_\_\_\_\_  
Date

THE HOUSING OPPORTUNITIES COMMISSION OF  
MONTGOMERY COUNTY

\_\_\_\_\_  
Bernie Tetreault, Executive Director

\_\_\_\_\_  
Date

RECOMMENDED BY:

\_\_\_\_\_  
Melvin J. Adams, Assistant Director

\_\_\_\_\_  
Date

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
Date

EXHIBIT T

AGREEMENT FOR PAYMENT IN LIEU OF TAXES  
BY AND BETWEEN MONTGOMERY COUNTY, MARYLAND,  
AND THE HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
by and between Montgomery County, Maryland, a municipal  
corporation (the "County") and the Housing Opportunities  
Commission of Montgomery County, a body politic and corporate  
established pursuant to the provisions of Article 44A of the  
Annotated Code of Maryland ("HOC").

WHEREAS, HOC is a housing authority established pursuant to  
Article 44A of the Annotated Code of Maryland charged with the  
responsibility of providing housing for income qualified persons  
in Montgomery County; and

WHEREAS, Article 44A of the Annotated Code of Maryland  
provides that property of a housing authority is tax exempt; and

WHEREAS, Section 7-215 of the Tax-Property Article of the  
Annotated Code of Maryland provides that real property owned by a  
housing authority is entitled to an exemption from real estate  
taxation upon approval of an application for such treatment and  
the execution of an agreement with the local taxing authority  
("PILOT Agreement"); and

WHEREAS, the County is the local taxing authority; and

WHEREAS, the County's Department of Transportation has  
constructed a parking garage known as Garage 49 in the Bethesda  
Central Business District; and

WHEREAS, the County is desirous of utilizing the air rights  
above Garage 49 to permit construction of a complex of

residential facilities, retail shopping, offices, a child care center and public amenities; and

WHEREAS, HOC is willing to serve as the developer of the air rights to serve its function of providing housing for income qualified persons; and

WHEREAS, HOC and the County have entered into an Air Rights Lease dated the \_\_\_\_ day of \_\_\_\_\_, 199\_ (the "Air Rights Lease"), whereby HOC became a long term lessee of the air rights above Garage 49 on which it will develop a twelve (12) story residential rental facility (the "Residential/Parking Operations"), limited retail shopping area (the "Retail Leasing Operations") and related facilities (collectively the "Residential/Retail Building"); and

WHEREAS, the Air Rights Lease contemplates that at least thirty percent (30%) of the rental units in the Residential/Retail Building will be available for occupancy by persons whose incomes average thirty percent (30%) of the median income for the Washington Standard Metropolitan Statistical Area in compliance with the obligations and responsibilities imposed upon HOC by Article 44A of the Annotated Code of Maryland; and

WHEREAS, in order to provide additional funding for the construction of the Residential/Retail Building, HOC intends to enter into a limited partnership agreement in which HOC is the general partner for the purpose of owning, maintaining, and operating a portion of the residential units in the Residential/Retail Building in compliance with Section 42 of the

Internal Revenue Code of 1986 (the "Partnership") to obtain low income housing tax credits; and

WHEREAS, upon completion of construction, HOC intends to create a condominium of the Residential/Retail Building creating three hundred eight (308) residential facilities, retail facilities and related common elements (the "Condominium") by recordation of a Declaration, Bylaws and Condominium Plat (the "Condominium Documents") among the Land Records of Montgomery County, Maryland; and

WHEREAS, HOC will transfer ownership of ninety-two (92) residential units in the Condominium to the Partnership subject to the Air Rights Lease and retain ownership of the remainder of the units; and

WHEREAS, HOC and the Partnership shall operate the residential units in the Condominium as a rental facility; and

WHEREAS, the Air Rights Lease provides for its assignment to the Council of Unit Owners of the Condominium upon completion of construction and recordation of the Condominium Documents; and

WHEREAS, HOC will issue or has issued its 1995 Housing Development Bonds, Issues A, B and C (the "Bonds") pursuant to a resolution (the "Bond Resolution") and a Trust Indenture. The County Guaranteed Bonds are guaranteed by Montgomery County pursuant to §20-32 et seq. of the Montgomery County Code 1984, as amended; and

WHEREAS, the Bonds have been issued or will be issued to provide funds for the construction financing of the

Residential/Retail Building to be constructed under the provisions of the Air Rights Lease; and

WHEREAS, HOC will execute 2 Notes in the aggregate principal amount of Thirty-Three Million Nine Hundred Five Thousand Dollars (\$33,905,000.00) evidencing its obligation to repay the funds for the development provided by the Bonds (the "Loan") secured by 2 Leasehold Deeds of Trust (the "Deeds of Trust") with lien parity for the benefit of the Trustee for the Bonds; and

WHEREAS, upon completion of the construction, recordation of the Condominium Documents and compliance with the Partnership Agreement, it is intended that permanent financing will be provided by obtaining mortgage insurance through the FHA Risk Sharing Program which will substitute for the guarantee provided by Montgomery County pursuant to §20-32 et seq. of the Montgomery County Code for the Bonds and ninety-two (92) condominium units to be transferred to the Partnership will be collateral for one Deed of Trust and the remainder of the condominium units shall serve as collateral for the other Deed of Trust; and

WHEREAS, under Section 7-503(a) of the Tax-Property Article of the Annotated Code of Maryland, a limited partnership having as its managing partner a housing authority and engaged in the construction, operation or management of a housing project for low income families may be eligible under certain conditions to enter into a PILOT Agreement; and

WHEREAS, HOC intends that the Partnership will qualify in all respects under the provisions of Section 7-503 to enter into

a PILOT Agreement for the Residential/Retail Building; and

WHEREAS, the parties desire to enter into an agreement to provide for payment in lieu of taxes on the real property which is subject to the Air Rights Lease.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions hereof the parties agree as follows:

1. Recognition Of PILOT A payment in lieu of taxes ("PILOT") in recognition of the contribution provided by the County for public services and facilities to the Residential/Retail Building in addition to those which are obligations of the County under the Air Rights Lease shall be paid by HOC or HOC and the Partnership, as the case may be, in accordance with the terms hereof. The PILOT payment, if any, shall be paid from Remaining Cash Flow before Rent under the Air Rights Lease. The County agrees to the assignment of the rights granted to HOC hereunder to the Partnership as to the units it may own in the Condominium upon written certification from HOC that a transfer of such units has occurred and that the Partnership is in compliance with paragraph 7 hereof.

2. Definitions All capitalized terms in this Agreement not otherwise defined herein shall have the same meaning as that identified in the Air Rights Lease.

3. Governing Law This Agreement, the rights and obligations of the parties hereto and any claims or disputes thereto shall be governed by and construed in accordance with the laws of the State of Maryland.



4. Calculation of PILOT HOC or HOC and the Partnership, as the case may be, shall pay all state taxes (unless separately waived or abated by the State), front foot benefit charges and other applicable charges assessed against the Lessee of the air rights under the Air Rights Lease.

a. Annually, HOC will provide the County with detailed audited financial statements regarding operations of the Residential/Parking Operations and the Retail Leasing Operations on or before September 15 of each fiscal year as provided in the Air Rights Lease.

b. A separate PILOT will be calculated as described below for, (1) the Residential/Parking Operations and (2) the Retail Leasing Operations.

c. Any PILOT payable will be made with the delivery of the audited financial statements.

d. The PILOT will be calculated in the first year in which there is RCF as defined in paragraph 3.06 of the Air Rights Lease using the amounts stated in the aforesaid audited financial statements as follows:

First, Net Operating Income (NOI) from the combined Residential/Parking Operations of the Partnership and HOC shall be calculated as follows:

Operating Income (OI) less Operating Expense (OE) less the PILOT for the immediately preceding year, if any less the payment of Remaining Cash Flow, to the County for the immediately preceding year, if any = NOI

$\text{NOI} \div .09 = \text{Market Value (MV)}$

$\text{MV} \times .40 = \text{Assessed Value (AV)}$

$\text{AV} \times \text{the Assessment Rate} \times \text{the Market Ratio (MR)} \text{ (as defined hereinafter)} = \text{Residential/Parking Share}$

Second, Net Operating Income from the Retail Leasing Operations shall be calculated as follows:

OI less OE less the PILOT for the immediately preceding year, if any less the payment of Remaining Cash Flow, to the County for the immediately preceding year, if any = NOI

$\text{NOI} \div .09 = \text{Market Value (MV)}$

$\text{MV} \times .40 = \text{Assessed Value (AV)}$

$\text{AV} \times \text{the Assessment Rate} = \text{Retail Leasing Share.}$

Third, the Residential/Parking Share and the Retail Leasing Share shall be added together to determine the PILOT.

e. The first PILOT calculated pursuant to paragraph 2(d) shall apply for the five (5) years following the first payment hereunder and shall be paid within thirty (30) days after submission of the financial statements by HOC.

f. On the fifth anniversary of the first calculation hereunder, and on each subsequent fifth anniversary, the PILOT shall be recalculated using the same formula as above substituting the Operating Income and Operating Expenses shown on the most recent audited financial statement provided by HOC and the most recent Assessment Rate determined by County. Each PILOT shall apply for a five (5) year period.

g. (i) For purposes of this Agreement, the term "Assessment Rate" shall mean the Tax Rate for the Tax Class applicable to the Demised Premises established by Montgomery County for the year in which the payment is to be made less the State tax and adjustment, if any, for the Parking Lot District Tax as provided below.

(ii) HOC has submitted an application to the County for exemption from the Parking Lot District Tax for the Residential/Retail Building which has been approved for consideration under Chapter 60 of the Montgomery County Code. HOC will resubmit such application for exemption as required during the term of this Agreement.

(iii) For the purpose of this Agreement, the term Market Ratio shall mean the fraction the numerator of which is the number of market rate housing units in the Residential/Parking Operations and the denominator is the total number of housing units in the Residential/Parking Operations.

(iv) Payments to the County under this Agreement shall not be considered a property tax on real property as identified in Section 14-805 of the Tax-Property Article of the Annotated Code of Maryland, and shall be subordinate in all respects to the payment of debt service under the Note and Deed of Trust as provided in the Air Rights Lease.

5. Right to Appeal Nothing in this Agreement shall be construed to deny to HOC or the Partnership its right of appeal and other administrative relief, if any, as a property owner

under Section 8-401 et seq. of the Tax-Property Article of the Annotated Code of Maryland.

6. Term of PILOT as to HOC HOC shall have the right to continue making the payments calculated in accordance with this Agreement as to units pursuant to the Air Right Lease or units it owns in the Condominium, as the case may be, provided that it continues to be in compliance with the following:

(a) HOC or its successor continues to be the housing authority for Montgomery County as defined in Article 44A of the Annotated Code of Maryland.

(b) Compliance with the requirements for occupancy by low and moderate income persons established in the Air Rights Lease.

(c) HOC or its successor, as the housing authority for Montgomery County, is the lessee under the terms of the Air Rights Lease or is the owner of two hundred sixteen (216) units in the Condominium subject to the Air Rights Lease.

7. Conditions of PILOT for Partnership The continued right of the Partnership under this Agreement to make the payments calculated in accordance herewith shall be conditioned upon compliance at all times during the term of this Agreement with the following:

(a) Compliance by the Partnership, during the term of this Agreement, with Section 42 of the Internal Revenue Code, as now or hereafter amended, with all applicable regulations and rulings thereunder.

(b) Compliance with the requirements for occupancy by low and moderate income persons established in the Air Rights Lease.

(c) HOC or its successor as housing authority for Montgomery County shall serve as the sole managing general partner of the Partnership.

(d) The Partnership is the owner of the units in the Condominium for which a PILOT payment is to be made.

(e) The Partnership shall notify the Chief, Division of Revenue for Montgomery County (the "Compliance Officer") of the addition, sale or other transfer, assignment or other termination of any unit in the Condominium as an eligible property not less than thirty (30) days prior to the effective date of any such event.

(f) The Partnership complies in all respects with the provisions of Section 7-503.

8. Annual Certification by HOC Annually, HOC and the Partnership shall certify that:

(a) The occupancy of the Residential/Retail Building is in conformity with the provisions of Article 44A of the Annotated Code of Maryland and Chapter 25A and 25B of the Montgomery County Code.

(b) All residential units which are not market rate housing units in the Residential/Retail Building are occupied or available to persons of low and moderate income that qualify for Opportunity Housing as established by the County

Executive by regulation from time to time.

9. Examination of Books and Records The County shall be permitted to examine the books and records of HOC and the Partnership for compliance herewith pursuant to the terms of the Air Rights Lease.

10. Termination by County of HOC Units This Agreement may be terminated by the County as of June 30 of any tax year upon thirty (30) days written notice to HOC upon the happening of any of the following events:

(a) The County is no longer authorized to extend to HOC the benefits of this Agreement due to a repeal or a substantial amendment of the applicable sections of the Annotated Code of Maryland.

(b) Any breach or default by HOC under the terms of this Agreement.

(c) The sale, transfer, or assignment of the rights of HOC as owner of its units in the Condominium subject to the Air Rights Lease to an entity that is not the housing authority for Montgomery County or is not authorized by law to enter into a PILOT Agreement.

11. Termination by the County of Partnership Units This Agreement may be terminated by the County as of June 30 of any tax year, upon thirty (30) days' written notice to HOC as general partner of the Partnership, upon the happening of any of the following events:

(a) The County is no longer authorized to extend to

the Partnership the benefits of this Agreement, as a result of the repeal or substantial amendment of the applicable sections of the Annotated Code of Maryland;

(b) An event of bankruptcy as defined in the Partnership's Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement");

(c) Any breach of default by the Partnership of any of the provisions of this Agreement;

(d) The distribution of cash at any time to the limited partner, except under the credit adjuster and recapture provisions of the Partnership Agreement;

(e) The withdrawal or removal of HOC as sole managing general partner, except if such withdrawal is consented to by the limited partner and Montgomery County, and the substitute general partner is the duly designated successor to HOC as the housing authority for Montgomery County under Article 44 of the Annotated Code of Maryland; and

(f) The sale, transfer or assignment of the rights of the Partnership as owner of the Units in the Condominium subject to the Air Rights Lease to an entity that is not authorized by law to enter into a PILOT Agreement.

12. Amendment This Agreement may not be amended, altered or modified except by an instrument in writing duly executed by the parties hereto.

13. Entire Agreement This Agreement sets forth the entire agreement between the parties and there is no verbal or other

written agreement regarding this matter between them.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and their respective seals to be affixed and attested as of the date and year first above written.

ATTEST

HOUSING OPPORTUNITIES COMMISSION  
OF MONTGOMERY COUNTY

\_\_\_\_\_

By: \_\_\_\_\_  
Bernard L. Tetreault  
Executive Director

MONTGOMERY COUNTY, MARYLAND

\_\_\_\_\_

By: \_\_\_\_\_  
Douglas M. Duncan  
County Executive

RECOMMENDED FOR APPROVAL:

By: \_\_\_\_\_  
Timothy Firestine  
Director, Department of Finance

APPROVED AS TO FORM AND LEGALITY:

By: \_\_\_\_\_



STATE OF MARYLAND  
COUNTY OF MONTGOMERY

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 1995, before me, the subscriber, a Notary Public in and for the aforesaid state and county, personally appeared Bernard L. Tetreault, Executive Director, and did acknowledge that he executed the foregoing Agreement on behalf of the Housing Opportunities Commission of Montgomery County, Maryland for the purpose therein contained, and further acknowledged the foregoing Agreement to be the act of the Housing Opportunities Commission of Montgomery County, Maryland.

As witness my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

On this \_\_\_\_\_ day of \_\_\_\_\_, 1995, before me, the undersigned officer, personally appeared \_\_\_\_\_ of Montgomery County, Maryland, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he as such \_\_\_\_\_ executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

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EXHIBIT U

DEVELOPMENT BUDGET  
(to be provided by HOC)

## EXHIBIT U

## DEVELOPMENT COSTS

Construction	\$28,842,237
Construction Contingency (5%)	\$1,442,112
<b>TOTAL CONSTRUCTION</b>	<b>\$30,284,349</b>
Architecture & Engineering	\$1,855,498
Financing Costs	\$5,341,114
Owner's Costs (Permits & Fees, Inspection & Testing, Furniture, Fixtures & Equipment, Marketing Costs, and Administrative Costs)	\$2,112,796
Land/Lease Costs	\$36,500
Contingency (5%)	\$467,295
<b>TOTAL SOFT COSTS</b>	<b>\$9,813,203</b>
<b>TOTAL DEVELOPMENT COSTS</b>	<b>\$40,097,552</b>

EXHIBIT V

NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS NON-DISTURBANCE AND ATTORNMENT AGREEMENT dated this \_\_\_\_ day of \_\_\_\_\_, 199\_\_, by and between Montgomery County, Maryland, a political subdivision of the State of Maryland ("Lessor") and \_\_\_\_\_ ("Subtenant")

WHEREAS, Lessor has entered into a long term Air Rights Lease with the Housing Opportunities Commission as Lessee ("HOC") dated the \_\_\_\_ day of \_\_\_\_\_, 1995 (the "Air Rights Lease"); and

WHEREAS, the Air Rights Lease provided for the construction, development, maintenance and operation of a three hundred eight (308) unit residential apartment facility and associated retail space; and

WHEREAS, under the terms of the Air Rights Lease, HOC was authorized to sublease the retail space as it deemed appropriate subject to the provisions of the Air Rights Lease; and

WHEREAS, Subtenant has entered into a sublease (the "Sublease") with HOC for a portion of the retail space identified as Unit No. \_\_\_\_\_ (the "Unit"); and

WHEREAS, the parties to this Agreement are desirous of assuring the continued possession of Subtenant in the Unit on the terms and conditions described in the Sublease for the balance of the term of the Sublease regardless of the termination of the Air Rights Lease after substantial completion unless the termination of the Air Right Lease results from condemnation or catastrophe.

WHEREAS, County and Subtenant desire to acknowledge and secure

the rights of each other with respect to the Sublease.

NOW, THEREFORE, in consideration of the mutual premises herein stated, the parties agree as follows:

1. Lessor agrees for itself, its respective successors and assigns and from anyone claiming an interest in the Unit thereunder that the Subtenant's right to occupy and use the Unit during the entire term of the Sublease, including any option periods, shall be absolute and not subject to disturbance and Subtenant's rights under the sublease shall continue unabated by any default, loss, action for repossession or any other right to obtain possession by Lessor. No default by HOC under any agreement or other document (whether presently existing or created after execution of this Sublease) and no proceeding for repossession of the Unit shall disturb Subtenant's absolute right to possession and quiet enjoyment of the property and Subtenant's rights thereto shall not be affected or cutoff thereby. Notwithstanding any repossession of the Unit, whether by pursuit of litigation or otherwise by Lessor, Subtenant's rights under this Sublease shall be absolutely recognized and shall be deemed to constitute a direct lease for the Unit.

2. The Sublease shall, at all times, be subject and subordinate to the Air Rights Lease and Subtenant at the request of Lessor shall execute any instrument that may reasonably be required

to confirm this status, to attorn to the rights of Lessor under the Air Rights Lease and, further provided, that as long as Subtenant continues the payment of rent and the performance of all of its covenants and agreements in the Sublease, Subtenant's quiet and peaceful possession and enjoyment of the Unit in accordance with the Sublease shall not be disturbed by reason of any action of Lessor under the provisions of the Air Rights Lease. The purpose of this provision is to permit the Sublease to continue in existence with the force and effect as if Lessor and Subtenant had entered into a lease agreement if the Air Rights Lease terminates for a term equal to the then unexpired term of the Sublease as of the termination of the Air Rights Lease containing the same terms, conditions and covenants as those contained in the Sublease, including the rights of renewal, unless the termination of the Air Rights Lease results from condemnation or other catastrophe. Lessor shall not be subject to any offsets or defenses that Subtenant might have against HOC and Lessor shall not be liable for any act or omission of HOC and shall not be bound by any rent or additional rent that Subtenant might have paid in advance to HOC.

3. If the Air Rights Lease terminates before substantial completion of the Unit, this agreement shall be deemed terminated.

4. All notices, demands, certificates, requests or other communications which may be or are required to be given, served or

sent by either party to the other party pursuant to this Agreement (whether or not the provision providing for such notice specifically refers to this Section 26.01) shall be in writing and shall be mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by hand delivery, addressed as follows:

**If to Lessor:**

Department of Transportation  
Montgomery County Government  
101 Monroe Street  
Rockville, Maryland 20850  
Attention: Director

With a copy (which shall not constitute notice) to:

Office of the County Attorney  
Montgomery County Government  
101 Monroe Street  
Rockville, Maryland 20850  
Attention: County Attorney

**If to Lessee:**

With a copy (which shall not constitute notice) to:

Each party may designate by notice in writing a new address to which any notice, demand, certificate, request or other

communication may thereafter be so given, served or sent. Each notice or other communication which shall be mailed, delivered or transmitted in the manner described above shall be deemed sufficiently given, served, sent and received for all purposes at such time as it is delivered to the addressee (with the return receipt, the delivery receipt, or the affidavit of messenger being deemed conclusive (but not exclusive) evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

5. In the event that any provision of this Agreement or the application thereof to any party or circumstance shall be finally determined by a court of proper jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each other provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

6. No delay or failure on the part of either party in exercising any right, power or privilege under this Agreement shall impair any such right, power or privilege or be construed as a waiver of or acquiescence in any default hereunder. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right, power or privilege, or



the exercise of any other right, power or privilege. No waiver shall be valid unless made in a written instrument duly executed by the party against whom enforcement of such waiver is sought, and then only to the extent expressly specified therein.

7. Subject to the provisions hereof restricting assignment, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

8. This Agreement shall not be amended, altered or modified except by an instrument in writing duly executed by the parties hereto with the same formalities as this Agreement.

9. All pronouns and any variations thereof shall, in this Agreement, be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or entity may require.

10. This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the State of Maryland (but not including the choice-of-law rules thereof).

11. Pursuant to the requirements of Montgomery County Code 1984, Chapter 11B, notice is hereby given as follows:

Any public employee who has or obtains any benefit from any contract with any person transacting business with Montgomery County, Maryland (the "County") in which the public

employee has an interest, financial or otherwise, must report such benefit to the Ethics Commission of the County. In the event that such public employee knows or should have known of such benefit, and fails to report such benefit to the Ethics Commission, he or she shall be in violation of the ethical standards of this Article. However, this provision shall not apply to a contract with a business entity where the employee's interest in the business has been placed in an independently managed trust.

It is unlawful for any person to offer, give or agree to give to any public or former public employee to solicit, demand, accept or agree to accept from another person, gifts for or because of:

- (a) an official public action taken, or to be taken, or which could be taken;

- (b) a legal duty performed or to be performed, or which could be performed; or

- (c) a legal duty violated or to be violated, or which could be violated by such public or former public employee. It is unlawful for any payment, gift or benefit to be made by or on behalf of a subcontractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract

or order.

Unless authorized under Section 11B-52, it is unlawful for any person transacting business with the County to employ a public employee for employment contemporaneous with his or her public employment.

12. Nothing contained in this Agreement shall be deemed (or be construed) to constitute a partnership or joint venture between Lessor and Subtenant, nor shall Subtenant, its employees or agents be considered agents or subagents of Lessor, respectively.

LESSOR:

MONTGOMERY COUNTY, MARYLAND

By: \_\_\_\_\_

SUBTENANT:

\_\_\_\_\_

AIRRGHTSN-DST-ATT.AGR

EXHIBIT W

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, dated this \_\_\_\_\_ day of \_\_\_\_\_, 1995, by and between Montgomery County, Maryland, a body politic and corporate, 101 Monroe Street, Rockville, Maryland 20850 ("Lessor") and Housing Opportunities Commission of Montgomery County, a body politic and corporate, 10400 Detrick Avenue Kensington, Maryland 20895 ("Lessee").

I. The parties hereto have executed a Long Term Air Rights Lease (the "Lease") dated the \_\_\_\_\_ day of \_\_\_\_\_, 1995, for the property identified on Exhibit A attached hereto and made a part hereof.

II. The term of the Lease shall commence on \_\_\_\_\_, 1995 and terminate on the 99th anniversary of the date of Substantial Completion of the Lessee Improvements as defined in the Lease, unless sooner terminated as provided in the Lease itself.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease on the day and year first above written.

HOUSING OPPORTUNITIES COMMISSION  
OF MONTGOMERY COUNTY

By: \_\_\_\_\_  
Bernard L. Tetreault  
Executive Director

MONTGOMERY COUNTY, MARYLAND

By: \_\_\_\_\_  
Douglas M. Duncan  
County Executive

STATE OF MARYLAND:  
COUNTY OF MONTGOMERY:

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 1995, before me, the subscriber, a Notary Public in and for the aforesaid state and county, personally appeared \_\_\_\_\_ and did acknowledge that he/she executed the foregoing \_\_\_\_\_ on behalf of the Housing Opportunities Commission of Montgomery County, Maryland for the purpose therein contained, and further acknowledged the foregoing \_\_\_\_\_ to be the act of the Housing Opportunities Commission of Montgomery County, Maryland.

As witness my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

STATE OF MARYLAND:  
COUNTY OF MONTGOMERY:

On this \_\_\_\_ day of \_\_\_\_\_, 1995, before me, the undersigned officer, personally appeared \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ of Montgomery County, Maryland, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she as such \_\_\_\_\_ executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

B:\AIRRGHTS\MEM-LSE

## Description

## Part of Lot 16, Block 12, Edgemoor

## "Land"

Being two pieces or parcels of land situated in the Seventh (7th) Election District of Montgomery County, Maryland, and each being a part of Lot 16, Block 12, as shown on a plat of subdivision entitled "Lot 16, Block 12, Edgemoor", and being recorded among the Land Records of Montgomery County, Maryland in Plat Book 144 as Plat No. 16519 and being more particularly described in two parts as follows

Part One

**Beginning** at a point at the northwesterly end of South 52° 33' 50" East, 245.22' line of Lot 16, as shown on Plat 16519, said point also being on the southwesterly right of way line of Old Georgetown Road; thence running with said right of way line

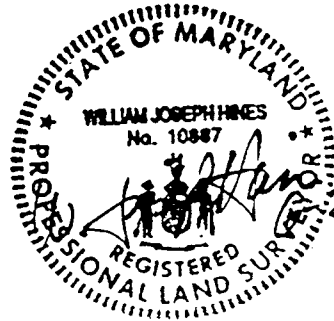
1. South 52° 33' 50" East, 33.55 feet to a point; thence leaving said right of way line and crossing a part of Lot 16, Block 12
2. South 37° 26' 10" West, 9.79 feet to a point; thence with a non-radial line
3. South 69° 46' 17" West, 4.71 feet to a point on a curve; thence
4. 101.14 feet along the arc of a curve deflecting to the left having a radius of 32.73 feet and a chord bearing South 77° 07' 21" West, 65.43 feet to a point; thence with a radial line
5. South 78° 36' 03" West, 9.31 feet to a point; thence
6. North 63° 59' 27" West, 1.00 feet to a point on the easterly right of way line of Woodmoot Avenue, said point lying 351.92 feet along the arc from the southerly end of the 398.72' curved right of way line of Woodmont Avenue; thence running with said right of way line, and with the outline of Lot 16, Block 12
7. 46.81 feet along the arc of a curve deflecting to the right having a radius of 360.00 feet and a chord bearing North 29° 44' 01" East and 46.77 feet to a point; thence
8. North 81° 26' 50" East 34.73 feet to the **point of beginning**; containing 538 square feet or 0.0124 acres of land.

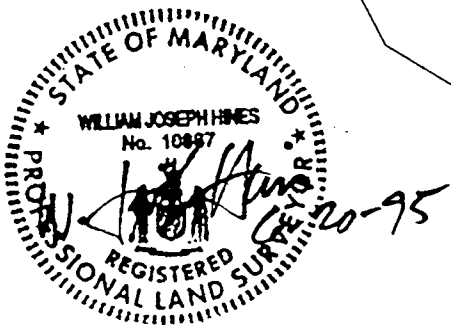
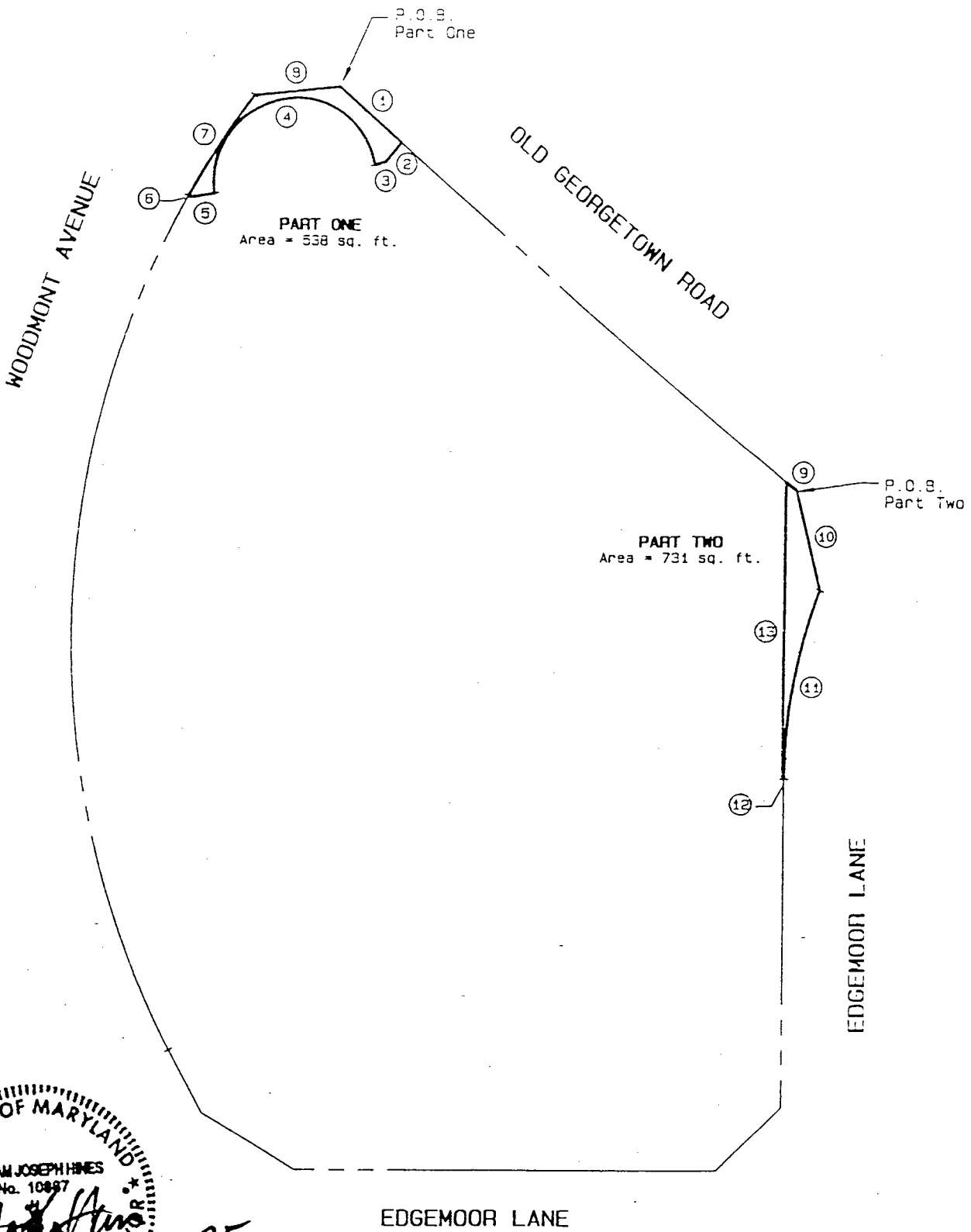
Part Two

**Beginning** at a point at the northwesterly end of the South 15° 59' 12" East, 40.56' line of Lot 16, Block 12 as shown on Plat 16519, said point being on the southwesterly right of way line of Old Georgetown Road, and also on the westerly right of way line of Edgemoor Lane; thence running with said right of way line

1. South 15° 59' 12" East, 40.56 feet along a non-radial line to a point; thence continuing with the westerly right of way line of Edgemoor Lane
3. 77.00 feet along the arc of a curve, deflecting to the left having a radius of 221.89 feet and a chord bearing South 07° 26' 37" West, 76.61 feet to a point; thence leaving said right of way line crossing a part Lot 16, Block 12 with a radial line
4. South 87° 30' 10" West, 0.59 feet to a point, thence
5. North 02° 25' 52" West, 118.43 feet to a point on the South 52° 33' 50" East, 245.22' line of Old Georgetown Road, said point lying 5.49 feet from the southeasterly end thereof; thence with said line
6. South 52° 33' 50" East, 5.49 feet, to the **point of beginning**; containing 731 square feet or 0.0168 acres of land.

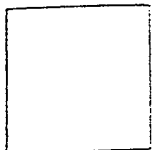
Parts One and Two described above being subject to any and all easements, rights of way and covenants of record.





The Metropolitan

Land





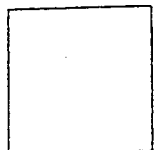
# DATA

○	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT	CHORD BEARING	CHORD DIST.
1	S 52° 33' 50" E		33.55			
2	S 37° 26' 10" W		9.79			
3	S 69° 46' 17" W		4.71			
4	177° 02' 36"	32.73	101.14	1268.24	S 77° 07' 21" W	65.44
5	S 78° 36' 03" W		9.31			
6	N 63° 59' 27" W		1.00			
7	7° 26' 57"	360.00	46.80	23.44	N 29° 44' 01" E	46.77
8	N 81° 26' 50" E		34.73			
9	S 52° 33' 50" E		5.49			
10	S 15° 59' 12" E		40.56			
11	19° 52' 54"	221.89	77.00	38.89	S 07° 26' 37" W	76.61
12	S 87° 30' 10" W		0.58			
13	N 02° 25' 52" W		118.43			



The Metropolitan

Land



## Description

### Part of Lot 16, Block 12, Edgemoor

#### "Old Georgetown Road Level"

Being two (2) three dimensional spaces, situated in the Seventh (7th) Election District of Montgomery County, Maryland, and being a part of an existing building situated on Lot 16, Block 12, as shown on a plat of subdivision entitled "Lot 16, Block 12, Edgemoor", and being recorded among the Land Records of Montgomery County, Maryland in Plat Book 144 as Plat No. 16519, and having an upper and lower elevation as shown on Exhibit G-3-A, and being more particularly described as follows

#### Part One

Beginning at a point lying on and distant 54.96 feet from the South 02° 29' 50" East, 131.16 foot plat line, as shown on said plat, said point also being on the westerly right of way line of Edgemoor Lane; thence running with and along said right of way line

1. South 02° 29' 50" East, 51.00 feet to a point; thence leaving said right of way of Edgemoor Lane and crossing a part of Lot 16, Block 12
2. South 87° 30' 10" West, 19.69 feet to a point; thence
3. South 02° 29' 50" East, 26.01 feet to a point; thence
4. North 87° 29' 03" East, 18.89 feet to a point on and distant 34.23 feet from the southwesterly end of South 42° 30' 10" West, 35.36' line of Lot 16; thence with the outline of Lot 16
5. South 42° 30' 10" West, 34.23 feet to a point; thence
6. South 87° 30' 10" West, 5.93 feet to a point; thence leaving the outline of Lot 16 and crossing a part thereof
7. North 02° 29' 50" West, 24.19 feet to a point; thence
8. South 87° 29' 03" West, 9.33 feet to a point; thence
9. South 02° 29' 50" East, 24.19 feet to a point on the northerly right of way line of Edgemoor Lane; thence with said right of way line
10. South 87° 30' 10" West, 156.88 feet to a point; thence with a part of the right of way

line of Woodmont Avenue

11. North  $61^{\circ} 14' 55''$  West, 40.40 feet to a point; thence leaving said right of way line and crossing a part of Lot 16 with a non-radial line
12. North  $30^{\circ} 25' 05''$  West, 30.21 feet to a point on a curve; thence with a curved line which is concentric with and parallel to the 398.72' curved right of way line of Woodmont Avenue, and offset 1.00 feet easterly thereof
13. 247.08 feet along the arc of a curve deflecting to the right having a radius of 359.00 feet and a chord bearing North  $10^{\circ} 17' 01''$  West, 242.23 feet; thence with a non-radial line
14. South  $81^{\circ} 19' 27''$  East, 58.69 feet to a point; thence
15. North  $11^{\circ} 51' 05''$  East, 26.45 feet to a point; thence
16. North  $16^{\circ} 51' 02''$  East, 7.44 feet to a point; thence with a non-radial line
17. South  $74^{\circ} 03' 18''$  East, 3.53 feet to a point on a curve; thence
18. 23.38 feet along the arc of a curve deflecting to the right having a radius of 47.75 feet and a chord bearing North  $53^{\circ} 58' 54''$  East, 23.14 feet to a point; thence with a non-radial line
19. North  $05^{\circ} 56' 44''$  West, 3.16 feet to a point; thence
20. North  $37^{\circ} 35' 12''$  East, 5.34 feet to a point; thence
21. North  $82^{\circ} 44' 30''$  East, 11.20 feet to a point; thence
22. South  $53^{\circ} 53' 06''$  East, 5.62 feet to a point; thence
23. North  $82^{\circ} 34' 11''$  East, 10.74 feet to a point; thence with a non-radial line
24. South  $08^{\circ} 19' 27''$  East, 4.99 feet to a point on a curve; thence
25. 6.43 feet along the arc of a curve deflecting to the right having a radius of 47.75 feet and a chord bearing South  $71^{\circ} 30' 10''$  East, 6.43 feet to a point; thence with a line which is radial to both the preceding curve and the following curve
26. South  $22^{\circ} 21' 23''$  West, 1.50 feet to a point on a curve; thence
27. 30.39 feet along the arc of a curve deflecting to the right having a radius of 46.25 feet and a chord bearing South  $48^{\circ} 49' 16''$  East and 29.84 feet to a point; thence with a non-radial line

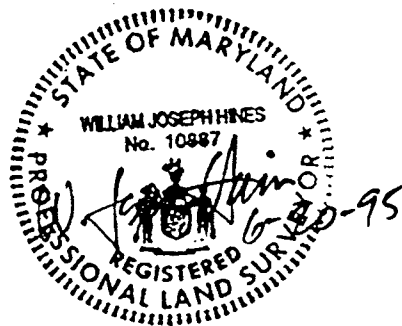
28. North 68° 03' 58" East, 4.28 feet to a point; thence
29. South 52° 46' 07" East, 86.70 feet to a point; thence
30. South 02° 30' 23" East, 141.73 feet to a point; thence
31. North 87° 29' 33" East, 61.70 feet to the **point of beginning**; containing 65,724 square feet or 1.5088 acres.

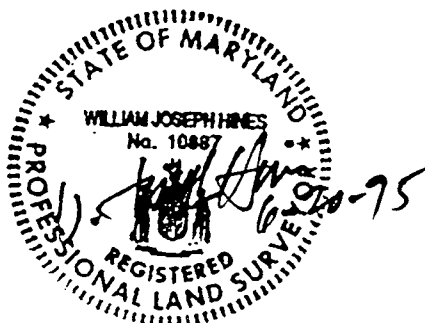
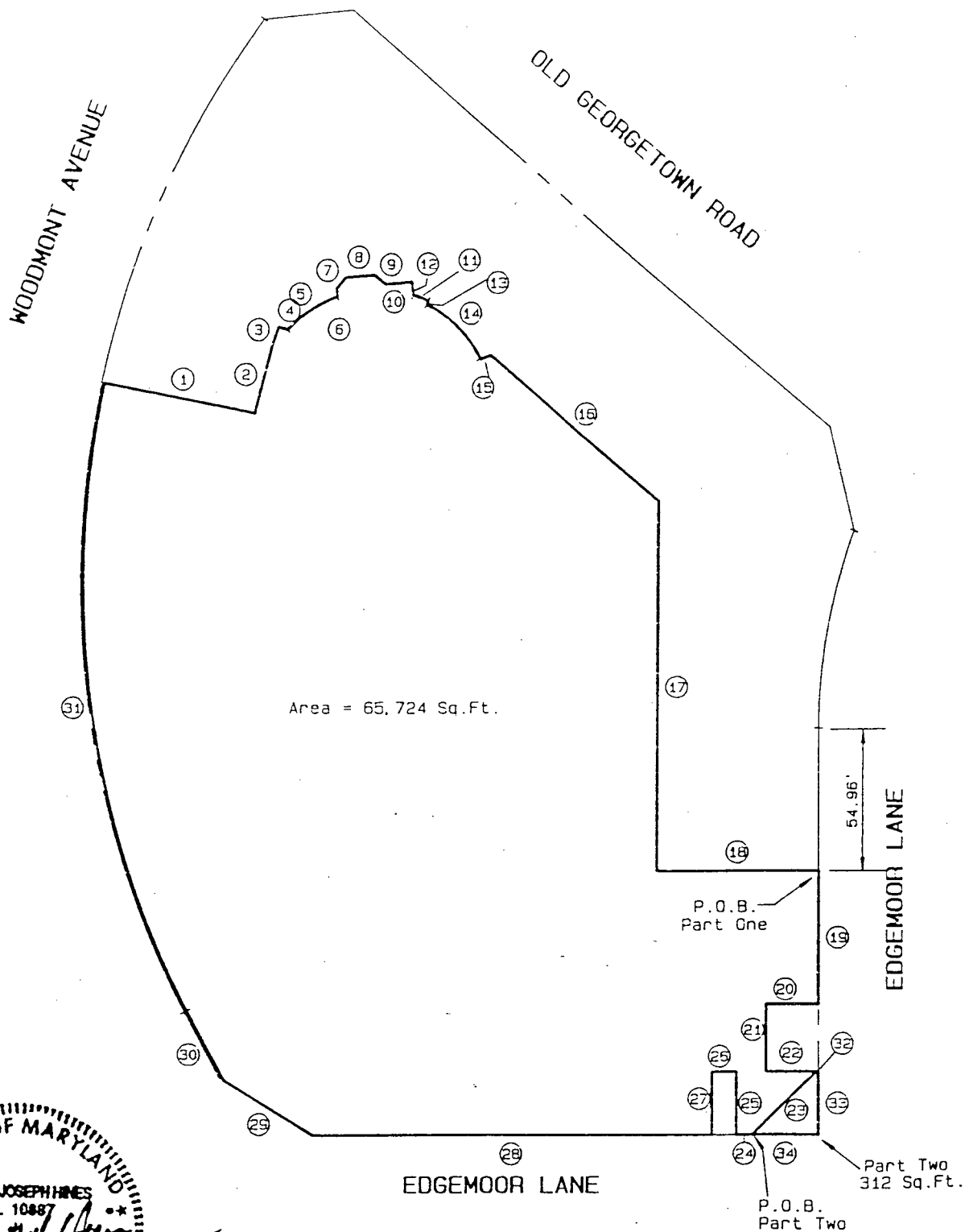
## Part Two

**Beginning** at the northeasterly end of the South 87° 30' 10" West, 172.15' right of way line of Edgemoor Lane, as shown on said plat; thence with the outline of Lot 16, Block 12

1. North 42° 30' 10" East, 34.23 feet, to a point; thence crossing a part of the right of way for Edgemoor Lane
2. North 87° 29' 03" East, 0.80 feet, to a point; thence
2. South 02° 29' 50" East, 24.20 feet, to a point; thence
2. South 87° 30' 10" West, 25.00 feet, to the **point of beginning**, containing 312 square feet or 0.0072 acres.

Parts One and Two described above being subject to any and all easements, rights of way and covenants of record.



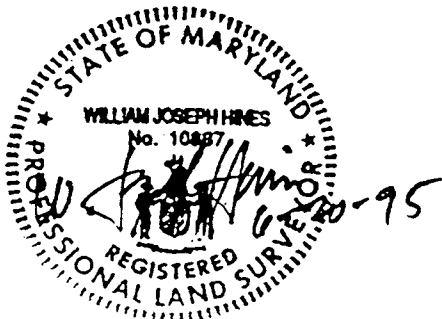


The Metropolitan

Old Georgetown Road Level

# DATA

○	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT	CHORD BEARING	CHORD DIST.
1	S 81° 19' 27"E		58.69			
2	N 11° 51' 05"E		26.45			
3	N 16° 51' 02"E		7.44			
4	S 74° 03' 18"E		3.53			
5	28° 02' 57"	47.75	23.38	11.93	N 53° 58' 54"E	23.14
6	N 05° 56' 44"W		3.16			
7	N 37° 35' 12"E		5.34			
8	N 82° 44' 30"E		11.20			
9	S 53° 53' 06"E		5.62			
10	N 82° 34' 11"E		10.74			
11	S 08° 19' 27"E		4.99			
12	7° 43' 05"	47.75	6.43	3.22	S 71° 30' 10"E	6.43
13	S 22° 21' 23"W		1.50			
14	37° 38' 43"	46.25	30.39	15.77	S 48° 49' 16"E	29.84
15	N 68° 03' 58"E		4.28			
16	S 52° 46' 07"E		86.70			
17	S 02° 30' 23"E		141.73			
18	N 87° 29' 33"E		61.70			
19	S 02° 29' 50"E		51.00			
20	S 87° 30' 10"W		19.69			
21	S 02° 29' 50"E		26.01			
22	N 87° 29' 03"E		18.69			
23	N 42° 30' 10"E		34.23			
24	S 87° 30' 10"W		5.94			
25	N 02° 29' 50"W		24.19			
26	S 87° 29' 03"W		9.33			
27	S 02° 29' 50"E		24.19			
28	S 87° 30' 10"W		156.88			
29	N 61° 14' 55"W		40.40			
30	N 30° 25' 05"W		30.21			
31	39° 25' 58"	359.00	247.08	129.66	N 10° 17' 01"W	242.23
32	N 87° 29' 03"E		0.80			
33	S 02° 29' 50"E		24.20			
34	S 87° 30' 10"W		25.00			



The Metropolitan

Old Georgetown Road Level

## Description

### Part of Lot 16, Block 12, Edgemoor

#### "Plaza Level"

Being two (2) three dimensional spaces, situated in the Seventh (7th) Election District of Montgomery County, Maryland, and being a part of an existing building situated on Lot 16, Block 12, as shown on a plat of subdivision entitled "Lot 16, Block 12, Edgemoor", and being recorded among the Land Records of Montgomery County, Maryland in Plat Book 144 as Plat No. 16519, and having an upper and lower elevation as shown on Exhibit G-3-A, and being more particularly described as follows

#### PART ONE

**Beginning** at a point lying on and distant 105.96 feet from the northerly end of the South 02° 29' 50" East, 191.18 foot plat line, as shown on said plat, said point also being on the westerly right of way line of Edgemoor Lane (80' wide); thence running with and along a part of said right of way line, and with the outline of Lot 16, Block 12

1. South 02° 29' 50" East, 25.20 feet to a point; thence
2. South 42° 30' 10" West, 35.36 feet to a point; thence
3. South 87° 30' 10" West, 6.40 feet to a point; leaving said right of way line of Edgemoor Lane and crossing a part of Lot 16
4. North 02° 29' 50" West, 3.03 feet to a point; thence
5. North 85° 30' 57" East, 2.34 feet to a point; thence
6. North 20° 39' 11" East, 4.35 feet to a point; thence
7. North 02° 29' 50" West, 8.76 feet to a point; thence
8. North 25° 39' 02" West, 4.35 feet to a point; thence
9. South 87° 29' 03" West, 2.34 feet to a point; thence
10. North 02° 29' 50" West, 2.18 feet to a point; thence
11. South 87° 40' 20" West, 18.27 feet to a point; thence
12. South 02° 34' 18" East, 22.22 feet to a point on the northerly right of way line of

Edgemoor Lane, as shown on said plat; thence with a part of said right of way line, and with the outline of Lot 16

13. South  $87^{\circ} 30' 10''$  West, 147.50 feet to a point; thence
14. North  $61^{\circ} 14' 55''$  West, 40.40 feet to a point; thence leaving said right of way line and crossing a part of Lot 16
15. North  $30^{\circ} 25' 05''$  West, 30.21 feet to a point of tangency; thence with a curved line which is concentric with and parallel to the 588.72' curved right of way line of Woodmont Avenue, and being offset 1.00 feet easterly thereof
16. 243.77 feet along the arc of a curve deflecting to the right, having a radius of 359.00 feet and a chord bearing North  $10^{\circ} 32' 50''$  West, 239.11 feet to a point; thence with a line which is radial to both the preceeding curve and the following curve
17. South  $81^{\circ} 05' 41''$  East, 58.21 feet, to a point; thence
18. 72.66 feet along the arc of a curve deflecting to the right, having a radius of 300.79 feet and a chord bearing North  $15^{\circ} 49' 31''$  East, 72.48 feet to a point; thence with a non-radial line
19. North  $77^{\circ} 07' 05''$  East, 17.37 feet, to a point; thence
20. South  $52^{\circ} 33' 50''$  East, 141.00 feet, to a point, thence
21. North  $88^{\circ} 07' 47''$  East, 12.54 feet, to a point; thence
22. South  $02^{\circ} 30' 23''$  East, 168.94 feet, to a point; thence
23. South  $47^{\circ} 30' 32''$  East, 6.01 feet, to a point; thence
24. South  $42^{\circ} 29' 28''$  West, 6.01 feet, to a point; thence
25. South  $47^{\circ} 30' 32''$  East, 38.99 feet, to a point; thence
26. North  $42^{\circ} 29' 28''$  East, 5.62 feet, to a point; thence
27. South  $47^{\circ} 30' 32''$  East, 4.20 feet, to a point; thence
28. North  $87^{\circ} 29' 03''$  East, 27.18 feet to the **point of beginning**, containing 64,034 square feet or 1.4700 acres; **saving and excepting from the above described area**, the following

**Being** a circle, the center of which lies 47.40 feet southwesterly and perpendicular to a point lying on and distant 51.30 feet from the northwesterly end of the above described nineteenth



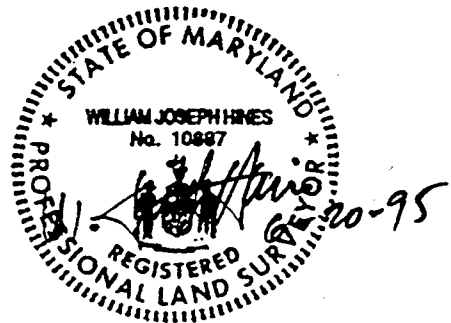
(19th) line, said circle having a radius of 29.75 feet and containing 2781 square feet or 0.0638 acres. The total net area described in Part One is 61,253 square feet or 1.4061 acres.

## **PART TWO**

**Beginning** at the northeasterly end of the South 87° 30' 10" West, 172.15' right of way line of Edgemoor Lane, as shown on said plat; thence with the outline of Lot 16, Block 12

1. North 42° 30' 10" East, 35.36 feet, to a point; thence crossing a part of the right of way for Edgemoor Lane
2. South 02° 29' 50" East, 25.00 feet, to a point; thence
2. South 87° 30' 10" West, 25.00 feet, to the **point of beginning**, containing 313 square feet or 0.0072 acres.

Parts One and Two described above being subject to any and all easements, rights of way and covenants of record.



WOODMONT AVENUE

OLD GEORGETOWN ROAD

OCULUS  
(Area Excluded)

Area = 61.253 sq. ft.

1.00'

105.96'

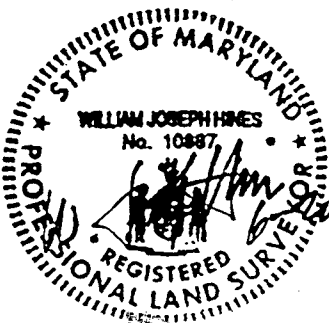
EDGEMOOR LANE

EDGEMOOR LANE

P.O.B.  
Part One

PART TWO  
313 SQ.FT.

P.O.B.  
Part Two

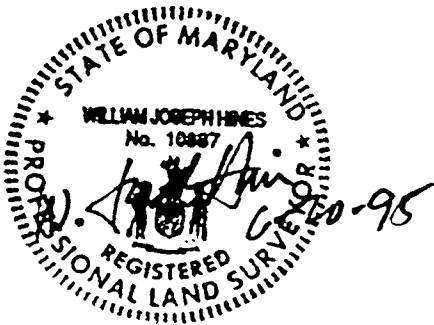


The Metropolitan

Plaza Level

# DATA

○	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT	CHORD BEARING	CHORD DIST.
1	N 77° 07' 05"E		17.37			
2	S 52° 33' 50"E		141.00			
3	N 88° 07' 47"E		12.54			
4	S 02° 30' 23"E		168.94			
5	S 47° 30' 32"E		6.01			
6	S 42° 29' 28"W		6.01			
7	S 47° 30' 32"E		38.99			
8	N 42° 29' 28"E		5.62			
9	S 47° 30' 32"E		4.20			
10	N 87° 29' 03"E		27.18			
11	S 02° 29' 50"E		25.20			
12	N 42° 30' 10"E		35.36			
13	S 87° 30' 10"W		6.40			
14	N 02° 29' 50"W		3.03			
15	N 85° 30' 57"E		2.34			
16	N 20° 39' 11"E		4.35			
17	N 02° 29' 50"W		8.76			
18	N 25° 39' 02"W		4.35			
19	S 87° 29' 03"W		2.34			
20	N 02° 29' 50"W		2.18			
21	S 87° 40' 20"W		18.27			
22	S 02° 34' 18"E		22.11			
23	S 87° 30' 10"W		147.50			
24	N 61° 14' 55"W		40.40			
25	N 30° 25' 05"W		30.21			
26	38° 54' 19"	359.00	243.77	126.79	N 10° 32' 50"W	239.11
27	S 81° 05' 41"E		58.21			
28	13° 50' 24"	300.79	72.66	36.51	N 15° 49' 31"E	72.48
29	S 02° 29' 50"E		25.00			
30	S 87° 30' 10"W		25.00			
31	0° 00' 00"	29.75	0.00	0.00	S 87° 29' 37"W	0.00



The Metropolitan

Plaza Level

## Description

### Part of Lot 16, Block 12, Edgemoor

#### "Old Georgetown Road Level"

**Being** three (3) three dimensional spaces, situated in the Seventh (7th) Election District of Montgomery County, Maryland, and being a part of an existing building situated on Lot 16, Block 12, as shown on a plat of subdivision entitled "Lot 16, Block 12, Edgemoor", and being recorded among the Land Records of Montgomery County, Maryland in Plat Book 144 as Plat No. 16519, and having an upper and lower elevation as shown on Exhibit G-3-A, and being more particularly described as follows

#### Part One

**Beginning** at a point lying North 52° 37' 02" West, 107.70 feet from the southeasterly end of the South 52° 33' 50" East, 245.22' plat line, as shown on said plat, said point being offset 0.10 feet southwesterly from a point lying on and distant 107.70 feet from the southeasterly end thereof; thence running with a line parallel to and offset 0.10 feet southwesterly thereof, and crossing a part of Lot 16

1. South 52° 33' 50" East, 102.37 feet to a point; thence
2. South 02° 22' 46" East, 66.05 feet to a point; thence
3. North 46° 39' 17" West, 8.59 feet to a point; thence
4. South 87° 57' 08" West, 11.24 feet to a point; thence
5. South 31° 26' 28" West, 11.04 feet to a point; thence
6. South 87° 21' 10" West, 37.79 feet to a point; thence
7. North 07° 12' 37" West, 40.92 feet to a point; thence
8. South 87° 00' 01" West, 10.60 feet to a point; thence
9. North 47° 30' 36" West, 4.23 feet to a point; thence
10. North 01° 10' 40" West, 7.80 feet to a point; thence
11. North 52° 13' 13" West, 97.55 feet to a point; thence
12. North 36° 55' 49" East, 7.28 feet to a point; thence

13. South  $51^{\circ} 59' 40''$  East, 26.23 feet to a point; thence
14. North  $37^{\circ} 28' 37''$  East, 18.33 feet to a point; thence
15. South  $53^{\circ} 17' 15''$  East, 49.02 feet to a point; thence
16. North  $33^{\circ} 31' 03''$  East, 6.16 feet to a point; thence
17. South  $64^{\circ} 49' 44''$  East, 6.24 feet to a point; thence
18. North  $37^{\circ} 43' 35''$  East, 24.69 feet to a point; thence
19. North  $52^{\circ} 32' 37''$  West, 37.25 feet to a point; thence
20. North  $37^{\circ} 43' 02''$  East, 4.87 feet to the **point of beginning**; containing 8,350 square feet or 0.1917 acres of land.

#### Part Two

**Being** a circle, the center of which is offset 110.32 feet southwesterly from a point lying on and distant 138.79 feet from the southeasterly end of the South  $52^{\circ} 33' 50''$  East, 245.22' right of way line of Old Georgetown Road, as shown on said plat; said circle having a radius of 29.75 feet and containing 2781 square feet or 0.0638 acres.

#### Part Three

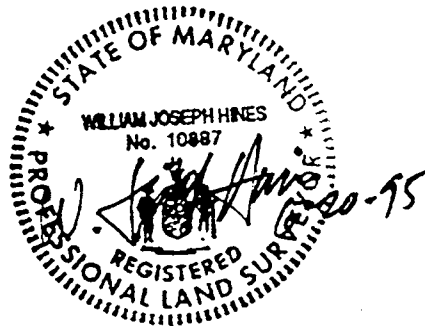
**Beginning** at a point lying South  $24^{\circ} 35' 24''$  West, 104.09 feet from the southwesterly end of the North  $81^{\circ} 26' 50''$  East, 34.73' line of Lot 16 as shown on said plat, said point being offset 1.00 feet easterly from a point lying on and distant 104.60 feet along the arc of the 398.72' curved right of way line of Woodmont Avenue; thence crossing a part of Lot 16, Block 12 with a non-radial line

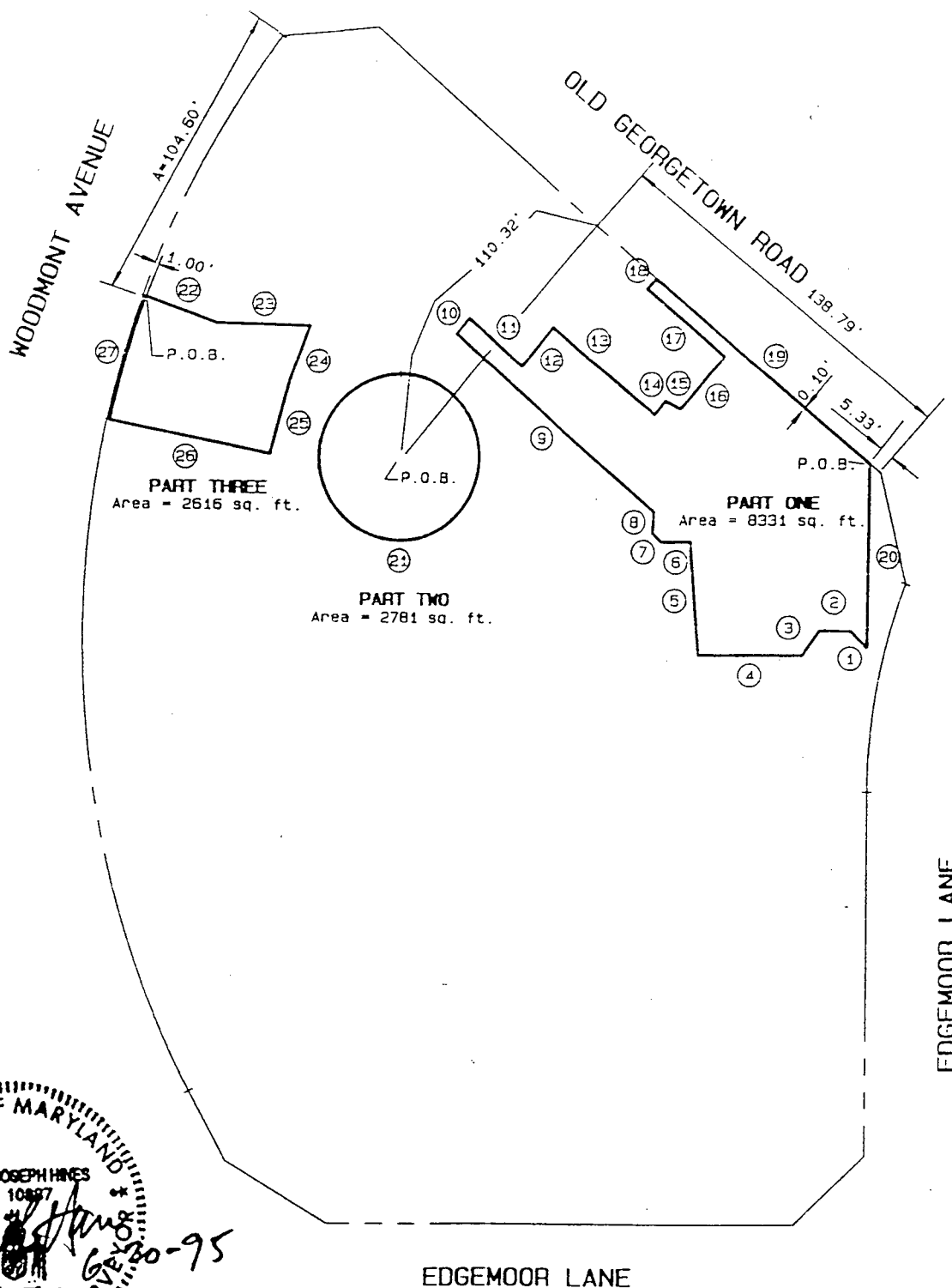
1. South  $72^{\circ} 33' 34''$  East, 26.92 feet to a point; thence
2. North  $88^{\circ} 43' 08''$  East, 33.81 feet to a point; thence
3. South  $17^{\circ} 27' 09''$  West, 21.50 feet to a point; thence
4. South  $11^{\circ} 57' 15''$  West, 26.49 feet to a point; thence with a non-radial line
5. North  $81^{\circ} 07' 51''$  West, 58.69 feet to a point on a curve which is concentric with and parallel to the 398.72' curved right of way line of Woodmont Avenue, and offset 1.00

feet easterly thereof; thence

6. 45.92 feet along the arc of a curve deflecting to the right having a radius of 359.00 feet and a chord bearing North 13° 08' 46" East and 45.89 feet to the **point of beginning**; containing 2,616 square feet or 0.0601 acres.

Parts One, Two, and Three described above being subject to any and all easements, rights of way and covenants of record.



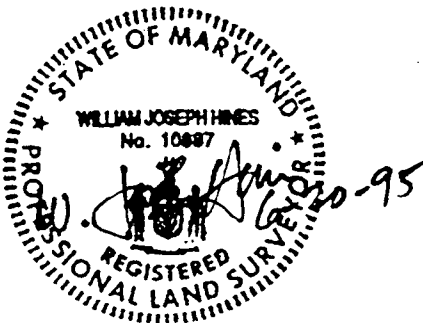


The Metropolitan

Old Georgetown Road Level

# DATA

○	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT	CHORD BEARING	CHORD DIST.
1	N 46° 39' 17" W		8.59			
2	S 87° 57' 08" W		11.24			
3	S 31° 26' 28" W		11.04			
4	S 87° 21' 10" W		37.79			
5	N 07° 12' 37" W		40.92			
6	S 87° 00' 01" W		10.60			
7	N 47° 30' 36" W		4.23			
8	N 01° 10' 40" W		7.80			
9	N 52° 13' 13" W		97.55			
10	N 36° 55' 49" E		7.28			
11	S 51° 59' 40" E		26.23			
12	N 37° 28' 37" E		18.33			
13	S 53° 17' 15" E		49.02			
14	N 33° 31' 03" E		6.16			
15	S 64° 49' 44" E		6.24			
16	N 37° 43' 35" E		24.69			
17	N 52° 32' 37" W		37.25			
18	N 37° 43' 02" E		4.87			
19	S 52° 33' 50" E		102.37			
20	S 02° 22' 46" E		66.05			
21	0° 00' 00"	29.75	0.00	0.00	S 87° 29' 37" W	0.00
22	S 72° 33' 34" E		26.91			
23	N 88° 43' 08" E		33.81			
24	S 17° 27' 09" W		21.50			
25	S 11° 57' 15" W		26.49			
26	N 81° 07' 50" W		58.69			
27	7° 19' 45"	359.00	45.92	22.99	N 13° 08' 46" E	45.89



The Metropolitan

Old Georgetown Road Level



## Description

### Part of Lot 16, Block 12, Edgemoor Exhibit G-4-I "Edgemoor Lane Level"

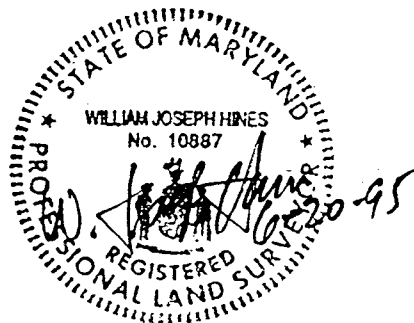
**Being** a three dimensional space, situated in the Seventh (7th) Election District of Montgomery County, Maryland, and being a part of an existing building situated on Lot 16, Block 12, as shown on a plat of subdivision entitled "Lot 16, Block 12, Edgemoor", and being recorded among the Land Records of Montgomery County, Maryland in Plat Book 144 as Plat No. 16519, and having an upper and lower elevation as shown on Exhibit G-3-A, and being more particularly described as follows

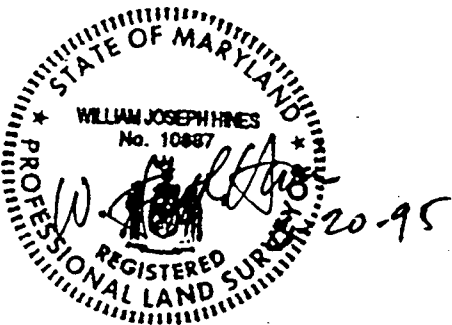
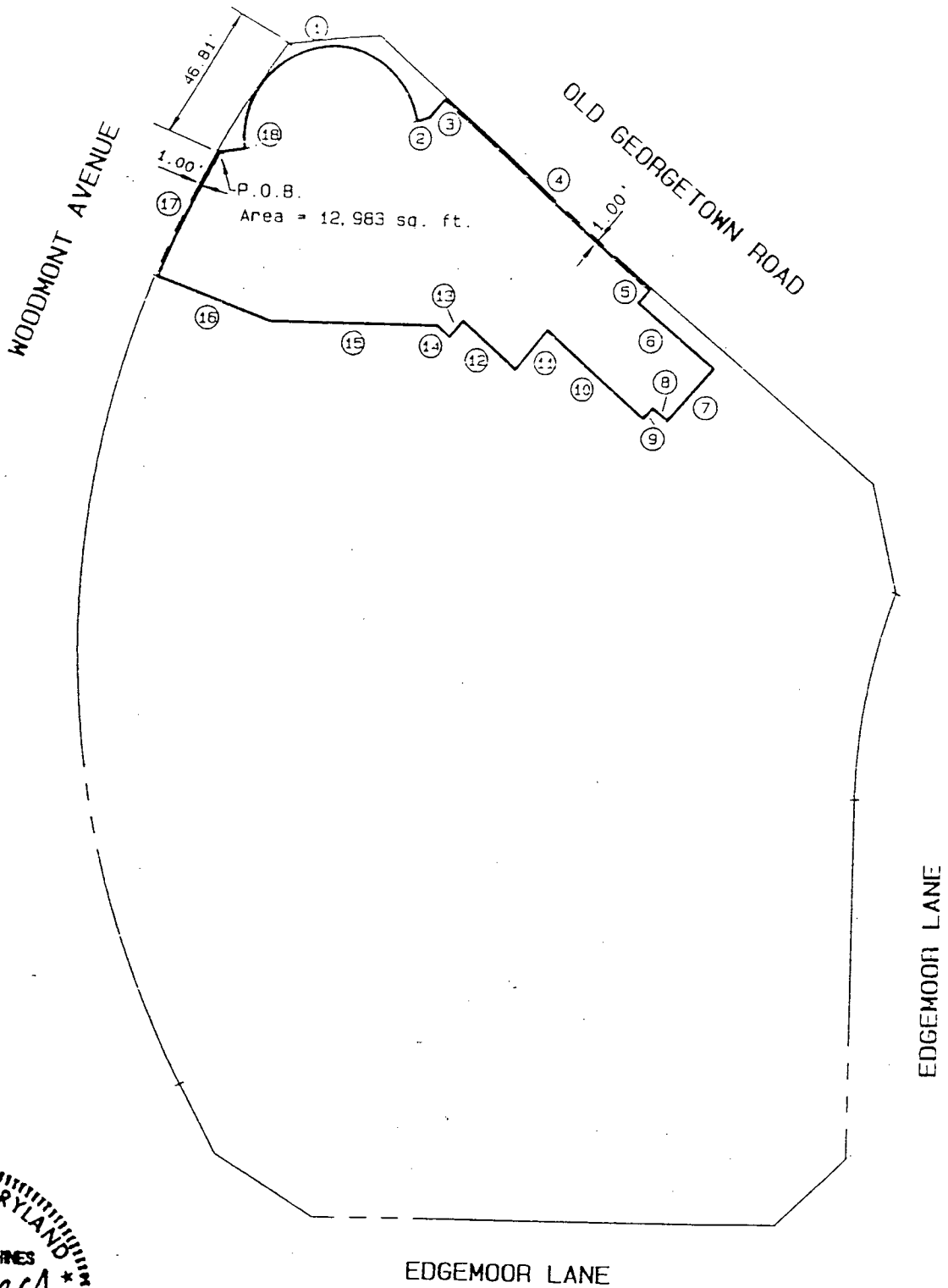
**Beginning** at a point lying South 28° 30' 36" West, 46.72 feet from the northerly end of the 588.72' curved plat line, as shown on said plat, said point also being offset 1.00 feet easterly from a point lying 46.81 southwesterly along the arc of said curved line; thence running in, through over and across Lot 16, Block 12 with a radial line

1. North 78° 36' 03" East, 9.31 feet to a point; thence
2. 101.14 feet along the arc of a curve deflecting to the right, having a radius of 32.73 feet and a chord bearing North 77° 07' 21" East, 65.43 feet to a point; thence with a non-radial line
3. North 69° 46' 17" East, 4.71 feet to a point; thence
4. North 37° 26' 10" East, 8.79 feet to a point lying South 50° 51' 23" East, 33.56 feet from the northwesterly end of the south 52° 33' 50" East, 243.82' plat line, said point being offset 1.00 feet southwesterly from a point lying 33.71 feet along said line; thence with a line parallel to said plat line
5. South 52° 33' 50" East, 104.22 feet to a point; thence
6. South 37° 26' 10" West, 6.00 feet to a point; thence
7. South 52° 33' 50" East, 36.12 feet to a point; thence
8. South 37° 26' 10" West, 24.78 feet to a point; thence
9. North 52° 33' 50" West, 7.11 feet to a point; thence
10. South 37° 26' 10" West, 5.06 feet to a point; thence
11. North 52° 33' 50" West, 48.26 feet to a point; thence

12. South  $37^{\circ} 26' 10''$  West, 18.91 feet to a point; thence
13. North  $52^{\circ} 33' 50''$  West, 26.57 feet to a point; thence
14. South  $37^{\circ} 26' 10''$  West, 7.73 feet to a point; thence
15. North  $52^{\circ} 33' 50''$  West, 6.30 feet to a point; thence
16. South  $87^{\circ} 31' 20''$  West, 63.29 feet to a point; thence with a non-radial line
17. North  $72^{\circ} 38' 15''$  West, 43.44 feet to a point; thence with curved line which is concentric with and parallel to the aforementioned 588.72' curved plat line, and being offset 1.00 feet easterly thereof
18. 49.69 feet along the arc of a curve deflecting to the right having a radius of 359.00 feet and a chord bearing North  $22^{\circ} 02' 39''$  East 49.65 feet to the **point of beginning**; containing 12,983 square feet or 0.2980 acres of land.

Subject to any and all easements, rights of way, and covenants of record.



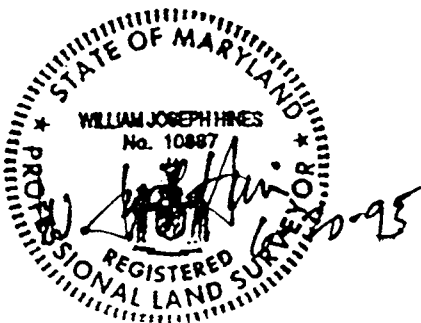


The Metropolitan

Edgemoor Lane Level

# DATA

○	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT	CHORD BEARING	CHORD DIST.
1	177°02'36"	32.73	101.14	1268.24	N 77°07'21"E	65.44
2	N 69°46'17"E		4.71			
3	N 37°26'10"E		8.79			
4	S 52°33'50"E		104.22			
5	S 37°26'10"W		6.00			
6	S 52°33'50"E		36.12			
7	S 37°26'10"W		24.78			
8	N 52°33'50"W		7.11			
9	S 37°26'10"W		5.06			
10	N 52°33'50"W		48.26			
11	S 37°26'10"W		18.91			
12	N 52°33'50"W		26.57			
13	S 37°26'10"W		7.73			
14	N 52°33'50"W		6.30			
15	S 87°31'20"W		63.29			
16	N 72°38'15"W		43.44			
17	7°55'47"	359.00	49.69	24.86	N 22°02'39"E	49.65
18	N 78°36'03"E		9.31			



The Metropolitan

Edgemoor Lane Level

AIR RIGHTS LEASE

Montgomery County, Maryland - Lessor

Housing Opportunities Commission of  
Montgomery County - Lessee

June 23, 1995

Binder 2 of 2

CHEN, WALSH, TECLER & MCCABE

ATTORNEYS AT LAW

200A MONROE STREET

SUITE 300

ROCKVILLE, MARYLAND 20850

JOHN BURGESS WALSH, JR.  
WILLIAM JAMES CHEN, JR.\*  
KENNETH B. TECLER.\*  
JOHN F. MCCABE, JR.\*

(301) 279-9500

FAX: (301) 294-5195

\* ALSO ADMITTED IN THE  
DISTRICT OF COLUMBIA

1-800-229-9510

June 22, 1995

Graham Norton  
Director  
Montgomery County Department of Transportation  
101 Monroe St., 10th Floor  
Rockville, Md. 20850

Bernard L. Tetreault  
Executive Director  
Housing Opportunities Commission  
10400 Detrick Avenue  
Kensington, Md. 20895

Re: Escrow Arrangements for Garage 49 Air Rights Lease

Dear Messrs. Norton and Tetreault:

This firm has been selected to serve as escrow agent to hold the Air Rights Lease (the "Air Rights Lease") executed by the Housing Opportunities Commission ("HOC") and Montgomery County (the "County") for the space above existing Garage 49 under the terms and conditions stated herein. The closing of the Bonds issued by HOC to provide the financing for the construction of the three hundred eight (308) unit multifamily apartment facility above Garage 49 was completed on June 14, 1995. The formal real estate closing, at which time the Notes, Leasehold Deeds of Trust and related loan documents (collectively the "Security Documents") will be executed, is scheduled for later this month. In order to assure that the financing is completed before implementation of the Air Right Lease, the parties have requested that we establish this escrow. This letter establishes the terms for an escrow of the Air Rights Lease pending completion of the closing on the Loan.

With this letter, I have received the following documents:

1. 2 copies of the Air Right Lease executed by the County and HOC with all Exhibits;
2. 3 copies of the Reciprocal Easement Agreement executed by the County and HOC;
3. 3 copies of the Memorandum of Lease executed by the County and HOC;
4. 3 copies of the Consent to Leasehold Mortgage executed by HOC and the County;

CHEN, WALSH, TECLER & MCCABE

June 22, 1995

Page Two

5. 2 copies of the Collateral Assignment of Plans and Agreements executed by HOC and the County;
6. 2 copies of the Office Building Memorandum of Understanding executed by HOC and the County;
7. 2 copies of the Additional Parking Memorandum of Understanding executed by HOC and the County;
8. 2 copies of the PILOT Agreement executed by HOC and the County;
9. 2 copies of the Investment Agreement executed by HOC and the County; and
10. Certificates of Insurance required by the Air Rights Lease for both the County and HOC's general contractor and architect.

The items identified above shall be referred to as the "Lease Documents".

Upon completion of the closing, this firm shall be authorized to assure the recordation of the Memorandum of Lease and the Reciprocal Easement Agreement prior to any Security Documents for the financing. Immediately upon completion of the recordation, this firm shall distribute the Lease Documents to each of the parties with date stamped copies of the Memorandum of Lease, Reciprocal Easement and Leasehold Deeds of Trust. Unless otherwise agreed by the parties, in the event that the closing is not completed and the Security Documents not recorded by July 7, 1995, the obligations of each of the parties to the other under the Lease Documents shall be determined "cancelled and null and void" and this escrow considered terminated.

Very truly yours,



Kenneth B. Tecler

APPROVED AND CONSENTED TO:

MONTGOMERY COUNTY DEPARTMENT  
OF TRANSPORTATION

By:




Graham Norton  
Director

KBT:bb

HOUSING OPPORTUNITIES  
COMMISSION OF MONTGOMERY  
COUNTY

By:



Bernard L. Tetreault  
Executive Director





AIR RIGHT LEASE

Montgomery County, Maryland - Lessor

Housing Opportunities Commission of Montgomery County - Lessee

June 23, 1995

Binder 2 of 2

3. Memorandum of Lease
4. Reciprocal Easement Agreement
5. Collateral Assignment and attachments
6. Additional Parking Memorandum of Understanding
7. Memorandum of Understanding  
re: Office Building & Residential Development
8. Investment Deposit Agreement
9. Agreement for Payment in Lieu of Taxes
10. Project Insurance Policy
11. Consent to Leasehold Mortgage
12. Contractors Insurance Policy
13. Escrow Letter



MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, dated this 23<sup>rd</sup> day of June, 1995, by and between Montgomery County, Maryland, a body politic and corporate, 101 Monroe Street, Rockville, Maryland 20850 ("Lessor") and Housing Opportunities Commission of Montgomery County, a body politic and corporate, 10400 Detrick Avenue Kensington, Maryland 20895 ("Lessee").

I. The parties hereto have executed a Long Term Air Rights Lease (the "Lease") dated the 23 day of June, 1995, for the property identified on Exhibit A attached hereto and made a part hereof.

II. The term of the Lease shall commence on June 23, 1995 and terminate on the 99th anniversary of the date of Substantial Completion of the Lessee Improvements as defined in the Lease, unless sooner terminated as provided in the Lease itself.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease on the day and year first above written.

HOUSING OPPORTUNITIES COMMISSION  
OF MONTGOMERY COUNTY

By: B. L. Tetreault  
Bernard L. Tetreault  
Executive Director

MONTGOMERY COUNTY, MARYLAND

By: Douglas M. Duncan  
Douglas M. Duncan  
County Executive

STATE OF MARYLAND:  
COUNTY OF MONTGOMERY:

I hereby certify that on this 21st day of June, 1995, before me, the subscriber, a Notary Public in and for the aforesaid state and county, personally appeared Bernard L Tetrcawlt and did acknowledge that he/she executed the foregoing Memorandum of Lease on behalf of the Housing Opportunities Commission of Montgomery County, Maryland for the purpose therein contained, and further acknowledged the foregoing Memorandum of Lease to be the act of the Housing Opportunities Commission of Montgomery County, Maryland.

As witness my hand and Notarial Seal.

[Signature]  
Notary Public  
My Commission Expires: 2/1/99

STATE OF MARYLAND:  
COUNTY OF MONTGOMERY:

On this 23rd day of June, 1995, before me, the undersigned officer, personally appeared Douglas M. Duncan, County Executive of Montgomery County, Maryland, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that (he) as such County Executive executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

[Signature: Jo Anne Poore]  
Notary Public  
My Commission Expires: June 1, 1998

B:\AIRRIGHTS\MEM-LSE

EXHIBIT A

Description

Part of Lot 16, Block 12, Edgemoor

"Land"

Being two pieces or parcels of land situated in the Seventh (7th) Election District of Montgomery County, Maryland, and each being a part of Lot 16, Block 12, as shown on a plat of subdivision entitled "Lot 16, Block 12, Edgemoor", and being recorded among the Land Records of Montgomery County, Maryland in Plat Book 144 as Plat No. 16519 and being more particularly described in two parts as follows

Part One

**Beginning** at a point at the northwesterly end of South 52° 33' 50" East, 245.22' line of Lot 16, as shown on Plat 16519, said point also being on the southwesterly right of way line of Old Georgetown Road; thence running with said right of way line

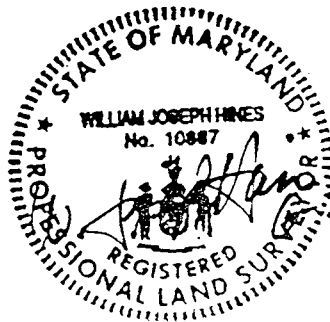
1. South 52° 33' 50" East, 33.55 feet to a point; thence leaving said right of way line and crossing a part of Lot 16, Block 12
2. South 37° 26' 10" West, 9.79 feet to a point; thence with a non-radial line
3. South 69° 46' 17" West, 4.71 feet to a point on a curve; thence
4. 101.14 feet along the arc of a curve deflecting to the left having a radius of 32.73 feet and a chord bearing South 77° 07' 21" West, 65.43 feet to a point; thence with a radial line
5. South 78° 36' 03" West, 9.31 feet to a point; thence
6. North 63° 59' 27" West, 1.00 feet to a point on the easterly right of way line of Woodmoot Avenue, said point lying 351.92 feet along the arc from the southerly end of the 398.72' curved right of way line of Woodmont Avenue; thence running with said right of way line, and with the outline of Lot 16, Block 12
7. 46.81 feet along the arc of a curve deflecting to the right having a radius of 360.00 feet and a chord bearing North 29° 44' 01" East and 46.77 feet to a point; thence
8. North 81° 26' 50" East 34.73 feet to the **point of beginning**; containing 538 square feet or 0.0124 acres of land.

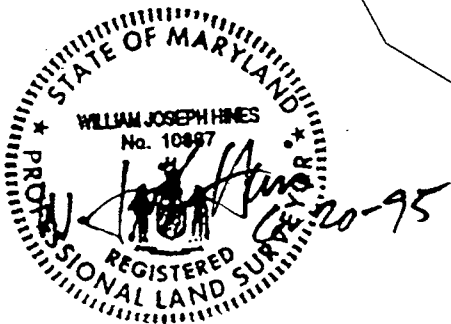
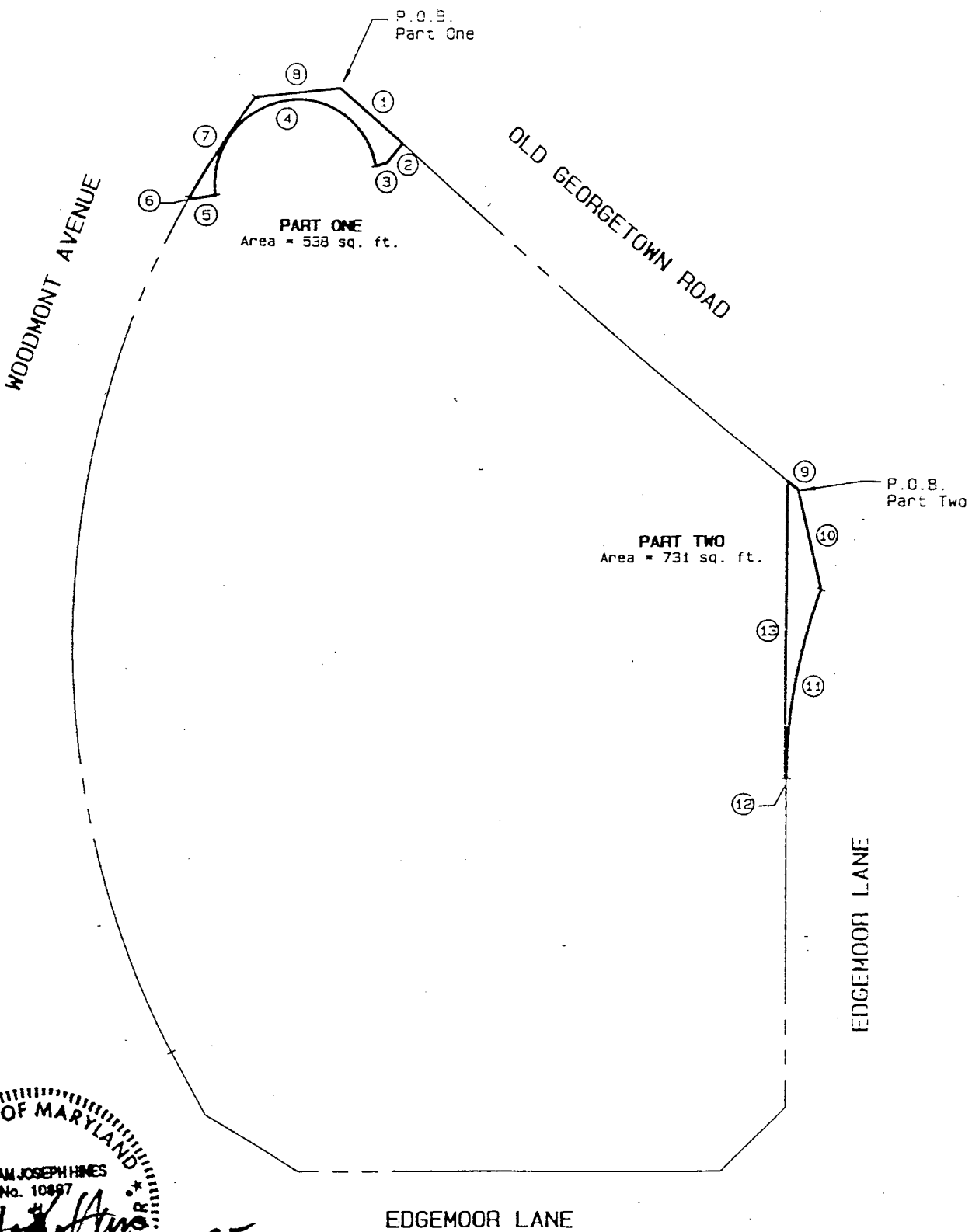
## Part Two

**Beginning** at a point at the northwesterly end of the South 15° 59' 12" East, 40.56' line of Lot 16, Block 12 as shown on Plat 16519, said point being on the southwesterly right of way line of Old Georgetown Road, and also on the westerly right of way line of Edgemoor Lane; thence running with said right of way line

1. South 15° 59' 12" East, 40.56 feet along a non-radial line to a point; thence continuing with the westerly right of way line of Edgemoor Lane.
3. 77.00 feet along the arc of a curve, deflecting to the left having a radius of 221.89 feet and a chord bearing South 07° 26' 37" West, 76.61 feet to a point; thence leaving said right of way line crossing a part Lot 16, Block 12 with a radial line
4. South 87° 30' 10" West, 0.59 feet to a point, thence
5. North 02° 25' 52" West, 118.43 feet to a point on the South 52° 33' 50" East, 245.22' line of Old Georgetown Road, said point lying 5.49 feet from the southeasterly end thereof; thence with said line
6. South 52° 33' 50" East, 5.49 feet, to the **point of beginning**; containing 731 square feet or 0.0168 acres of land.

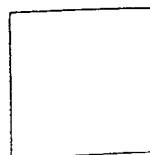
Parts One and Two described above being subject to any and all easements, rights of way and covenants of record.





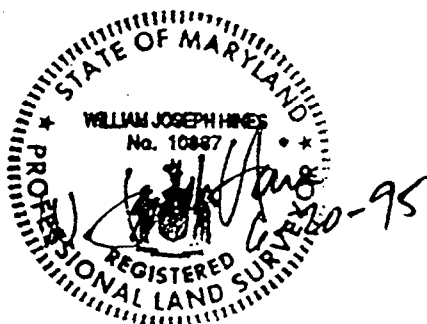
The Metropolitan

Land



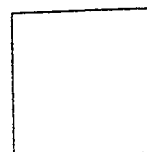
# DATA

○	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT	CHORD BEARING	CHORD DIST.
1	S 52° 33' 50" E		33.55			
2	S 37° 26' 10" W		9.79			
3	S 69° 46' 17" W		4.71			
4	177° 02' 36"	32.73	101.14	1268.24	S 77° 07' 21" W	65.44
5	S 78° 36' 03" W		9.31			
6	N 63° 59' 27" W		1.00			
7	7° 26' 57"	360.00	46.80	23.44	N 29° 44' 01" E	46.77
8	N 81° 26' 50" E		34.73			
9	S 52° 33' 50" E		5.49			
10	S 15° 59' 12" E		40.56			
11	19° 52' 54"	221.89	77.00	38.89	S 07° 26' 37" W	76.61
12	S 87° 30' 10" W		0.58			
13	N 02° 25' 52" W		118.43			



The Metropolitan

Land





## Description

### Part of Lot 16, Block 12, Edgemoor

#### "Old Georgetown Road Level"

Being two (2) three dimensional spaces, situated in the Seventh (7th) Election District of Montgomery County, Maryland, and being a part of an existing building situated on Lot 16, Block 12, as shown on a plat of subdivision entitled "Lot 16, Block 12, Edgemoor", and being recorded among the Land Records of Montgomery County, Maryland in Plat Book 144 as Plat No. 16519, and having an upper and lower elevation as shown on Exhibit G-3-A, and being more particularly described as follows

#### Part One

**Beginning** at a point lying on and distant 54.96 feet from the South 02° 29' 50" East, 131.16 foot plat line, as shown on said plat, said point also being on the westerly right of way line of Edgemoor Lane; thence running with and along said right of way line

1. South 02° 29' 50" East, 51.00 feet to a point; thence leaving said right of way of Edgemoor Lane and crossing a part of Lot 16, Block 12
2. South 87° 30' 10" West, 19.69 feet to a point; thence
3. South 02° 29' 50" East, 26.01 feet to a point; thence
4. North 87° 29' 03" East, 18.89 feet to a point on and distant 34.23 feet from the southwesterly end of South 42° 30' 10" West, 35.36' line of Lot 16; thence with the outline of Lot 16
5. South 42° 30' 10" West, 34.23 feet to a point; thence
6. South 87° 30' 10" West, 5.93 feet to a point; thence leaving the outline of Lot 16 and crossing a part thereof
7. North 02° 29' 50" West, 24.19 feet to a point; thence
8. South 87° 29' 03" West, 9.33 feet to a point; thence
9. South 02° 29' 50" East, 24.19 feet to a point on the northerly right of way line of Edgemoor Lane; thence with said right of way line
10. South 87° 30' 10" West, 156.88 feet to a point; thence with a part of the right of way

line of Woodmont Avenue

11. North  $61^{\circ} 14' 55''$  West, 40.40 feet to a point; thence leaving said right of way line and crossing a part of Lot 16 with a non-radial line
12. North  $30^{\circ} 25' 05''$  West, 30.21 feet to a point on a curve; thence with a curved line which is concentric with and parallel to the 398.72' curved right of way line of Woodmont Avenue, and offset 1.00 feet easterly thereof
13. 247.08 feet along the arc of a curve deflecting to the right having a radius of 359.00 feet and a chord bearing North  $10^{\circ} 17' 01''$  West, 242.23 feet; thence with a non-radial line
14. South  $81^{\circ} 19' 27''$  East, 58.69 feet to a point; thence
15. North  $11^{\circ} 51' 05''$  East, 26.45 feet to a point; thence
16. North  $16^{\circ} 51' 02''$  East, 7.44 feet to a point; thence with a non-radial line
17. South  $74^{\circ} 03' 18''$  East, 3.53 feet to a point on a curve; thence
18. 23.38 feet along the arc of a curve deflecting to the right having a radius of 47.75 feet and a chord bearing North  $53^{\circ} 58' 54''$  East, 23.14 feet to a point; thence with a non-radial line
19. North  $05^{\circ} 56' 44''$  West, 3.16 feet to a point; thence
20. North  $37^{\circ} 35' 12''$  East, 5.34 feet to a point; thence
21. North  $82^{\circ} 44' 30''$  East, 11.20 feet to a point; thence
22. South  $53^{\circ} 53' 06''$  East, 5.62 feet to a point; thence
23. North  $82^{\circ} 34' 11''$  East, 10.74 feet to a point; thence with a non-radial line
24. South  $08^{\circ} 19' 27''$  East, 4.99 feet to a point on a curve; thence
25. 6.43 feet along the arc of a curve deflecting to the right having a radius of 47.75 feet and a chord bearing South  $71^{\circ} 30' 10''$  East, 6.43 feet to a point; thence with a line which is radial to both the preceding curve and the following curve
26. South  $22^{\circ} 21' 23''$  West, 1.50 feet to a point on a curve; thence
27. 30.39 feet along the arc of a curve deflecting to the right having a radius of 46.25 feet and a chord bearing South  $48^{\circ} 49' 16''$  East and 29.84 feet to a point; thence with a non-radial line

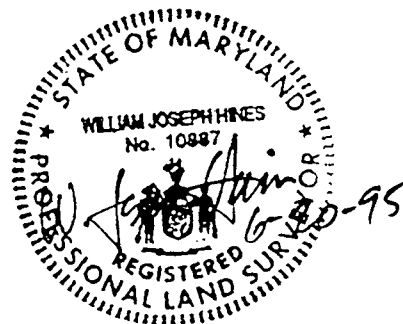
28. North 68° 03' 58" East, 4.28 feet to a point; thence
29. South 52° 46' 07" East, 86.70 feet to a point; thence
30. South 02° 30' 23" East, 141.73 feet to a point; thence
31. North 87° 29' 33" East, 61.70 feet to the **point of beginning**; containing 65,724 square feet or 1.5088 acres.

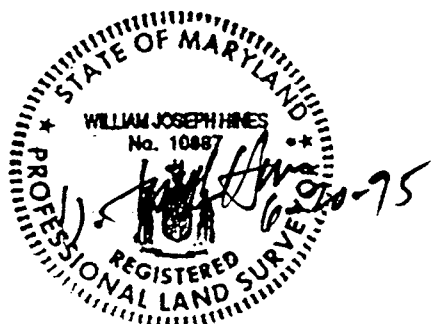
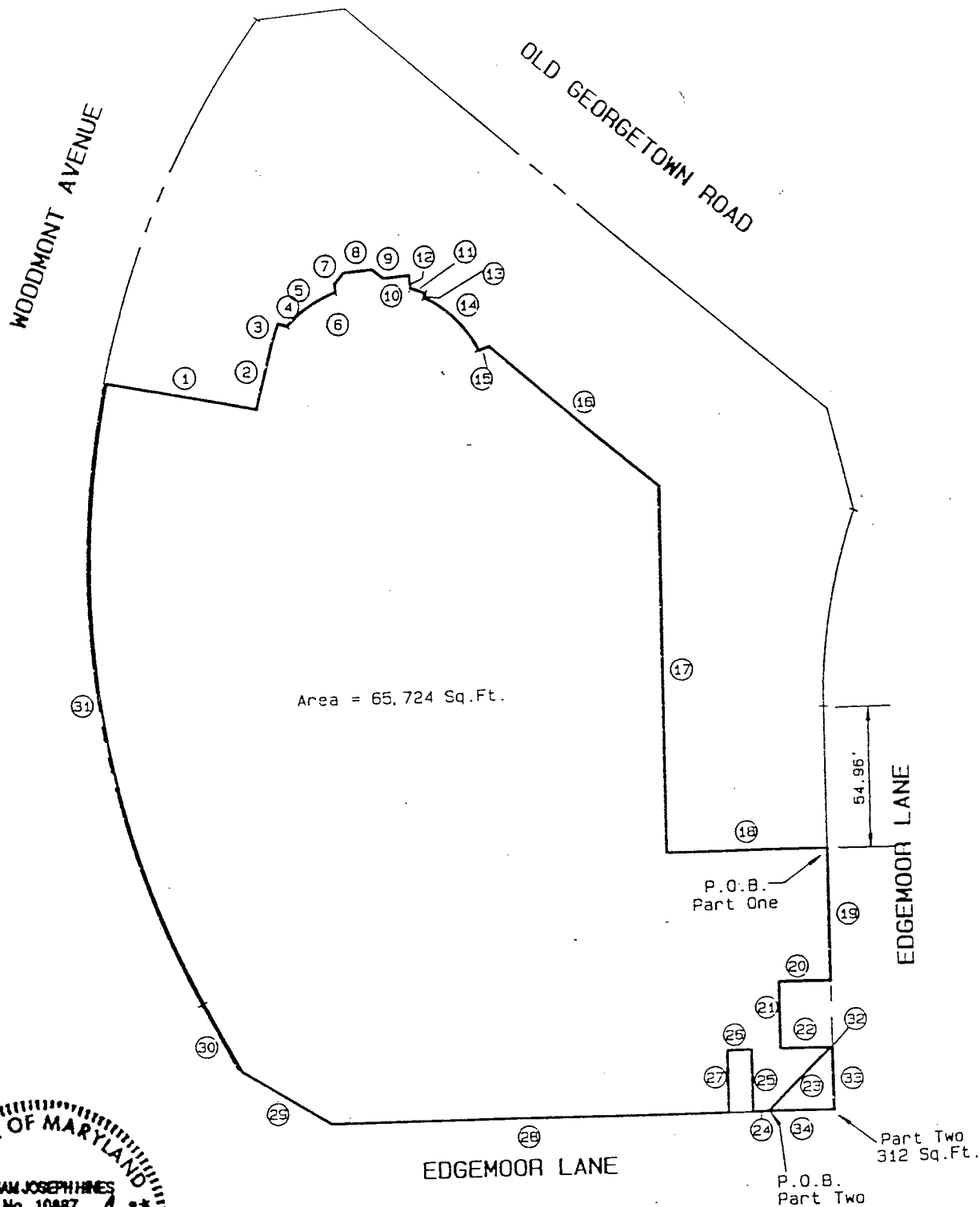
## Part Two

**Beginning** at the northeasterly end of the South 87° 30' 10" West, 172.15' right of way line of Edgemoor Lane, as shown on said plat; thence with the outline of Lot 16, Block 12

1. North 42° 30' 10" East, 34.23 feet, to a point; thence crossing a part of the right of way for Edgemoor Lane
2. North 87° 29' 03" East, 0.80 feet, to a point; thence
2. South 02° 29' 50" East, 24.20 feet, to a point; thence
2. South 87° 30' 10" West, 25.00 feet, to the **point of beginning**, containing 312 square feet or 0.0072 acres.

Parts One and Two described above being subject to any and all easements, rights of way and covenants of record.



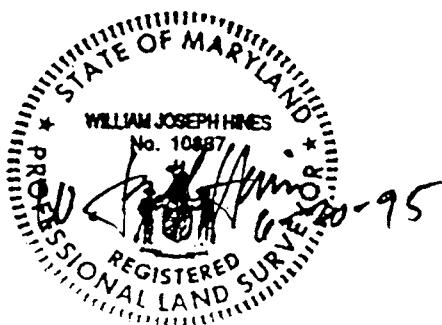


**The Metropolitan**

Old Georgetown Road Level

# DATA

○	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT	CHORD BEARING	CHORD DIST.
1	S 81° 19' 27"E		58.69			
2	N 11° 51' 05"E		26.45			
3	N 16° 51' 02"E		7.44			
4	S 74° 03' 18"E		3.53			
5	28° 02' 57"	47.75	23.38	11.93	N 53° 58' 54"E	23.14
6	N 05° 56' 44"W		3.16			
7	N 37° 35' 12"E		5.34			
8	N 82° 44' 30"E		11.20			
9	S 53° 53' 06"E		5.62			
10	N 82° 34' 11"E		10.74			
11	S 08° 19' 27"E		4.99			
12	7° 43' 05"	47.75	6.43	3.22	S 71° 30' 10"E	6.43
13	S 22° 21' 23"W		1.50			
14	37° 38' 43"	46.25	30.39	15.77	S 48° 49' 16"E	29.84
15	N 68° 03' 58"E		4.28			
16	S 52° 46' 07"E		86.70			
17	S 02° 30' 23"E		141.73			
18	N 87° 29' 33"E		61.70			
19	S 02° 29' 50"E		51.00			
20	S 87° 30' 10"W		19.69			
21	S 02° 29' 50"E		26.01			
22	N 87° 29' 03"E		18.89			
23	N 42° 30' 10"E		34.23			
24	S 87° 30' 10"W		5.94			
25	N 02° 29' 50"W		24.19			
26	S 87° 29' 03"W		9.33			
27	S 02° 29' 50"E		24.19			
28	S 87° 30' 10"W		156.88			
29	N 61° 14' 55"W		40.40			
30	N 30° 25' 05"W		30.21			
31	39° 25' 58"	359.00	247.08	129.66	N 10° 17' 01"W	242.23
32	N 87° 29' 03"E		0.80			
33	S 02° 29' 50"E		24.20			
34	S 87° 30' 10"W		25.00			



The Metropolitan

Old Georgetown Road Level

## **Description**

### **Part of Lot 16, Block 12, Edgemoor**

#### **"Plaza Level"**

**Being** two (2) three dimensional spaces, situated in the Seventh (7th) Election District of Montgomery County, Maryland, and being a part of an existing building situated on Lot 16, Block 12, as shown on a plat of subdivision entitled "Lot 16, Block 12, Edgemoor", and being recorded among the Land Records of Montgomery County, Maryland in Plat Book 144 as Plat No. 16519, and having an upper and lower elevation as shown on Exhibit G-3-A, and being more particularly described as follows

#### **PART ONE**

**Beginning** at a point lying on and distant 105.96 feet from the northerly end of the South 02° 29' 50" East, 191.18 foot plat line, as shown on said plat, said point also being on the westerly right of way line of Edgemoor Lane (80' wide); thence running with and along a part of said right of way line, and with the outline of Lot 16, Block 12

1. South 02° 29' 50" East, 25.20 feet to a point; thence
2. South 42° 30' 10" West, 35.36 feet to a point; thence
3. South 87° 30' 10" West, 6.40 feet to a point; leaving said right of way line of Edgemoor Lane and crossing a part of Lot 16
4. North 02° 29' 50" West, 3.03 feet to a point; thence
5. North 85° 30' 57" East, 2.34 feet to a point; thence
6. North 20° 39' 11" East, 4.35 feet to a point; thence
7. North 02° 29' 50" West, 8.76 feet to a point; thence
8. North 25° 39' 02" West, 4.35 feet to a point; thence
9. South 87° 29' 03" West, 2.34 feet to a point; thence
10. North 02° 29' 50" West, 2.18 feet to a point; thence
11. South 87° 40' 20" West, 18.27 feet to a point; thence
12. South 02° 34' 18" East, 22.22 feet to a point on the northerly right of way line of

Edgemoor Lane, as shown on said plat; thence with a part of said right of way line, and with the outline of Lot 16

13. South  $87^{\circ} 30' 10''$  West, 147.50 feet to a point; thence
14. North  $61^{\circ} 14' 55''$  West, 40.40 feet to a point; thence leaving said right of way line and crossing a part of Lot 16
15. North  $30^{\circ} 25' 05''$  West, 30.21 feet to a point of tangency; thence with a curved line which is concentric with and parallel to the 588.72' curved right of way line of Woodmont Avenue, and being offset 1.00 feet easterly thereof
16. 243.77 feet along the arc of a curve deflecting to the right, having a radius of 359.00 feet and a chord bearing North  $10^{\circ} 32' 50''$  West, 239.11 feet to a point; thence with a line which is radial to both the preceeding curve and the following curve
17. South  $81^{\circ} 05' 41''$  East, 58.21 feet, to a point; thence
18. 72.66 feet along the arc of a curve deflecting to the right, having a radius of 300.79 feet and a chord bearing North  $15^{\circ} 49' 31''$  East, 72.48 feet to a point; thence with a non-radial line
19. North  $77^{\circ} 07' 05''$  East, 17.37 feet, to a point; thence
20. South  $52^{\circ} 33' 50''$  East, 141.00 feet, to a point, thence
21. North  $88^{\circ} 07' 47''$  East, 12.54 feet, to a point; thence
22. South  $02^{\circ} 30' 23''$  East, 168.94 feet, to a point; thence
23. South  $47^{\circ} 30' 32''$  East, 6.01 feet, to a point; thence
24. South  $42^{\circ} 29' 28''$  West, 6.01 feet, to a point; thence
25. South  $47^{\circ} 30' 32''$  East, 38.99 feet, to a point; thence
26. North  $42^{\circ} 29' 28''$  East, 5.62 feet, to a point; thence
27. South  $47^{\circ} 30' 32''$  East, 4.20 feet, to a point; thence
28. North  $87^{\circ} 29' 03''$  East, 27.18 feet to the **point of beginning**, containing 64,034 square feet or 1.4700 acres; **saving and excepting from the above described area, the following**

**Being** a circle, the center of which lies 47.40 feet southwesterly and perpendicular to a point lying on and distant 51.30 feet from the northwesterly end of the above described nineteenth

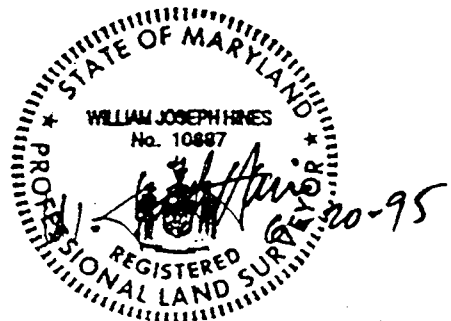
(19th) line, said circle having a radius of 29.75 feet and containing 2781 square feet or 0.0638 acres. The total net area described in Part One is 61,253 square feet or 1.4061 acres.

## PART TWO

**Beginning** at the northeasterly end of the South 87° 30' 10" West, 172.15' right of way line of Edgemoor Lane, as shown on said plat; thence with the outline of Lot 16, Block 12

1. North 42° 30' 10" East, 35.36 feet, to a point; thence crossing a part of the right of way for Edgemoor Lane
2. South 02° 29' 50" East, 25.00 feet, to a point; thence
2. South 87° 30' 10" West, 25.00 feet, to the **point of beginning**, containing 313 square feet or 0.0072 acres.

Parts One and Two described above being subject to any and all easements, rights of way and covenants of record.





WOODMONT AVENUE

OLD GEORGETOWN ROAD

OCULUS  
(Area Excluded)

Area = 61,253 sq. ft.

1.00'

105.96'

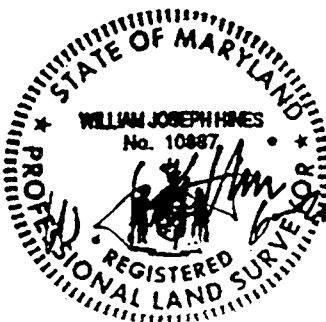
EDGEMOOR LANE

P.O.B.  
Part One

PART TWO  
313 SQ.FT.

P.O.B.  
Part Two

EDGEMOOR LANE

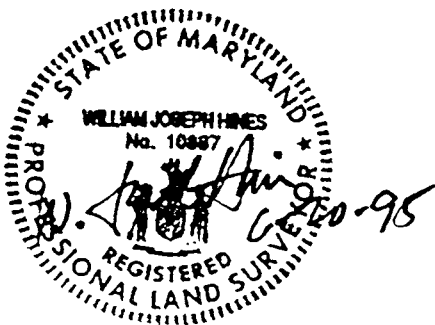


The Metropolitan

Plaza Level

# DATA

○	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT	CHORD BEARING	CHORD DIST.
1	N 77° 07' 05"E		17.37			
2	S 52° 33' 50"E		141.00			
3	N 88° 07' 47"E		12.54			
4	S 02° 30' 23"E		168.94			
5	S 47° 30' 32"E		6.01			
6	S 42° 29' 28"W		6.01			
7	S 47° 30' 32"E		38.99			
8	N 42° 29' 28"E		5.62			
9	S 47° 30' 32"E		4.20			
10	N 87° 29' 03"E		27.18			
11	S 02° 29' 50"E		25.20			
12	N 42° 30' 10"E		35.36			
13	S 87° 30' 10"W		6.40			
14	N 02° 29' 50"W		3.03			
15	N 85° 30' 57"E		2.34			
16	N 20° 39' 11"E		4.35			
17	N 02° 29' 50"W		8.76			
18	N 25° 39' 02"W		4.35			
19	S 87° 29' 03"W		2.34			
20	N 02° 29' 50"W		2.18			
21	S 87° 40' 20"W		18.27			
22	S 02° 34' 18"E		22.11			
23	S 87° 30' 10"W		147.50			
24	N 61° 14' 55"W		40.40			
25	N 30° 25' 05"W		30.21			
26	38° 54' 19"	359.00	243.77	126.79	N 10° 32' 50"W	239.11
27	S 81° 05' 41"E		58.21			
28	13° 50' 24"	300.79	72.66	36.51	N 15° 49' 31"E	72.48
29	S 02° 29' 50"E		25.00			
30	S 87° 30' 10"W		25.00			
31	0° 00' 00"	29.75	0.00	0.00	S 87° 29' 37"W	0.00



The Metropolitan

Plaza Level

## Description

### Part of Lot 16, Block 12, Edgemoor

#### "Old Georgetown Road Level"

Being three (3) three dimensional spaces, situated in the Seventh (7th) Election District of Montgomery County, Maryland, and being a part of an existing building situated on Lot 16, Block 12, as shown on a plat of subdivision entitled "Lot 16, Block 12, Edgemoor", and being recorded among the Land Records of Montgomery County, Maryland in Plat Book 144 as Plat No. 16519, and having an upper and lower elevation as shown on Exhibit G-3-A, and being more particularly described as follows

#### Part One

**Beginning** at a point lying North 52° 37' 02" West, 107.70 feet from the southeasterly end of the South 52° 33' 50" East, 245.22' plat line, as shown on said plat, said point being offset 0.10 feet southwesterly from a point lying on and distant 107.70 feet from the southeasterly end thereof; thence running with a line parallel to and offset 0.10 feet southwesterly thereof, and crossing a part of Lot 16

1. South 52° 33' 50" East, 102.37 feet to a point; thence
2. South 02° 22' 46" East, 66.05 feet to a point; thence
3. North 46° 39' 17" West, 8.59 feet to a point; thence
4. South 87° 57' 08" West, 11.24 feet to a point; thence
5. South 31° 26' 28" West, 11.04 feet to a point; thence
6. South 87° 21' 10" West, 37.79 feet to a point; thence
7. North 07° 12' 37" West, 40.92 feet to a point; thence
8. South 87° 00' 01" West, 10.60 feet to a point; thence
9. North 47° 30' 36" West, 4.23 feet to a point; thence
10. North 01° 10' 40" West, 7.80 feet to a point; thence
11. North 52° 13' 13" West, 97.55 feet to a point; thence
12. North 36° 55' 49" East, 7.28 feet to a point; thence

13. South  $51^{\circ} 59' 40''$  East, 26.23 feet to a point; thence
14. North  $37^{\circ} 28' 37''$  East, 18.33 feet to a point; thence
15. South  $53^{\circ} 17' 15''$  East, 49.02 feet to a point; thence
16. North  $33^{\circ} 31' 03''$  East, 6.16 feet to a point; thence
17. South  $64^{\circ} 49' 44''$  East, 6.24 feet to a point; thence
18. North  $37^{\circ} 43' 35''$  East, 24.69 feet to a point; thence
19. North  $52^{\circ} 32' 37''$  West, 37.25 feet to a point; thence
20. North  $37^{\circ} 43' 02''$  East, 4.87 feet to the **point of beginning**; containing 8,350 square feet or 0.1917 acres of land.

### Part Two

Being a circle, the center of which is offset 110.32 feet southwesterly from a point lying on and distant 138.79 feet from the southeasterly end of the South  $52^{\circ} 33' 50''$  East, 245.22' right of way line of Old Georgetown Road, as shown on said plat; said circle having a radius of 29.75 feet and containing 2781 square feet or 0.0638 acres.

### Part Three

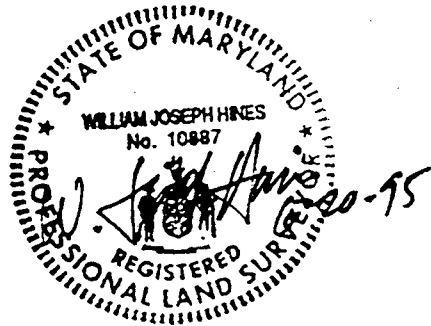
**Beginning** at a point lying South  $24^{\circ} 35' 24''$  West, 104.09 feet from the southwesterly end of the North  $81^{\circ} 26' 50''$  East, 34.73' line of Lot 16 as shown on said plat, said point being offset 1.00 feet easterly from a point lying on and distant 104.60 feet along the arc of the 398.72' curved right of way line of Woodmont Avenue; thence crossing a part of Lot 16, Block 12 with a non-radial line

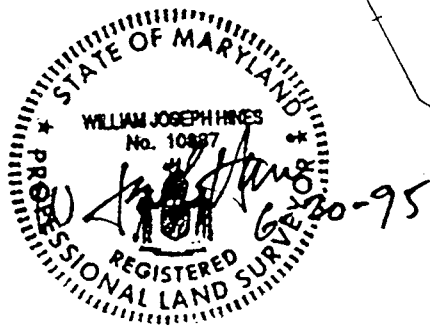
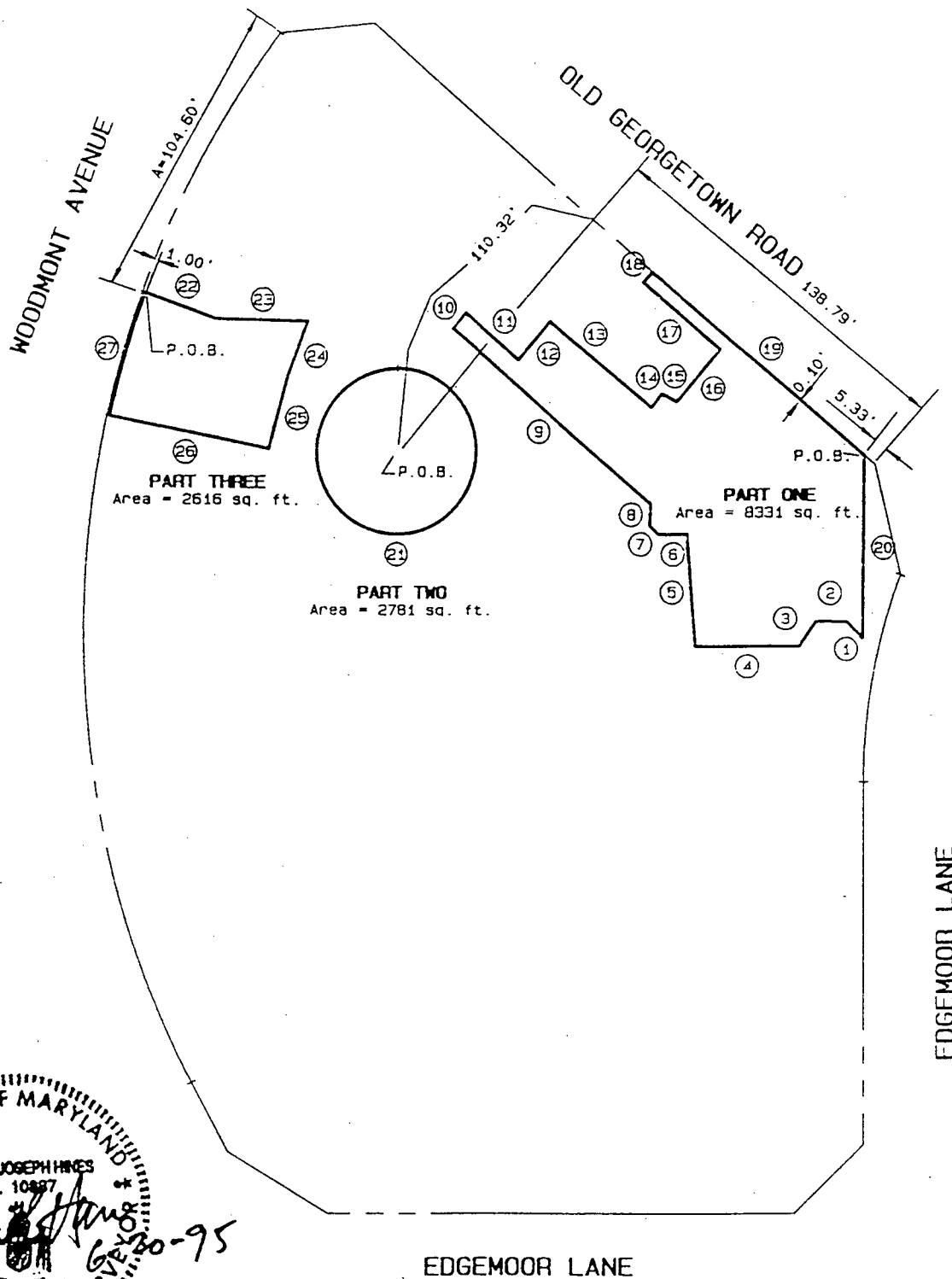
1. South  $72^{\circ} 33' 34''$  East, 26.92 feet to a point; thence
2. North  $88^{\circ} 43' 08''$  East, 33.81 feet to a point; thence
3. South  $17^{\circ} 27' 09''$  West, 21.50 feet to a point; thence
4. South  $11^{\circ} 57' 15''$  West, 26.49 feet to a point; thence with a non-radial line
5. North  $81^{\circ} 07' 51''$  West, 58.69 feet to a point on a curve which is concentric with and parallel to the 398.72' curved right of way line of Woodmont Avenue, and offset 1.00

feet easterly thereof; thence

6. 45.92 feet along the arc of a curve deflecting to the right having a radius of 359.00 feet and a chord bearing North 13° 08' 46" East and 45.89 feet to the **point of beginning**; containing 2,616 square feet or 0.0601 acres.

Parts One, Two, and Three described above being subject to any and all easements, rights of way and covenants of record.



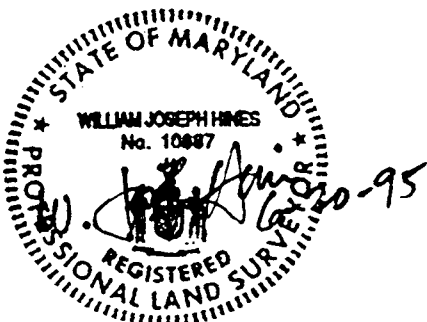


The Metropolitan

Old Georgetown Road Level

# DATA

○	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT	CHORD BEARING	CHORD DIST.
1	N 46° 39' 17" W		8.59			
2	S 87° 57' 08" W		11.24			
3	S 31° 26' 28" W		11.04			
4	S 87° 21' 10" W		37.79			
5	N 07° 12' 37" W		40.92			
6	S 87° 00' 01" W		10.60			
7	N 47° 30' 36" W		4.23			
8	N 01° 10' 40" W		7.80			
9	N 52° 13' 13" W		97.55			
10	N 36° 55' 49" E		7.28			
11	S 51° 59' 40" E		26.23			
12	N 37° 28' 37" E		18.33			
13	S 53° 17' 15" E		49.02			
14	N 33° 31' 03" E		6.16			
15	S 64° 49' 44" E		6.24			
16	N 37° 43' 35" E		24.69			
17	N 52° 32' 37" W		37.25			
18	N 37° 43' 02" E		4.87			
19	S 52° 33' 50" E		102.37			
20	S 02° 22' 46" E		66.05			
21	0° 00' 00"	29.75	0.00	0.00	S 87° 29' 37" W	0.00
22	S 72° 33' 34" E		26.91			
23	N 88° 43' 08" E		33.81			
24	S 17° 27' 09" W		21.50			
25	S 11° 57' 15" W		26.49			
26	N 81° 07' 50" W		58.69			
27	7° 19' 45"	359.00	45.92	22.99	N 13° 08' 46" E	45.89



The Metropolitan

Old Georgetown Road Level

## Description

### Part of Lot 16, Block 12, Edgemoor Exhibit G-4-I "Edgemoor Lane Level"

**Being** a three dimensional space, situated in the Seventh (7th) Election District of Montgomery County, Maryland, and being a part of an existing building situated on Lot 16, Block 12, as shown on a plat of subdivision entitled "Lot 16, Block 12, Edgemoor", and being recorded among the Land Records of Montgomery County, Maryland in Plat Book 144 as Plat No. 16519, and having an upper and lower elevation as shown on Exhibit G-3-A, and being more particularly described as follows

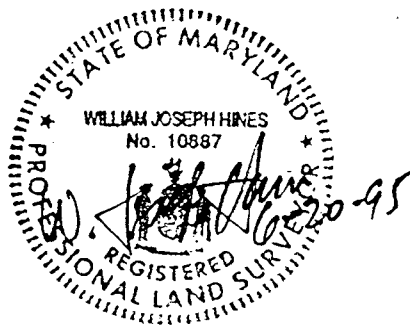
**Beginning** at a point lying South 28° 30' 36" West, 46.72 feet from the northerly end of the 588.72' curved plat line, as shown on said plat, said point also being offset 1.00 feet easterly from a point lying 46.81 southwesterly along the arc of said curved line; thence running in, through over and across Lot 16, Block 12 with a radial line

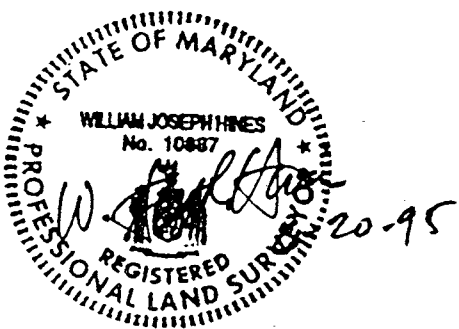
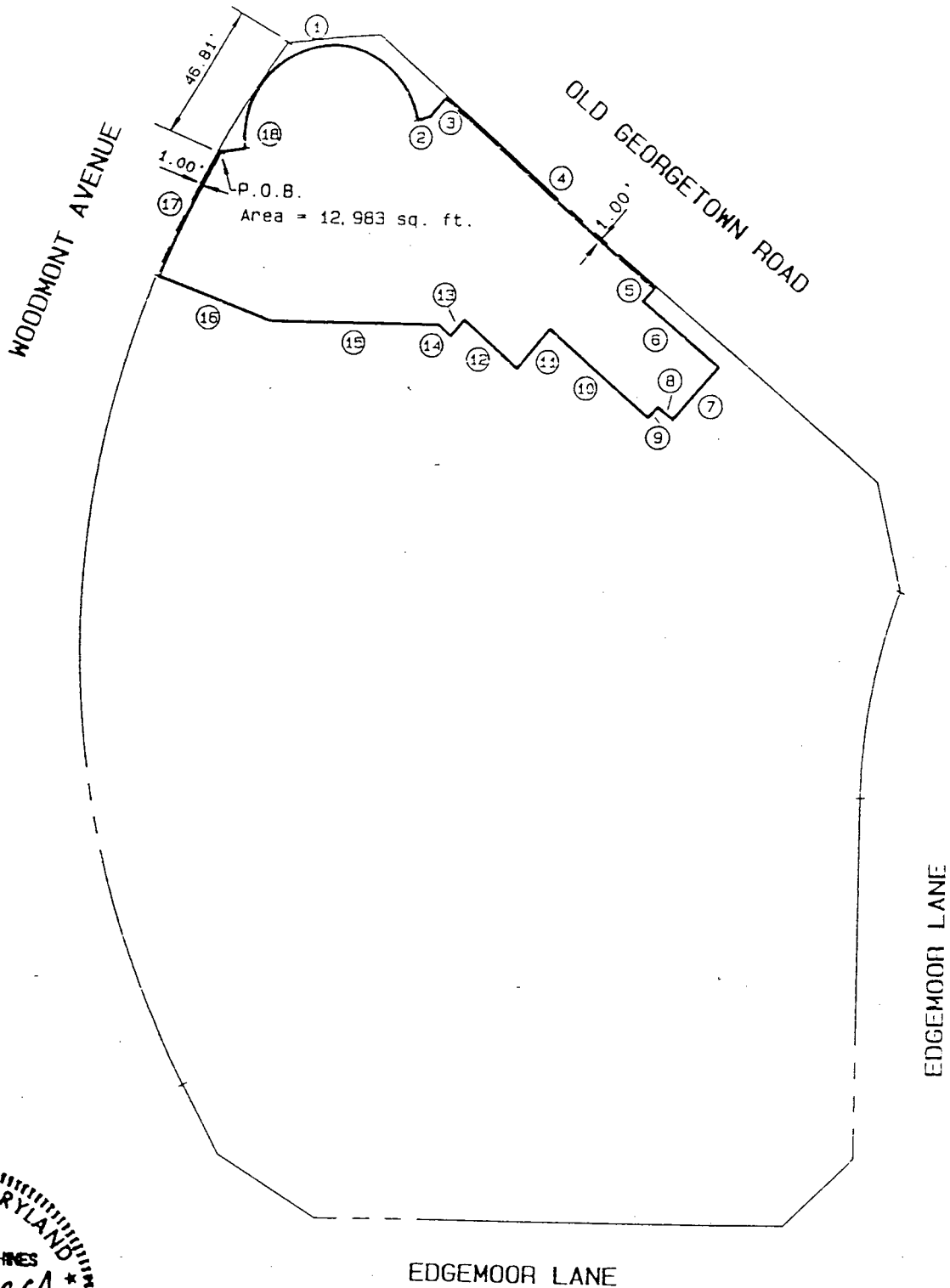
1. North 78° 36' 03" East, 9.31 feet to a point; thence
2. 101.14 feet along the arc of a curve deflecting to the right, having a radius of 32.73 feet and a chord bearing North 77° 07' 21" East, 65.43 feet to a point; thence with a non-radial line
3. North 69° 46' 17" East, 4.71 feet to a point; thence
4. North 37° 26' 10" East, 8.79 feet to a point lying South 50° 51' 23" East, 33.56 feet from the northwesterly end of the south 52° 33' 50" East, 243.82' plat line, said point being offset 1.00 feet southwesterly from a point lying 33.71 feet along said line; thence with a line parallel to said plat line
5. South 52° 33' 50" East, 104.22 feet to a point; thence
6. South 37° 26' 10" West, 6.00 feet to a point; thence
7. South 52° 33' 50" East, 36.12 feet to a point; thence
8. South 37° 26' 10" West, 24.78 feet to a point; thence
9. North 52° 33' 50" West, 7.11 feet to a point; thence
10. South 37° 26' 10" West, 5.06 feet to a point; thence
11. North 52° 33' 50" West, 48.26 feet to a point; thence



12. South  $37^{\circ} 26' 10''$  West, 18.91 feet to a point; thence
13. North  $52^{\circ} 33' 50''$  West, 26.57 feet to a point; thence
14. South  $37^{\circ} 26' 10''$  West, 7.73 feet to a point; thence
15. North  $52^{\circ} 33' 50''$  West, 6.30 feet to a point; thence
16. South  $87^{\circ} 31' 20''$  West, 63.29 feet to a point; thence with a non-radial line
17. North  $72^{\circ} 38' 15''$  West, 43.44 feet to a point; thence with curved line which is concentric with and parallel to the aforementioned 588.72' curved plat line, and being offset 1.00 feet easterly thereof
18. 49.69 feet along the arc of a curve deflecting to the right having a radius of 359.00 feet and a chord bearing North  $22^{\circ} 02' 39''$  East 49.65 feet to the **point of beginning**; containing 12,983 square feet or 0.2980 acres of land.

Subject to any and all easements, rights of way, and covenants of record.



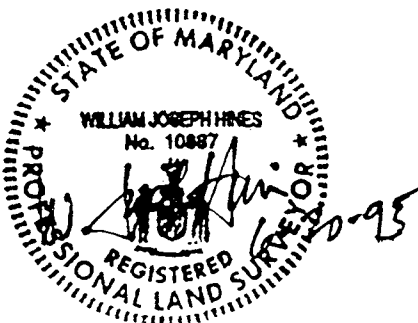


The Metropolitan

Edgemoor Lane Level

# DATA

○	DELTA/BEARING	RADIUS	LEN./DIST.	TANGENT	CHORD BEARING	CHORD DIST.
1	177° 02' 36"	32.73	101.14	1268.24	N 77° 07' 21"E	65.44
2	N 69° 46' 17"E		4.71			
3	N 37° 26' 10"E		8.79			
4	S 52° 33' 50"E		104.22			
5	S 37° 26' 10"W		6.00			
6	S 52° 33' 50"E		36.12			
7	S 37° 26' 10"W		24.78			
8	N 52° 33' 50"W		7.11			
9	S 37° 26' 10"W		5.06			
10	N 52° 33' 50"W		48.26			
11	S 37° 26' 10"W		18.91			
12	N 52° 33' 50"W		26.57			
13	S 37° 26' 10"W		7.73			
14	N 52° 33' 50"W		6.30			
15	S 87° 31' 20"W		63.29			
16	N 72° 38' 15"W		43.44			
17	7° 55' 47"	359.00	49.69	24.86	N 22° 02' 39"E	49.65
18	N 78° 36' 03"E		9.31			



The Metropolitan

Edgemoor Lane Level



RECIPROCAL EASEMENT AGREEMENT AND  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS RECIPROCAL EASEMENT AGREEMENT AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, (this "Agreement") is made and entered into this 23 day of June, 1995, by and between HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY, a body politic and corporate (the "Lessee") and MONTGOMERY COUNTY, MARYLAND, a political subdivision of the State of Maryland in its capacity as an owner of real estate, not in its capacity as a governmental entity (the "Lessor").

RECITALS

WHEREAS, the Lessor is the owner of that certain parcel of land in Bethesda, Maryland bounded by Woodmont Avenue, Old Georgetown Road and Edgemoor Lane in the central business district of Bethesda, Maryland and more particularly described on Exhibit A attached hereto (the "Land"), upon which the Lessor has caused to be constructed a multi-level, approximately 1200-space parking structure (the "Existing Structure"); and

WHEREAS, the Lessor and the Lessee have entered into that certain Air Rights Lease of even date herewith (the "Air Rights Lease") which is incorporated herein by reference; and

WHEREAS, Lessor, pursuant to the Air Rights Lease, has leased to the Lessee, a portion of the Land, a portion of the Existing Structure (consisting of the parking deck being generally on the level of Old Georgetown Road and the portions of the parking deck being generally on the level of Edgemoor Lane), a portion of the air rights over the Existing Structure hereto all referred to as

the "Demised Premises" and more particularly defined in the Air Rights Lease; and

WHEREAS, the portions of the Existing Structure which are not included within the Demised Premises are being retained by the Lessor and will be used to operate a public parking garage (the "Garage") and to build and operate an office building with a day care center and play lot (the "Office Project") both as more particularly defined in the Air Rights Lease; and

WHEREAS, it is the intent of the parties that the Lessee shall complete specific elements of the Existing Structure and construct within the Demises Premises a 308 unit residential rental community with approximately 14,725 square feet of related retail uses an open space system including a plaza on the roof of a portion of the Existing Structure (the "Plaza") a street level vest pocket park (the "Water Plaza"), a pedestrian walkway system linking two pedestrian bridges to be built by the Lessor (the "Pedestrian Bridges") to all elements of the development in and above the Existing Structure together with the "Lessee Development" (which term shall include the portion of the Existing Structure within the Demised Premises and any substitute or replacement improvement within the Demised Premises), as more fully described in the Air Rights Lease in accordance with the Lessee Plans and Specifications as defined in the Air Rights Lease; and

WHEREAS, the Lessor desires to provide the Lessee with certain non-exclusive easements of support for the Lessee Improvements over certain portions of the Garage and the Land, and the parties desire to grant to each other certain exclusive and non-exclusive easements within the Existing Structure, the Lessee Improvements and the Office Project for the installation, construction, maintenance, and repair of certain facilities necessary for the coordinated operation, repair, construction, reconstruction and maintenance of the Garage, the Lessee Improvements and the Office Project, including, without limitation, easements for the location, use, operation, maintenance and repair, of utilities, utilities vaults, mechanical rooms, heating, ventilating and air conditioning facilities, elevators and related equipment, stairwells, and other necessary facilities for the coordinated operation of the Garage, the Lessee Improvements and the Office Project, together with easements for pedestrian ingress, egress and transport between portions of the Garage, the Lessee Improvements and the Office Project; and

NOW THEREFORE, for and in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### TERM

Unless the Lessee shall have purchased the Demised Premises pursuant to the Air Rights Lease, this Agreement shall have the same term as the Air Rights Lease. If the Lessee purchases the Demised Premises, this Agreement shall be effective in perpetuity unless terminated by the mutual agreement of the owners from time to time of the Garage, the Lessee Improvements and the Office Project and Montgomery County, Maryland, as a municipal entity (and not as owner of the Garage for purposes of extinguishing any rights of use created by Section 3.08 hereof.

## ARTICLE 2

### CERTAIN DEFINITIONS

Section 2.01. Capitalization of Words. All capitalized terms used in this Agreement and not otherwise defined in this Agreement shall have the meanings ascribed to them in the Air Rights Lease (and the relevant portions of the Air Rights Lease defining such meanings are incorporated into this Agreement by this reference). All definitions incorporated by reference from the Air Rights Lease shall, to the extent necessary, survive the expiration or earlier termination of the Air Rights Lease or any substitute New Lease.

Section 2.02. Easement Holder and Dominant Parcel. For the purposes of this Easement, the owner of the improvements or estate



which is benefited by any of the easements granted herein shall be referred to as the "Easement Holder" and the improvements or estate which are benefited by any such easement shall be referred to as the "Dominant Parcel". The owner of the improvements or estate in or upon which any such easement is located shall be referred to as the "Servient Owner," and the improvements or estate in or upon which any such easement is located shall be referred to as the "Servient Parcel".

### ARTICLE 3

#### GRANTING OF EASEMENTS

##### Section 3.01. Non-Exclusive Easements for Structural Support.

The Lessor grants a non-exclusive easement for the support of the Lessee Improvements and the Office Project through and over the caissons, grade beams, columns, footings, transfer beams, shear walls, floor slabs and beams and other structural elements (together, the "Support Members") within the Garage Property as necessary for the support of the Lessee Improvements as contemplated by the Lessee Plans and Specifications and the Office Project as contemplated by Office Plans and Specifications. The Support Members subject to such non-exclusive support easement are designated on the drawings listed on Exhibit B attached hereto. The Support Members have been constructed and are in place on the date hereof. The Lessor further grants a non-exclusive easement

for the benefit of the Demised Premises and the Lessee Improvements and the Office Project over and across the areas occupied by such Support Members for the placement, replacement, construction, reconstruction, maintenance, repair and replacement (subject to the conditions set forth herein) of such existing or substitute Support Members as may from time to time be necessary for the support of the Lessee Improvements, the Office Project or any replacement improvements within the Demised Premises (subject to the limitations on replacement improvements set forth in the Air Rights Lease so long as the Air Rights Lease remains in effect); provided, however, that the loads created or allowed to be created upon such Support Members (including both live loads and static loads) shall not exceed the design capabilities thereof as set forth on the drawings listed on Exhibit B attached hereto or otherwise permit the Lessee Improvements or any replacement improvements to be used for any purpose or to any degree which is inconsistent with the intended use and design capabilities of the Support Members. The existing Support Members shall not be altered or modified except as specified on the drawings listed on Exhibit C (which alteration or modifications do not exceed the design capabilities set forth on the drawings listed on Exhibit B), without the express prior written consent of the other party, which consent may be conditioned upon the agreement by the party seeking to alter or

modify the Support Members to take steps necessary to minimize the necessary disruption of the other party's operations; provided, however, that in an emergency, such work may be performed without such prior consent provided that (a) the party conducting such work promptly notifies the other party and (b) the party conducting such work uses best efforts not to materially interfere with the other party's use or operation of its property (i.e., the Garage, the Lessee Improvements or the Office Project as the case may be); provided, however, that the Support Members and the easements provided therefor by this Section 3.01 shall not be altered, and the structural integrity of the support provided thereby to the Lessee Improvements or Office Project shall not be diminished as a result of any change, alteration or utilization.

Section 3.02. Easements For Water and Gas Utilities.

3.02(a). Non-Exclusive Water Easement for Lessee Improvements and Office Project. The Lessor grants a non-exclusive easement for the benefit of the Lessee Improvements and Office Project for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation, and removal from time to time of water utility lines and utilities equipment shown on the Lessee Plans and Specifications attached to the Air Rights Lease as Exhibit M now or hereafter necessary for the delivery and removal of water and gas services to or from the Lessee Improvements, which

non-exclusive easements shall run over and across the areas within and through the structure of the Garage Property and Demised Premises designated for such purpose on Exhibit D-3 attached hereto and as shown more particularly on the Lessee Plans and Specifications.

3.02(b). Exclusive Water and Gas Easements for Lessee Improvements. The Lessor grants and conveys to the Lessee an exclusive easement for the benefit of the Lessee Improvements for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation, and removal from time to time of utility lines and equipment shown on the Lessee Plans and Specifications attached to the Air Rights Lease as Exhibit M now or hereafter necessary for the delivery and removal of water and gas services to or from the Lessee Improvements, which exclusive easements shall run over and across the areas within and through the structure of the Garage Property designated for such purpose on Exhibits D-1 through D-3 attached hereto and as shown more particularly on the Lessee Plans and Specifications.

3.02(c). Exclusive Water and Gas Easement for Office Project. The Lessee grants an exclusive easement for the benefit of the Office Project for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation and removal from time to time of utility lines and equipment now or hereafter

necessary for the delivery or removal of water and gas service to or from the Office Project as shown on the Office Plans and Specifications attached to the Air Rights Lease as Exhibit P, which easements shall run over and across the areas within the Garage or the Demised Premises designated for such purposes on Exhibit D-3 attached hereto and more particularly on the Office Plans and Specifications.

Section 3.03. Easements for Fire Protection.

3.03(a). Non-Exclusive Fire Protection Easement for Lessee Improvements and Office Project. The Lessor grants a non-exclusive easement for the benefit of the Lessee Improvements and Office Project for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation, and removal from time to time of fire protection facilities and equipment shown on the Lessee Plans and Specifications attached to the Air Rights Lease as Exhibit M now or hereafter necessary for the provision of fire protection services to or from the Lessee Improvements, which non-exclusive easement shall run over and across the areas within and through the structure of the Garage Property and Demised Premises designated for such purposes on Exhibits E-2 and E-3 attached hereto and as shown more particularly on the Lessee Plans and Specifications.

3.03(b). Exclusive Fire Protection Easements for Lessee Improvements. The Lessor grants and conveys to the Lessee an exclusive easement for the benefit of the Lessee Improvements for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation, and removal from time to time of fire protection facilities and equipment shown on the Lessee Plans and Specifications attached to the Air Rights Lease as Exhibit M now or hereafter necessary for the provision of fire protection services to or from the Lessee Improvements, which exclusive easements shall run over and across the areas within and through the structure of the Garage Property designated for such purpose on Exhibits E-2 and E-3 attached hereto and as shown more particularly on the Lessee Plans and Specifications.

3.03(c) Exclusive Fire Protection Easements for Garage Project. The Lessee grants and conveys to the Lessor an exclusive easement for the benefit of the Garage Project for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation, and removal from time to time of fire protection facilities and equipment shown on the Drawing List for the Existing Structure attached hereto as Exhibit B now or hereafter necessary for the provision of fire protection services to or from the Garage Project, which exclusive easement shall run over and across the areas within and through the structure of the

Lessee Improvements designated for such purpose on Exhibits E-2 and E-3 attached hereto and as shown more particularly on the Lessee Plans and Specifications.

3.03(d). Exclusive Fire Protection Easement for Office Project. The Lessee grants an exclusive easement for the benefit of the Office Project for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation and removal from time to time of fire protection facilities and equipment now or hereafter necessary for the provision of fire protection services to and from the Office Project as shown on the Office Plans and Specifications attached to the Air Rights Lease as Exhibit P, which easements shall run over and across the areas within the Garage Property or the Demised Premises designated for such purposes on Exhibit E-3 attached hereto and more particularly on the Office Plans and Specifications.

Section 3.04. Electrical, Telephone, Cable and Telecommunications Easements

3.04(a). Exclusive Electrical, Telephone, Cable and Other Telecommunication Services Easement for Lessee Improvements. The Lessor grants and conveys to the Lessee an exclusive easement for the benefit of the Lessee Improvements for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation, and removal from time to time of utility

lines and equipment shown on the Lessee Plans and Specifications attached to the Air Rights Lease as Exhibit M now or hereafter necessary for the delivery of electrical, telephone, cable and other telecommunication services to or from the Lessee Improvements, which exclusive easements shall run over and across the areas within and through the structure of the Garage Property designated for such purpose on Exhibits F-1 through F-4 attached hereto and as shown more particularly on the Lessee Plans and Specifications.

3.04(b). Exclusive Electrical, Telephone, Cable and Other Telecommunication Services Easement for Office Project. The Lessor and Lessee grant and convey an exclusive easement for the benefit of the Office Project for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation and removal from time to time of utility lines and equipment now or hereafter necessary for the delivery of electrical, telephone, cable and other telecommunication services to or from the Office Project as shown on the Office Plans and Specifications attached to the Air Rights Lease as Exhibit P, which easements shall run over and across the areas within the Garage Property or the Demised Premises designated for such purposes on Exhibit F-3 attached hereto and more particularly on the Office Plans and Specifications.



Section 3.05. Storm and Sanitary Sewer Easements.

3.05(a). Exclusive Easement for Sanitary and Storm Sewer for Lessee Improvements. The Lessor hereby grants and conveys to the Lessee an exclusive easement for the benefit of the Lessee Improvements over and across the areas designated for such purpose on Exhibits G-1 through G-4 attached hereto for connection to and use of the sanitary and storm sewer mains, pipelines, disposal units, and related facilities from time to time located within the Garage and the Office Project, together with a non-exclusive easement to share in the use of all such facilities within the Garage and the Office Project as may be necessary to connect the sanitary and storm sewer system within the Lessee Improvements to the public sanitary sewer system all as shown on the Lessee Plans and Specifications attached to the Air Rights Lease as Exhibit M; provided, however, the Lessee's sharing thereof shall not cause the designed capacity thereof at any time to be exceeded, but provided, further, that the Lessee shall not be deemed in breach of the foregoing covenant to the extent the designed capacity has been exceeded due to an increase in use by the Garage or the Office Project beyond the current anticipated use levels. The Lessee shall be responsible for the installation, location, construction, use, operation, maintenance, repair, replacement, and removal of all facilities connected by it to the Lessor's sanitary sewer

system and of all facilities placed by the Lessee within the sanitary sewer easement granted hereby and shall at all times ensure that such installation, location, use, construction, operation, maintenance, repair, replacement, and removal shall not interfere with the Lessor's use or enjoyment of the Land, the Garage, the Office Project, or the sanitary sewer system located within the Garage, except to the extent any such interference results from the Lessor's own increase in use beyond the levels set forth above.

3.05(b). Non-Exclusive Easement for Sanitary and Storm Sewer for Garage and Office Project. The Lessee hereby grants a non-exclusive easement for the benefit of the Garage and Office Project over and across the areas designated for such purpose on Exhibits G-3 and G-4 attached hereto for connection to and use of the sanitary and storm sewer mains, pipelines, disposal units, and related facilities from time to time located within the Lessee Improvements, together with a non-exclusive easement to share in the use of all such facilities within the Garage and the Office Project as may be necessary to connect the sanitary and storm sewer system of Lessor and Lessee to the public sanitary sewer system all as shown on the Lessee Plans and Specifications attached to the Air Rights Lease as Exhibit P; provided, however, the Lessor's sharing thereof shall not cause the designed capacity thereof at any time

to be exceeded, but provided, further, that the Lessee shall not be deemed in breach of the foregoing covenant to the extent the designed capacity has been exceeded due to an increase in use by the Lessee Improvements beyond the current anticipated use levels. The Lessor shall be responsible for the installation, location, construction, use, operation, maintenance, repair, replacement, and removal of all facilities connected by it to the Lessee's sanitary sewer system and of all facilities placed by the Lessor within the sanitary sewer easement granted hereby and shall at all times ensure that such installation, location, use, construction, operation, maintenance, repair, replacement, and removal shall not interfere with the Lessee's use or enjoyment of the Lessee Improvements, or the sanitary sewer system located within the Lessee Improvements, except to the extent any such interference results from the Lessee's own increase in use beyond the levels set forth above.

3.05(c) Exclusive and Non-Exclusive Easements for Sanitary and Storm Sewer for Office Project. The Lessee hereby grants and conveys to the Lessor an exclusive easement for the benefit of the Office Project over and across the areas designated for such purpose on Exhibits G-2 through G-4 attached hereto for connection to and use of the sanitary and storm sewer mains, pipelines, disposal units, and related facilities from time to time located

within the Garage and the Lessee Improvements, together with a non-exclusive easement to share in the use of all such facilities within the Garage and the Lessee Improvements as may be necessary to connect the sanitary and storm sewer system within the Office Project to the public sanitary sewer system all as shown on the Office Project Plans and Specifications attached to the Air Rights Lease as Exhibit P; provided, however, the Lessor's sharing thereof shall not cause the designed capacity thereof at any time to be exceeded, but provided, further, that the Lessor shall not be deemed in breach of the foregoing covenant to the extent the designed capacity has been exceeded due to an increase in use by the Garage or the Lessee Improvements beyond the current anticipated use levels. The Lessor shall be responsible for the installation, location, construction, use, operation, maintenance, repair, replacement, and removal of all facilities connected by it to the Lessee's sanitary sewer system and of all facilities placed by the Lessor within the sanitary sewer easement granted hereby and shall at all times ensure that such installation, location, use, construction, operation, maintenance, repair, replacement, and removal shall not interfere with the Lessee's use or enjoyment of the Lessee Improvements, or the sanitary sewer system located within the Garage, except to the extent any such interference results from the Lessee's own increase in use beyond the levels set

forth above.

Section 3.06. Mechanical Room Easements.

3.06(a). Non-Exclusive Mechanical Room Easement for Garage and Office Project. The Lessee grants a non-exclusive easement for the benefit of the Garage, and the Office Project in and to the mechanical rooms located within the Demised Premises and designated for such purpose on Exhibits F-2, H-1 and H-2 hereto attached for the purposes of ingress and egress thereto and for constructing, reconstructing, inspecting, altering, maintaining, repairing, and replacing from time to time electrical and mechanical equipment necessary or desirable in connection with the furnishing of utilities and mechanical services to the Lessee Improvements. The Lessee shall be responsible for placing, repairing, replacing, operating, and maintaining its own equipment within such mechanical rooms and for any cleaning of the mechanical rooms necessitated by any of the foregoing all at its sole cost and expense. The Lessee shall at all times operate and maintain its facilities located therein in a safe and sound condition at the Lessee's sole cost and expense.

Section 3.07. Ventilation Easements.

3.07(a). Exclusive Ventilation Easement for Lessee Improvements. The Lessor grants an exclusive easement for the benefit of the Lessee Improvements for the location, construction,

use, operation, maintenance, repair, replacement, relocation and removal from time to time of ventilation shafts (both intake and exhaust), plenums, ducts, fans, blowers, motors, and other equipment related to the heating, ventilating and air conditioning of the Lessee Improvements over portions of the Garage Property designated on Exhibits I-1 and I-2 attached hereto.

3.07(b). Exclusive Ventilation Easement for Garage. The Lessee grants an exclusive easement for the benefit of the Garage for the location, construction, use, operation, maintenance, repair, replacement, relocation, and removal from time to time of ventilation shafts (both intake and exhaust), plenums, ducts, fans, blowers, motors, and other equipment related to the heating, ventilating and air conditioning of the Garage over the portions of the Lessee Improvements designated for such purpose on Exhibit I-1 through I-2 attached hereto. In accordance with Section 4.01(e) of the Air Rights Lease, Lessee shall install certain ventilation shafts as part of the initial construction and thereafter shall not interfere with the use thereof for the purposes set forth in this Section 3.07.

Section 3.08. Easements for Elevators and Stairtowers.

3.08(a). Exclusive Elevator Easement for Lessee Improvements. The Lessor grants an exclusive easement for the benefit of the Lessee Improvements for the installation, location, construction,

use, operation, maintenance, repair, replacement, relocation, and removal of elevators, elevator pits, elevator shafts, and related equipment over and across the areas within the Garage Property designated for such purpose on Exhibit J-2 through J-7 attached hereto. All such elevators, elevator penthouses, elevator shafts, and related equipment shall be installed, operated, repaired and maintained in a safe and sound condition in compliance with all applicable laws and regulations at the sole cost and expense of the Lessee.

3.08(b). Exclusive Elevator Easement for Garage. The Lessee grants an exclusive easement for the benefit of the Garage for the installation, location, construction, use, operation, maintenance, repair, replacement, relocation, and removal of elevators, elevator pits, elevator shafts, and related equipment over and across the areas within the Demised Premises designated for such purpose on Exhibit J-1 and J-2 attached hereto. Except as provided in Section 4.01(e) of the Air Rights Lease, all such elevators, elevator penthouses, elevator shafts, and related equipment shall be installed, operated, repaired and maintained in a safe and sound condition in compliance with all applicable laws and regulations at the sole cost and expense of the Lessor; provided, however, that the areas from the outside unfinished surfaces of the elevator shafts and elevator penthouses outward constructed by the Lessee in

accordance with Section 4.01(e) of the Air Rights Lease shall be maintained by the Lessee at its sole cost and expense, and Lessee shall be responsible for installing, maintaining, repairing and replacing the finished surfaces to such shafts and penthouses.

Section 3.09. Easements for Garage for Ingress and Egress Over Stairways and Other Areas and for Stairtowers.

3.09(a) Non-Exclusive Easements for Garage ingress and egress for Garage. In order to provide access for users of the Garage from and between the Garage and the Plaza referred to in Section 3.10 hereof, Lessee grants a non-exclusive easement for the benefit of the Garage and the users thereof over and across the portions of the stairways, stairwells, stairtowers, entrances, and landing areas within the Lessee Improvements to be constructed within the Demised Premises shown on Exhibit K-1 and K-2 attached hereto. The Lessor shall maintain such stairways and other areas within the Demised Premises in a good, safe, and sound condition at the Lessor's sole cost and expense. The Lessee shall not close, remove, alter, modify or relocate any such stairways and other areas without the Lessor's prior written consent, which consent shall not be unreasonably withheld, but which consent may be conditioned upon the continued availability of reasonable means of access, ingress and egress between the Garage and the Plaza. The Lessor shall at all times maintain, at its sole cost and expense,



adequate lighting within the foregoing easement areas in compliance with applicable laws and regulations.

3.09(b) Lessee Right to Secure Entrance to Plaza.

Except for the elevator and stairway access from the Garage to the Edgemoor Lane pedestrian bridge, Lessee reserves the right to secure the Plaza level from the stairways leading to the Garage and the elevators to the Garage after 11:00 P.M. each night by locking gates or doors at appropriate locations so that access will not be available between the Garage and Plaza.

Section 3.10. Operation of Open Space. The Lessee agrees to construct the open space system consisting of the areas designated as Plaza, Water Plaza, and Pedestrian Walkway on Exhibit L-1 - L-2 attached hereto in accordance with the Lessee Plans and Specifications, to repair and maintain such facilities and all such other areas in a good and sound condition, and to operate such facilities in accordance with the requirements of the Project Plan Opinion and Site Plan Opinion as they may be modified from time to time of the Maryland National Capital Park and Planning Commission with the consent of the Lessee; provided, however, the Lessee shall have the right to establish reasonable rules and regulations with respect to the use of such areas, which rules and regulations must be consistent with the Project Plan Opinion and the Site Plan Opinion. The rights created by this Section 3.10 shall survive the

termination of this Reciprocal Easement Agreement except upon the consent of Montgomery County, Maryland as a municipal entity (and not as the owner of the Garage). The rights created by this Section 3.10 may be enforced solely by Montgomery County, Maryland as a municipal entity (and not as the owner of the Garage). The parties to this Agreement do not intend to create by this Section any rights which may be enforceable by anyone other than the aforesaid Montgomery County, Maryland.

Section 3.11. Exclusive Easement for Support of Pedestrian Bridges. The Lessee grants, conveys, and dedicates to Montgomery County, Maryland an exclusive easement over and across the areas designated "Bridge Support Easements" on Exhibit M attached hereto for the purpose of maintaining support for a pedestrian bridge across Old Georgetown Road and a pedestrian bridge across Edgemoor Lane at the locations shown on said Exhibit. The Lessee shall not install or erect, or permit to be installed or erected, any building, fence, structure or other obstacle of any kind which would impede access, ingress or egress between the Plaza and such pedestrian bridges except as shown on the Lessee Plans and Specifications or as otherwise agreed in writing by the Lessor. The easement created by this Section 3.11 shall survive the termination of this Reciprocal Easement agreement except upon the consent of Montgomery County, Maryland as a municipal entity (and

not as the owner of the Garage). Notwithstanding the foregoing, nothing in this Agreement shall be construed to require the Lessee to construct such pedestrian bridges or the related support elements beyond the Plaza.

Section 3.12. Non-Exclusive Easements for Maintenance, Repair and Inspection. Each Servient Owner grants the applicable Easement Holder a non-exclusive temporary easement for ingress and egress at such times and over such portions of the Lessee Improvements, Garage Project or Office Project as may be necessary from time to time to permit the applicable Easement Holder to inspect, install, locate, construct, replace, repair, maintain, alter, remove or relocate any of the Easement Holder's facilities within any of the easement areas established hereby; provided, however, that all such repairs, maintenance and other activities shall be effected at reasonable times upon reasonable prior written notice to the Servient Owner (except in an emergency, in which case notice shall be given promptly) and shall be conducted in such a way as to minimize any interference or disruption of the Servient Owner's operations on the Lessee Improvements, Garage Project, or Office Project, as the case may be; provided, however, if any such repairs, maintenance or other activities are necessitated by condemnation, catastrophe, acts of God, change in law, or other matters outside the Easement Holders' (or its agents', subtenants',

employees', contractors', or invitee) reasonable ability to control, then the Easement Holder shall be required to use best efforts not to materially interfere with or disrupt the Servient Owner's operations on the Lessee Improvements, Garage Project, or Office Project, as the case may be.

Section 3.13. Easement to Maintain Waterproof Membrane for Garage Property. In the event the Lessee fails to maintain the waterproof membrane described in Section 6.02 in the manner described in Section 6.02, the Lessor shall have a temporary construction easement over the portions of the Lessee Improvements necessary and at the times necessary to effect such repairs as may be necessary to maintain such membrane in the condition required by said Section 6.02, and the costs thereof incurred by the Garage Property shall be reimbursed by the Lessee within thirty (30) days after the Lessor's written demand therefor.

Section 3.14. Easement For Loading Dock, Retail and Service Corridor.

3.14(a). Non-exclusive Easement for Loading Dock. The Lessor grants a non-exclusive easement for the benefit of the Lessee Improvements in and to the area designated "Loading Dock" on Exhibit N attached hereto for the purpose of finishing the construction, reconstruction, inspection, alteration, maintenance, repair, replacement and operation of retail space and to provide a

service corridor for the convenience of those wishing to transport materials to and from the Lessee Improvements and the Loading Dock. Lessor or its designee shall construct the Office Project and turn over the area designated Loading Dock to the Lessee as an unfinished shell with a concrete slab ceiling; concrete slab floor and block walls as shown on the Office Plans and Specifications listed on Exhibit P to the Air Rights Lease so that Lessee can complete these areas in accordance with the Lessee Plans and Specifications listed as Exhibit M to the Air Rights Lease as part of the Lessee Improvements. The Loading Dock shall be available for use at times and under conditions agreed to by the parties from time to time.

3.14(b). Exclusive Easement for Retail and Service Corridor.

The Lessor grants an exclusive easement for the benefit of the Lessee Improvements in and to the area designated "Retail" and "Service Corridor" on Exhibit O attached hereto for the purpose of finishing the construction, reconstruction, inspection, alteration, maintenance, repair, replacement and operation of retail space and to provide a service corridor for the convenience of those wishing to transport materials to and from the Lessee Improvements and the Loading Dock. Lessor or its designee shall construct the Office Project and turn over the area designated "Retail" and "Service Corridor" to the Lessee as an unfinished shell with a concrete slab

ceiling, concrete slab floor and block walls all as shown on the Office Plans and Specifications listed on Exhibit P to the Air Rights Lease so that Lessee can complete these areas in accordance with the Lessee Plans and Specifications listed on Exhibit M to the Air Rights Lease as part of Lessee Improvements.

3.14(c) Cost of Services and Utilities to Office Project, Loading Dock and Retail. Lessee and Lessor agree to make every reasonable effort for separate metering of areas utilized by the several occupants of the Office Project. The cost of services and utilities billed or charged by others to Lessor or incurred by Lessor for the Office Project for services or utilities provided for the benefit of the Loading Dock, Service Corridor and Retail in the Office Project shall be reimbursed by Lessee on a proportionate basis on a formula based on the relationship of the area occupied by the Loading Dock, Service Corridor and Retail to the area of the Office Project or other formula providing for fair division of costs between the parties.

Section 3.15. Non-Exclusive Easement for Use of Playlot. The Lessor grants to Lessee, its tenants and their guests and invitees and the general public a non-exclusive easement for the use of the Playlot at any time when the daycare center in the Office Project is not in operation. Lessor shall be responsible for maintenance of and repairs and replacement to the Playlot in accordance with Section 5.04 of this Agreement unless otherwise agreed pursuant to the Air Rights Lease. The rights created by this Section 3.15 as to the general public may be enforced solely by Montgomery County, Maryland, as a municipal entity.

Section 3.16. Responsibility for Plaza Level and Old Georgetown Road Level. Upon Substantial Completion of the Lessee Improvements, Lessee shall be responsible for all Structural

Repairs and Maintenance (as hereinafter defined) for the Plaza. Lessee shall be responsible for Maintenance of the deck of the Old Georgetown Road level within the Demised Premises. The Lessor shall be responsible for Structural Repairs to the deck of the Old Georgetown Road level within the Demised Premises. Lessee shall provide Lessor with access over the Lessee Improvements from time to time to permit inspections and for work as provided in Section 3.12. For the purposes of this Section, the term "Structural Repairs" shall mean all work structural in nature or acknowledged as capital in nature in accordance with generally accepted accounting principles. For the purposes of this Section, the term "Maintenance" shall mean (i) all work of a general housekeeping nature, (ii) correction of spalling, scaling, delamination or similar situations typified by surface irregularities, (iii) correction of damaged or deteriorated membrane, sealer, caulking surface cracks and joints, (expansion, control or otherwise) and (iv) all work not otherwise properly characterized as Structural Repairs.

#### ARTICLE 4

##### LOCATION, RELOCATION AND USE OF EASEMENTS; OTHER EASEMENTS

##### Section 4.01. More Definite Statement of Easement Areas.

As of the date hereof, the Existing Structure has been fully constructed (except as set forth in Exhibit O of the Air Rights Lease), but the Lessee Improvements have not been constructed. The parties hereto recognize and acknowledge that, until the Lessee Improvements are completed, the locations of the easements granted hereby are subject to change as field conditions or amendments to the Plans and Specifications may require. The parties agree that,

within ninety (90) days after Substantial Completion of the Lessee Improvements (or as soon thereafter as is reasonably practicable), the Lessee will deliver to the Lessor as-built construction drawings for all portions of the Garage relevant to the Lessee's easements therein, and the Lessee shall deliver to the Lessor as-built construction drawings of all portions of the Lessee Improvements relevant to the Garage's easements therein, in each case showing specifically the location of all easements granted hereby or which may have been granted by either party to the other after the date hereof and prior to Substantial Completion. Subject to Section 4.02 hereof, such as-built construction drawings shall be definitive of the locations of the easements granted hereby until modified by written agreement of the parties. Each party shall at all times keep a complete set of such as-built construction drawings of both the Garage Property and the Lessee Improvements in its principal offices for purposes of advising all persons with an interest in the Garage Property or the Lessee Improvements of the locations of the easements granted hereby.

Section 4.02. Relocation of Easements.

The parties recognize that the areas shown on the exhibits attached hereto as the locations of the various easements created herein are approximate and each Servient Owner agrees to cooperate with each Easement Holder in accommodating reasonable requests by the Easement Holder for changing the location of such easements or for granting additional easements (including, without limitation, easements to third parties to the extent necessary for the provisions of customary services to the Garage Project, the County Project and the Lessee Improvements, as set forth in Section 4.05);



provided, however, that the relocation of addition of any such easement shall not adversely affect the operations conducted on the Servient Parcel (except to a de minimis decree). Any such relocation at the request of an Easement Holder and the installation, location, construction, and removal of the Easement Holder's facilities therein, shall be at the sole cost and expense of the Easement Holder. The parties further agree that each Servient Owner shall have the right in its reasonable discretion to relocate the easements granted to an Easement Holder and the facilities located therein; provided, however, that (a) the Servient Owner provides not less than thirty (30) days' prior written notice thereof to the Easement Holder, (b) such relocation does not unreasonably interfere with the Easement Holder's easement rights or the Easement Holder's operations on the Dominant Parcel, (c) the usefulness or function of the Easement Holder's facilities within the applicable easement are not reduced, (d) the Easement Holder shall have the right at its own cost to be present when such relocation occurs, and (e) the Servient Owner shall pay all costs and expenses associated with such relocation. Upon the relocation of any such easements or facilities pursuant to this Section 4.02, the Servient Owner shall grant the Easement Holder a new easement over the area to which such facilities have been relocated, and the prior easement area shall thereupon be extinguished. The parties agree to execute any instrument or agreement reasonably requested by the other party to give effect to the provisions of this Section 4.02. In the event of the relocation of any easement pursuant to this Section 4.02, the Servient Owner will provide the Easement Holder, at the sole cost and expense of the party initiating such

relocation, as-built construction drawings showing the relocated easement areas.

Section 4.03. Easements Non-Exclusive.

All easements granted in Article 3 hereof, other than the easements created by Section 3.02(b), 3.02(c), 3.03(b), (c) and (d), 3.04(a) and (b), 3.05(a), 3.05(c), 3.07(a) and (b), 3.08(a) and (b), 3.11, 3.12 and 3.14(b) are non-exclusive, and each Servient Owner shall have the right to share the use of such easements with the applicable Easement Holder; provided however, that such use by the Servient Owner does not interfere with the Easement Holder's use and enjoyment of such easements.

Section 4.04. Damage or Destruction to Servient Parcel.

In the event that all or any portion of the improvements within a Servient Parcel are damaged, destroyed, demolished, removed or otherwise affected in such a way as to interfere with an Easement Holder's easement rights across such Servient Parcel or the ability of such Easement Holder to maintain its facilities within the easement areas granted herein, such Easement Holder shall have the right and non-exclusive temporary easement of necessity to lay its facilities across such portions of the Servient Parcel as shall be reasonably necessary to the Easement Holder's operations (which areas may be reasonably designated by the Servient Owner); provided, however, that such location shall not unreasonably interfere with the Servient Owner's efforts to repair, restore, construct, or reconstruct the improvements within the Servient Parcel; and provided, further, that the Servient Owner shall have the right to relocate such facilities and easement areas, at the Servient Owner's cost and expense, to other areas

within the Servient Parcel reasonably designated by the Servient Owner so long as such location shall not materially interfere with the Easement Holder's operations or use of its facilities.

Section 4.05. Granting Other Easements.

From time to time hereafter, the parties hereto will cooperate in granting other easements necessary for the coordinated operation of the Garage, the County Project and the Lessee Improvements; provided, however, that the presence, location, or use of such easements or the operation, maintenance, installation, repair and replacement of the facilities to be located by the Easement Holder therein, will not (a) materially interfere with the use and operation of the Servient Parcel or (b) adversely affect the structural integrity of the improvements located within the Servient Parcel.

ARTICLE 5

MAINTENANCE, REPAIR,  
ALTERATIONS, RESTORATIONS AND RELOCATIONS

Section 5.01. Maintenance of Garage Property.

The Garage Owner shall at all times maintain the Garage Property, exclusive of any facilities of the Lessee located within the Existing Structure, at its sole cost and expense in a manner which will not (a) materially adversely affect the use and operation of the Lessee Improvements and (b) adversely affect the structural integrity of the Lessee Improvements.

Section 5.02. Maintenance of Lessee Improvements.

5.02(a). Lessee Obligation to Maintain. The Lessee shall at all times maintain the Lessee Improvements, exclusive of any facilities of the Garage within the Lessee Improvements, in a

manner which will not (i) materially adversely affect the use and operation of the Garage or (ii) adversely affect the structural integrity of the Garage.

5.02(b). Cost of Maintenance. The cost of operation, maintenance, repair and replacement of the Lessee Improvements shall be at Lessee's sole expense, except that the portion of those costs fairly related to the elements used in common by the Residential/Retail Building and the Office Project, including the Plaza, Water Plaza, Pedestrian System and Loading Dock, shall be shared by the Lessee and the owner of the Office Project in the proportion by which the gross building area of the respective party is to the sum of the building area of both buildings. (For purposes of illustration, if the building area of the Office Project is 19,040 square feet and the Building Area of the Residential/Retail Building is 336,670 square feet the amount of the total cost of operation, maintenance, repair and replacement of the Lessee Improvements fairly allocated to the elements used in common by the Residential/Retail Building and the Office Project, including the Plaza, Water Plaza, Pedestrian System and Loading Dock and related facilities, shall be multiplied by the fraction  $336,670/355,710$  to calculate the share of such costs to be paid by the Residential/Retail Building and the fraction  $19,040/355,710$  to calculate the share of such costs to be paid by the Office Project.)

5.02(c). Financial Reports. Commencing in the year after Substantial Completion of the Lessee Development, Lessee shall deliver to the owner of the Office Project a detailed audited statement for the prior calendar year, prepared by an independent

certified public accounting firm reasonably acceptable to Lessor. The audited statement shall present fairly the Operating Expense attributable to the operation, maintenance, repair and replacement of the elements used in common by the Residential/Retail Building and the Office Project, including the Plaza, Water Plaza, Pedestrian System and Loading Dock. Within thirty (30) calendar days of receipt of the annual audited statement, the owner of the Office Project shall pay to Lessee the amount identified in the report as the Office Project share of the cost of operation, maintenance, repair and replacement of the Lessee Improvements used in common by the Residential/Retail Building and the Office Project, including the Plaza, Water Plaza, Pedestrian System and Loading Dock and related facilities.

Section 5.03. Easement Holder Pays Maintenance Costs; Non-Interference.

Each Easement Holder will be responsible for the full costs and expenses of installing, operating, repairing, replacing and maintaining the facilities serving its respective improvements including any facilities located in an easement within a Servient Parcel. No such facilities shall be installed, located, constructed, used, operated, maintained, repaired, replaced or relocated in such a way as to materially interfere with the Servient Owners's use and operation of the Servient Parcel.

Section 5.04. Covenant Regarding Maintenance Standards.

All repairs and maintenance shall be made with reasonable dispatch and in a good and workmanlike manner consistent with the quality of a first-class building of similar type in the Bethesda-Chevy Chase area and in compliance with all permits, approvals,

zoning laws and all other applicable laws, rules, regulations and ordinances, and in accordance with the plans and specifications applicable thereto. All repairs and maintenance shall be effected in a manner which will not materially interfere with the use or operation of the Garage, Office Project or the Lessee Improvements. The party making the repair or replacement shall, at its own cost and expense, provide and maintain, all safety measures which may be required by any governmental authority or which the owner of the Garage, Office Project or the Lessee Improvements may reasonably deem necessary during the making of any repair or alteration. Lessee and Lessor agree to cooperate in the scheduling and staging of activities in connection with any repair or alteration in order to minimize any disruption of the operations in the Garage, Office Project or Lessee Improvements.

Section 5.05. Reciprocal Easement Controlling.

While the Air Rights Lease remains in effect, to the extent that the maintenance obligations set forth in the Air Rights Lease are different from or more extensive than the obligations set forth in this Agreement, this Agreement shall be controlling.

Section 5.06. Lessor's Obligations Subject to Annual Appropriations; Annual Budget. Lessee acknowledges that Lessor's obligation to pay to Lessee and to pay (or to reimburse) to Lessee or otherwise incur any portion of the costs and expenses for maintenance provided in §5.02(b) and any sums which would otherwise be payable to Lessee pursuant to the terms and conditions of this Agreement (collectively, the "Lessor Payment Amounts") shall be subject to annual appropriation by Montgomery County Council (the "Council") of funds sufficient to pay such Lessor Payment Amounts.

Lessor agrees to use its best efforts to secure from the Council in each Fiscal Year the appropriation of funds in Lessor Payment Amounts coming due during such Fiscal Year. Lessee acknowledges and agrees that in the event that Lessor fails to pay any Lessor Payment Amounts when due by reason of the failure by Lessor to secure from the Council appropriations sufficient to pay such Lessor Payment Amounts, Lessee's remedies shall be limited in the manner contemplated herein.

Section 5.07. Annual Estimated Budget. Lessee shall submit to Lessor, on or before each July 1 from and after Substantial Completion of the Lessee Development, an estimated budget of all Lessor Payment Amounts for the Fiscal Year commencing on the next anniversary of such July 1, including, without limitation, amounts sufficient to pay all Structural Repairs reasonably believed to be necessary during such Fiscal Year. Lessor and Lessee shall meet to discuss such estimated budget in an effort to agree upon an estimated budget on or before August 1 of the then current year (the "Annual Estimated Budget"). Lessor shall pursue through its budget and appropriation by the Council funds sufficient to pay the amounts set forth therein. If for any reason the Annual Estimated Budget has not been established within the time required to submit an estimated budget to the Council for approval for the Fiscal Year in question, the parties shall submit to the Council for its approval for such Fiscal Year the estimated budget approved by the Council with respect to the immediately preceding Fiscal Year, increased by such amount or amounts as may be necessary to reflect the effects of inflation, if any, from the date of approval of such estimated budget for the immediately preceding Fiscal Year through

the date of submission of such estimated budget for the Fiscal Year in question.

## ARTICLE 6

### COVENANTS AND RESTRICTIONS

#### Section 6.01. Covenant to Maintain in Safe Condition.

Each party hereto covenants and agrees to comply with the obligations imposed on such party by this Agreement, including, without limitation, the maintenance obligations imposed by Article 5 hereof. In addition, each party covenants and agrees that, in the event of any condition in or upon such party's property (i.e., the Garage, the Office Project or the Lessee Improvements, as applicable) poses a hazard or danger to the other party's property, or to the use and operation thereof, or to the occupants thereof, the party in or upon whose property such condition exists shall promptly take all actions necessary to remedy such hazardous or dangerous condition in conformity with the provisions of the Air Rights Lease.

#### Section 6.02. Covenant to Maintain Waterproof Membrane.

Except as otherwise provided in Section 7.01(c) of the Air Rights Lease, the Lessee covenants and agrees at all times to maintain the waterproof membrane between the Lessee Improvements and the Garage, located generally on the Plaza and Old Georgetown Road levels of the Lessee Improvements, at the Lessee's sole cost and expense in a manner which will (a) prevent the leaking of water from the Lessee Improvements into the Garage and (b) otherwise prevent any water damage to the Garage or the Support Members.



## ARTICLE 7

### MISCELLANEOUS

Section 7.01. Meaning of Terms Garage Owner, Office Project Owner and Lessee. The terms "Garage Owner" and "Office Project Owner" as used herein, so far as the Garage Owner's and Office Project Owner's covenants and agreements hereunder are concerned, shall be limited to, mean and include only the owner or owners at the time in question of the fee title to the Garage or the Office Project, acting in their capacity as such. The term "Lessee" as used herein, so far as the Lessee covenants and agreements hereunder are concerned, shall be limited to mean and include only the owner or owners at the time in question of the Lessee Improvements acting in their capacity as such. So long as Montgomery County, Maryland is the Garage Owner or Office Project Owner hereunder, the terms Garage Owner or Office Project Owner shall mean Montgomery County, Maryland only in its capacity as owner of the Garage or Office Project and not in its capacity as a governmental entity. This Agreement is intended as a contract between neighboring landowners and is not intended to affect the rights and obligations of the parties hereto independent of this Agreement as governmental entities. In the event of any conveyance of title, to the estate owned by the Garage Owner, the Office Project Owner, or the Lessee, respectively, the "Garage Owner," "Office Project Owner" or the "Lessee" herein named, as the case may be, and each subsequent grantor, shall be automatically relieved, from and after the date of such conveyance, of all personal liability as respects the performance of any of the covenants and agreements thereafter to be performed by the Garage

Owner, Office Project Owner, or the Lessee, as the case may be and such grantee shall be bound by all such covenants and agreements, it being intended that the covenants and agreements shall be binding on the Garage Owner, the Office Project Owner and the Lessee named herein and such party's successors and assigns only during and in respect of their successive periods of ownership.

Section 7.02. Modifications, Waivers and Consents.

This Agreement shall not be modified, amended or supplemented in any way, and no provision hereof shall be deemed to have been waived, and no consent hereunder shall be deemed to have been given except by a writing signed by the party against whom such modification, waiver or consent is sought to be enforced.

Section 7.03. Binding Effect; Covenants Running With the Land.

The provisions of this Agreement shall be deemed covenants running with the land and shall (except as otherwise provided herein) be binding upon and inure to the benefit of all persons who shall succeed to any interest (other than a security interest or similar interest) in all or any portion of the Land, the Garage, the Office Project, the Demised Premises, or the Lessee Improvements, whether by Lease, deed or other conveyance, by succession upon default, by foreclosure, or by operation of law until such time as this Agreement shall terminate in accordance with its own terms or until every person, entity, agency or corporation having or holding any interest in the Land, the Garage, the Office Project, the Demised Premises, or the Lessee Improvements shall execute and acknowledge a declaration of termination of this Agreement and shall cause such declaration to

be duly recorded in the Land Records of Montgomery County, Maryland.

Section 7.04. Notices.

All notices and other communications hereunder shall be in writing and shall be deemed given if personally delivered or mailed by certified mail, return receipt requested, postage prepaid, if to the Lessee to The Housing Opportunities Commission of Montgomery County, 10400 Detrick Avenue, Kensington, Maryland 20895-2484 if to the Lessor or the owner of the Office Project, to the Montgomery County Department of Transportation, 101 Monroe Street, Rockville, Maryland 20850, Attention: Director, Department of Transportation.


Section 7.05. Severability.

Every provision of this Agreement is hereby declared to be independent of, and separable from, every other provision of this Agreement, and if any such provision shall at any time be held to be invalid or unenforceable, such invalid or unenforceable provisions shall be considered not to be a part of this Agreement and such holding shall be without effect upon the validity or enforceability of any other provision of this Agreement.


IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf by its duly authorized representatives.

HOUSING OPPORTUNITIES COMMISSION  
OF MONTGOMERY COUNTY

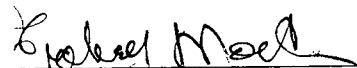
By: \_\_\_\_\_

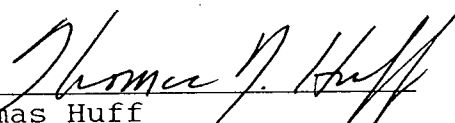
  
Bernard L. Tetreault  
Executive Director

MONTGOMERY COUNTY, MARYLAND

By:   
Douglas M. Duncan  
County Executive

RECOMMENDED FOR APPROVAL:


  
Graham Norton, Director  
Department of Transportation

  
Thomas Huff  
Office of Parking Management

STATE OF MARYLAND:  
COUNTY OF MONTGOMERY:

I hereby certify that on this 21<sup>st</sup> day of June, 1995, before me, the subscriber, a Notary Public in and for the aforesaid state and county, personally appeared Bernard L. Tetreault, Executive Director, of the Housing Opportunities Commission and did acknowledge that he executed the Reciprocal Easement Agreement and Declaration of Covenants, Conditions and Restrictions of the Housing Opportunities Commission of Montgomery County, Maryland for the purpose therein contained, and further acknowledged the foregoing Reciprocal Easement Agreement and Declaration of Covenants, Conditions and Restrictions to be the act of the Housing Opportunities Commission of Montgomery County, Maryland.

As witness my hand and Notarial Seal.

  
Notary Public  
My Commission Expires: 2/1/99

STATE OF MARYLAND :  
COUNTY OF MONTGOMERY:

On this 23<sup>rd</sup> day of June, 1995, before me, the undersigned officer, personally appeared Douglas M. Duncan, County Executive, of Montgomery County, Maryland, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he as such County Executive executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

Jo Anne Poore  
Notary Public  
My Commission Expires: June 1, 1998

b:\gang49\rec-cas.de2

## EXHIBITS

A	Land
B	Support Members and Capabilities
C	Modification to Support Members
D-1 - D-3	Utilities Easements - Gas and Water
E-1 - E-3	Fire Protection System Easements
F-1 - F-4	Utilities Easements - Electric, Telephone and Telecommunication
G-1 - G-4	Storm and Sanitary Sewer Easement
H-1 - H-2	Mechanical Room Easement
I-1 - I-2	Ventilation Easements
J-1 - J-7	Elevator Easements
K-1 - K-2	Ingress and Egress Easements
L-1 - L-2	Open Space System
M	Easement for Support of Pedestrian Bridges
N	Loading Dock Easement
O	Retail and Service Corridor Easement

28700010410148015150 C002 C20755

METROPOLITAN PARK DRAWING LIST

STRUCTURAL DRAWINGS PRODUCED  
BY SKIDMORE, OWINGS & MERRILL

	TITLE	STATUS/DATE
S-1	PARKING LEVEL 5 FRAMING PLAN - NORTH	BU-2 8/24/88
S-2	PARKING LEVEL 5 FRAMING PLAN - SOUTH	BU-2 8/24/88
S-3	PARKING LEVELS 2 THRU 4 FRAMING PLAN - NORTH	BU-2 8/24/88
S-4	PARKING LEVELS 2 THRU 4 FRAMING PLAN - SOUTH	BU-3 10/18/88
S-5	EDGEMOOR LANE FRAMING PLAN - NORTH	BU-4 10/24/88
S-6	EDGEMOOR LANE FRAMING PLAN - SOUTH	BU-5 1/6/89
S-7	OLD GEORGETOWN ROAD LEVEL FRAMING PLAN - NORTH	BU-6 4/13/89
S-7A	OLD GEORGETOWN ROAD LEVEL FRAMING PLAN - NORTH	BU-9 7/7/89
S-8	OLD GEORGETOWN ROAD LEVEL FRAMING PLAN - SOUTH	BU-6 4/13/89
S-8A	OLD GEORGETOWN ROAD LEVEL FRAMING PLAN - SOUTH	BU-9 7/7/89
S-9	PARKING RAMP FRAMING PLANS	AD-11 4/8/88
S-10	RAMP SECTIONS AND DETAILS	BU-5 16/89
S-11	FOOTING & CAISSON SCHEDULES, SECTIONS, DETAILS AND NOTES	BU-5 1/6/89
S-12	FOUNDATION WALL SECTIONS AND DETAILS	BU-1 8/4/88
S-13	POST-TENSIONED SCHEDULE DETAILS AND NOTES	BU-7 5/2/88
S-13A	POST-TENSIONED SCHEDULE AND DETAILS	BU-4 10/24/88
S-13B	POST-TENSIONED SCHEDULE AND DETAILS	BU-7 5/2/88
S-14	PLAZA LEVEL FRAMING PLAN NORTH	BU-7 5/2/88
S-14A	PLAZA LEVEL FRAMING PLAN NORTH	BU-9 7/7/88
S-15	PLAZA LEVEL FRAMING PLAN - SOUTH	BU-7 5/2/88
S-15A	PLAZA LEVEL FRAMING PLAN - SOUTH	BU-9 7/7/88
S-16	APARTMENT LEVEL 2 FRAMING PLAN	AD-13 4/25/88
S-17	APARTMENT LEVELS 3-6 FRAMING PLANS	AD-11 4/8/88
S-18	LEVELS 7 THRU 9 APARTMENT FRAMING PLAN	AD-11 4/8/88
S-19	LEVELS 10 THRU 12 APARTMENT FRAMING PLAN	AD-14 5/24/88
S-20	ROOF LEVEL FRAMING PLAN	AD-11 4/8/88
S-21	BEAM/SLAB SCHEDULE DETAILS AND NOTES	BU-5 1/6/89
S-22	SECTIONS & DETAILS	AD-11 4/8/88
S-22A	SECTIONS & DETAILS	BU-9 7/7/89
S-23	COLUMN SCHEDULE AND DETAILS	BU-1 8/4/88
S-24	SHEAR WALL SCHEDULE, DETAILS & NOTES	AD-11 4/8/88
S-25	OFFICE LEVEL 2, 3 & ROOF FRAMING PLAN	AD-10 3/25/88
S-25A	STRUCTURAL STEEL DETAILS	AD-11 4/8/88
S-25B	FRAMING PLANS, SECTIONS AND DETAILS	BU-9 7/7/89
S-26	STRUCTURAL STEEL AND METAL DECK SECTIONS, DETAILS AND NOTES	AD-10 3/25/88
S-27	DAYCARE FRAMING PLANS, SECTIONS AND DETAILS	AD-10 3/25/88



METROPOLITAN PARK

BACK-UP CORRESPONDENCE RELATED TO STRUCTURAL INTEGRITY, REMEDIAL MEASURES, AND SUPPORT MEMBER LOADS FOR EXISTING GARAGE #49

<u>FROM</u>	<u>TO</u>	<u>DATE</u>
SOM	DOP	12/12/90
SKA	ARTERY	11/21/90
SKA	ARTERY	11/15/90
SOM	DOP	10/23/90
SKA	ARTERY	9/19/90
SOM	DOP	9/10/90
SOM	DOP	8/31/90
SKA	ARTERY	8/30/90
SKA	ARTERY	8/14/90
SKA	ARTERY	7/13/90
SOM	DOP	7/7/90
SKA	ARTERY	7/23/90
SKA	ARTERY	7/13/90
SOM	DOP	6/21/90
SKA	ARTERY	6/13/90
SOM	DOP	6/6/90 *

\* (Above letter includes all repair/strengthening details provided by SOM in response to SK&A's review comments up to 6/6/90, which were subsequently implemented.)

DOP	ARTERY	5/2/90
SKA	ARTERY	4/2/90
SKA	ARTERY	3/26/90
SKA	ARTERY	3/19/90
ARTERY		
(Transmittal)	SKA	11/13/89

DRAWINGS PROVIDED BY SOM ANNOTATING LOADS

S-7A	OLD GEORGETOWN ROAD LEVEL FRAMING PLAN - NORTH	7/17/90
S-8A	OLD GEORGETOWN ROAD LEVEL FRAMING PLAN - SOUTH	7/17/90
S-14A	PLAZA LEVEL FRAMING PLAN NORTH	7/17/90
S-15A	PLAZA LEVEL FRAMING PLAN - SOUTH	7/17/90

EXHIBIT "C"

METROPOLITAN PARK DRAWING LIST  
BY SK&A

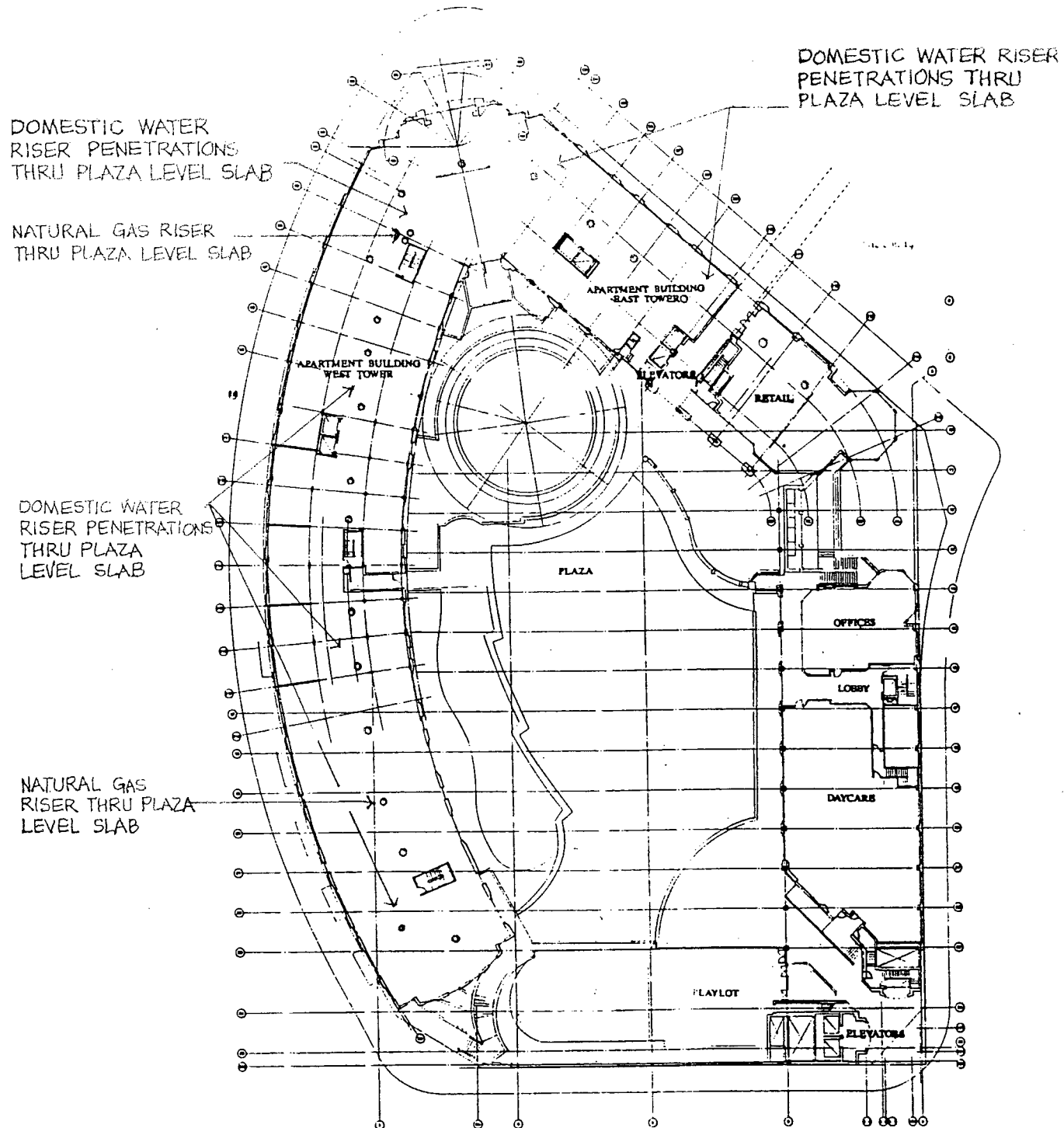
	<u>TITLE</u>	<u>STATUS/DATE</u>
S-1	OLD GEORGETOWN ROAD LEVEL FRAMING PLAN-NORTH	
S-2	PLAZA LEVEL FRAMING PLAN-NORTH	
S-3	PLAZA LEVEL FRAMING PLAN-SOUTH AND PARTIAL PLANS	
S-4	SECOND FLOOR FRAMING PLAN, HIGHRISE RESIDENTIAL	
S-5	TYPICAL FLOOR FRAMING PLAN, HIGHRISE RESIDENTIAL	
S-6	PARTIAL FLOOR FRAMING PLANS, HIGHRISE RESIDENTIAL	
S-7	MAIN ROOF AND PENTHOUSE FLOOR FRAMING PLAN, HIGHRISE RESIDENTIAL	
S-8	PENTHOUSE ROOF AND UPPER PENTHOUSE FRAMING PLAN, HIGHRISE RESIDENTIAL	
S-9	COLUMN SCHEDULE, HIGHRISE RESIDENTIAL	
S-10	TYPICAL CONCRETE DETAILS AND BEAM SCHEDULE	
S-11	FRAMING PLANS, LOWRISE RESIDENTIAL	
S-12	STAGE-STRESSED POST-TENSIONED BEAM SCHEDULE AND STRUCTURAL NOTES	
S-13	SECTIONS	
S-14	SECTIONS	
S-15	SECTIONS	
S-16	SECTIONS	
OS-17	OFFICE BUILDING FRAMING PLANS	
OS-18	OFFICE BUILDING - COLUMN SCHEDULE, TYPICAL DETAILS & STRUCTURAL NOTES	
OS-19	OFFICE BUILDING - SECTIONS & DETAILS	
OS-20	OFFICE BUILDING - SECTIONS & DETAILS	

TO BE FURNISHED AFTER DRAWINGS ARE ISSUED  
FOR CONSTRUCTION

4/25/96

## LEGEND

- ☐ EXCLUSIVE USE OF LESSEE IMPROVEMENT
- ☐ JOINT USE
- ☐ EXCLUSIVE USE OF GARAGE
- ☐ EXCLUSIVE USE OF OFFICE



The Metropolitan

Plaza Level

Utilities, Gas  
and Water Easements

D-1

DOMESTIC WATER  
SUPPLY FOR RETAIL

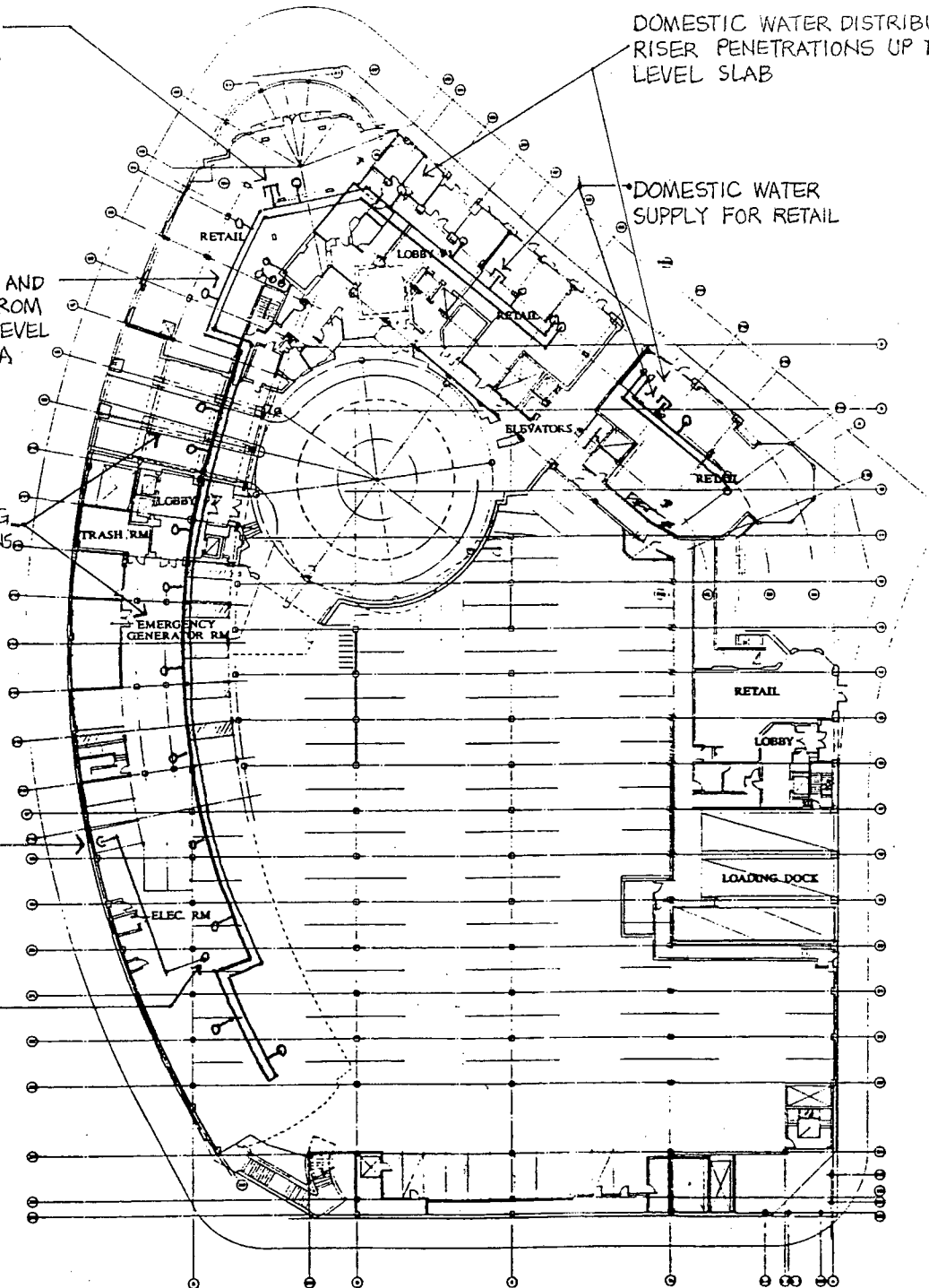
DOMESTIC WATER DISTRIBUTION PIPING AND  
RISER PENETRATIONS UP THRU PLAZA  
LEVEL SLAB

DOMESTIC WATER AND  
NATURAL GAS UP FROM  
EDGEMORE LANE LEVEL  
AND UP THRU PLAZA  
LEVEL SLAB

DOMESTIC WATER  
DISTRIBUTION PIPING  
& RISER PENETRATIONS  
UP THRU PLAZA  
LEVEL SLAB

NATURAL GAS UP  
FROM EDGEMORE  
LANE LEVEL

NATURAL GAS  
UP THRU PLAZA  
LEVEL SLAB



The Metropolitan

Utilities  
Gas and Water Easements

Old Georgetown Road Level

D-2

NATURAL GAS  
SERVICE AND METER

12" WATER SERVICE  
DOMESTIC/FIRE PROTECTION

MAIN WATER METER

DOMESTIC WATER AND  
NATURAL GAS-UP

NATURAL GAS  
DISTRIBUTION

NATURAL GAS-UP

SUB WATER METER  
FOR APARTMENT BUILDING

DOMESTIC BOOSTER PUMPS

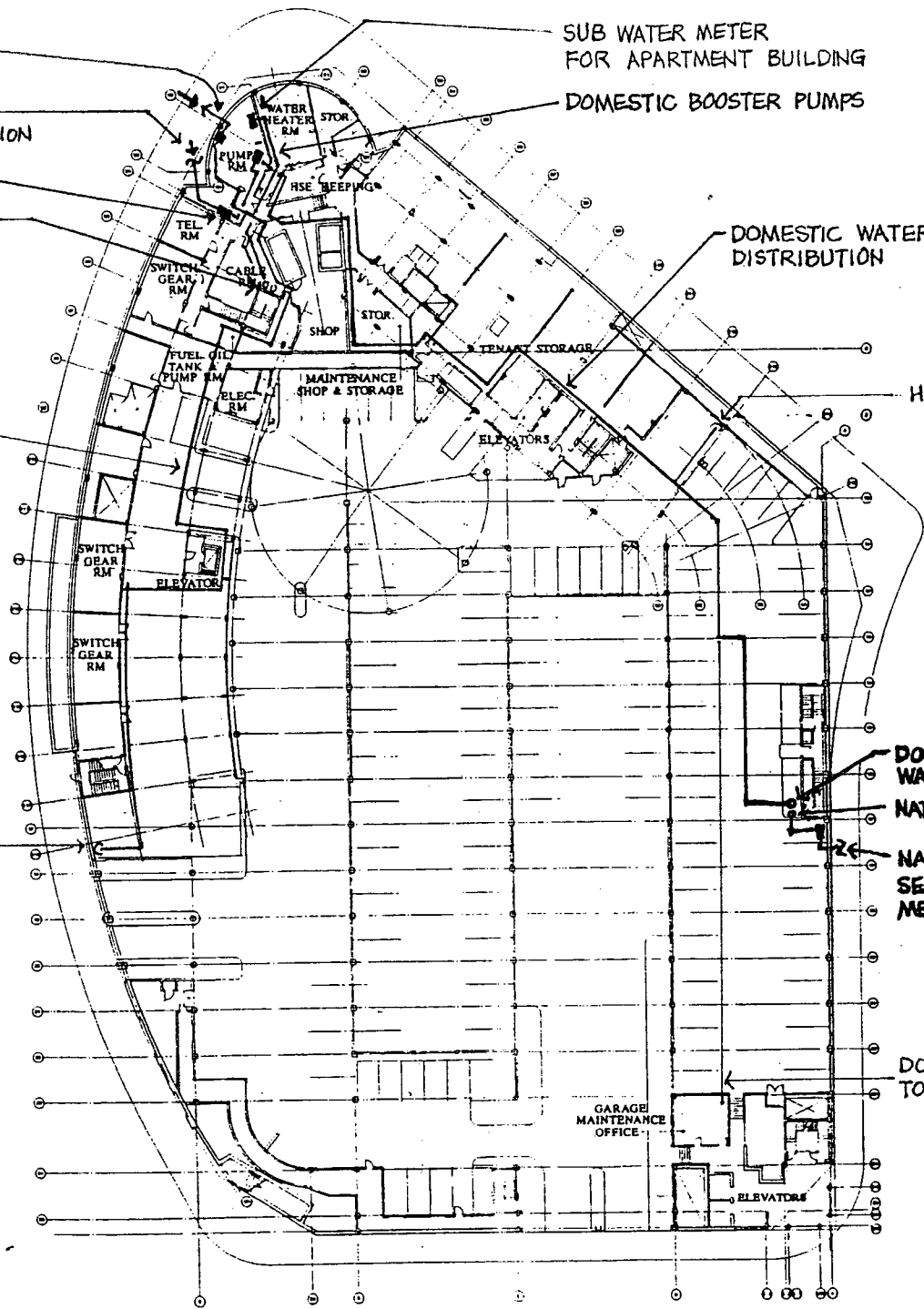
DOMESTIC WATER  
DISTRIBUTION

HOSE BIBB

DOMESTIC  
WATER-UP  
NATURAL GAS-UP

NATURAL GAS  
SERVICE AND  
METER

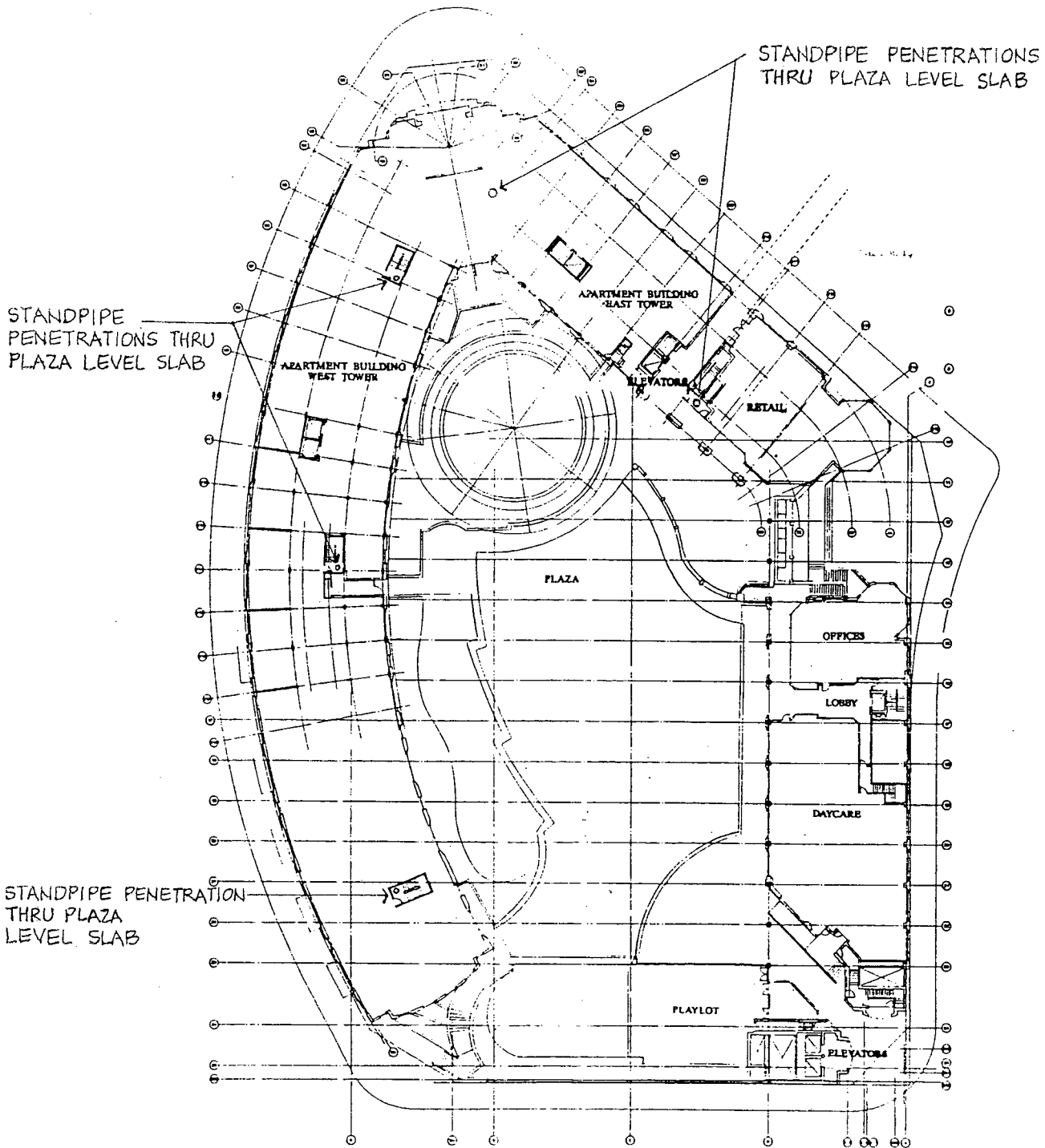
DOMESTIC WATER  
TO TOILET ROOM



The Metropolitan  
Edgemoor Lane Level

Utilities  
Gas and Water Easements

D-3

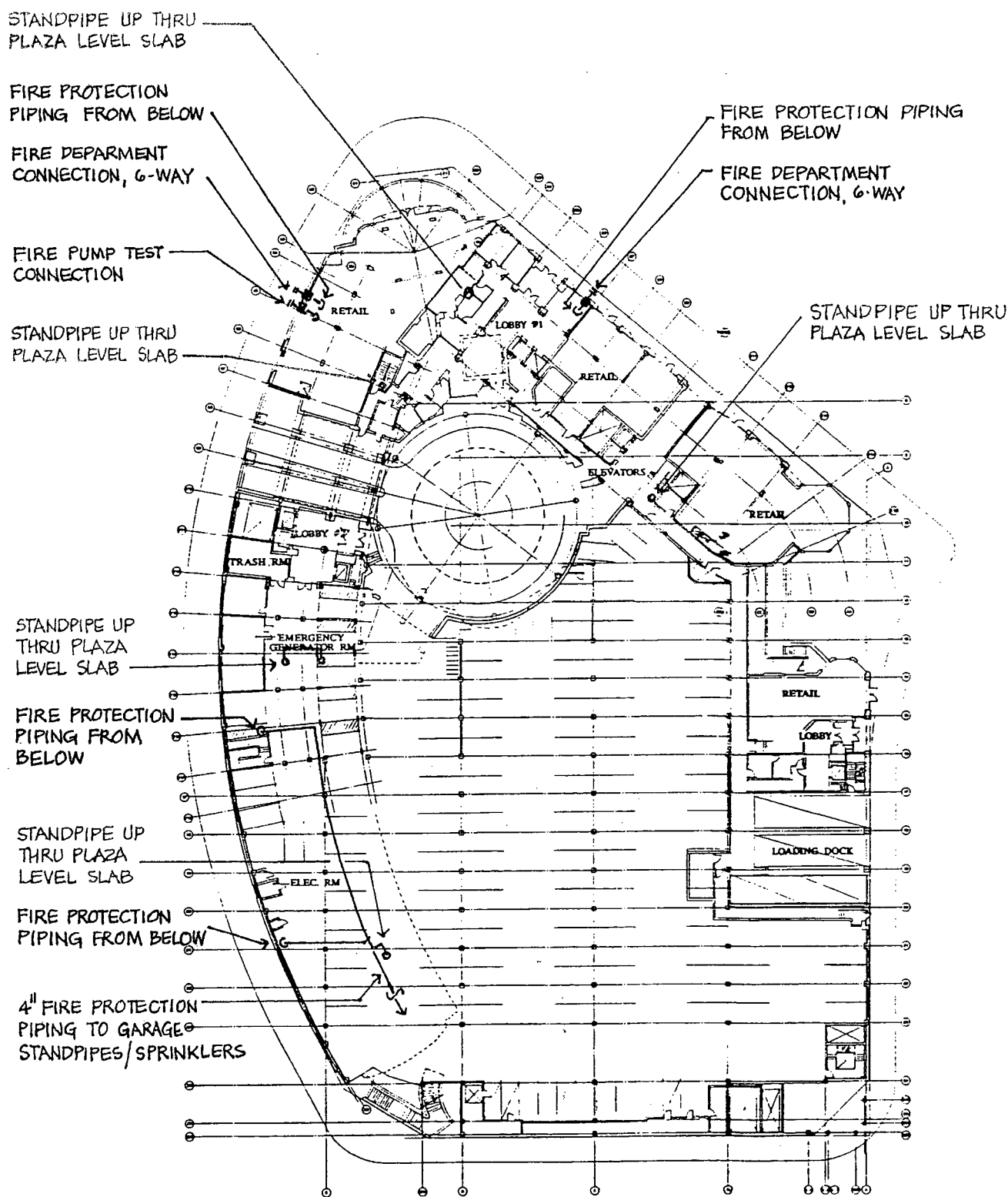


The Metropolitan

Plaza Level

Fire Protection  
System Easements

E-1

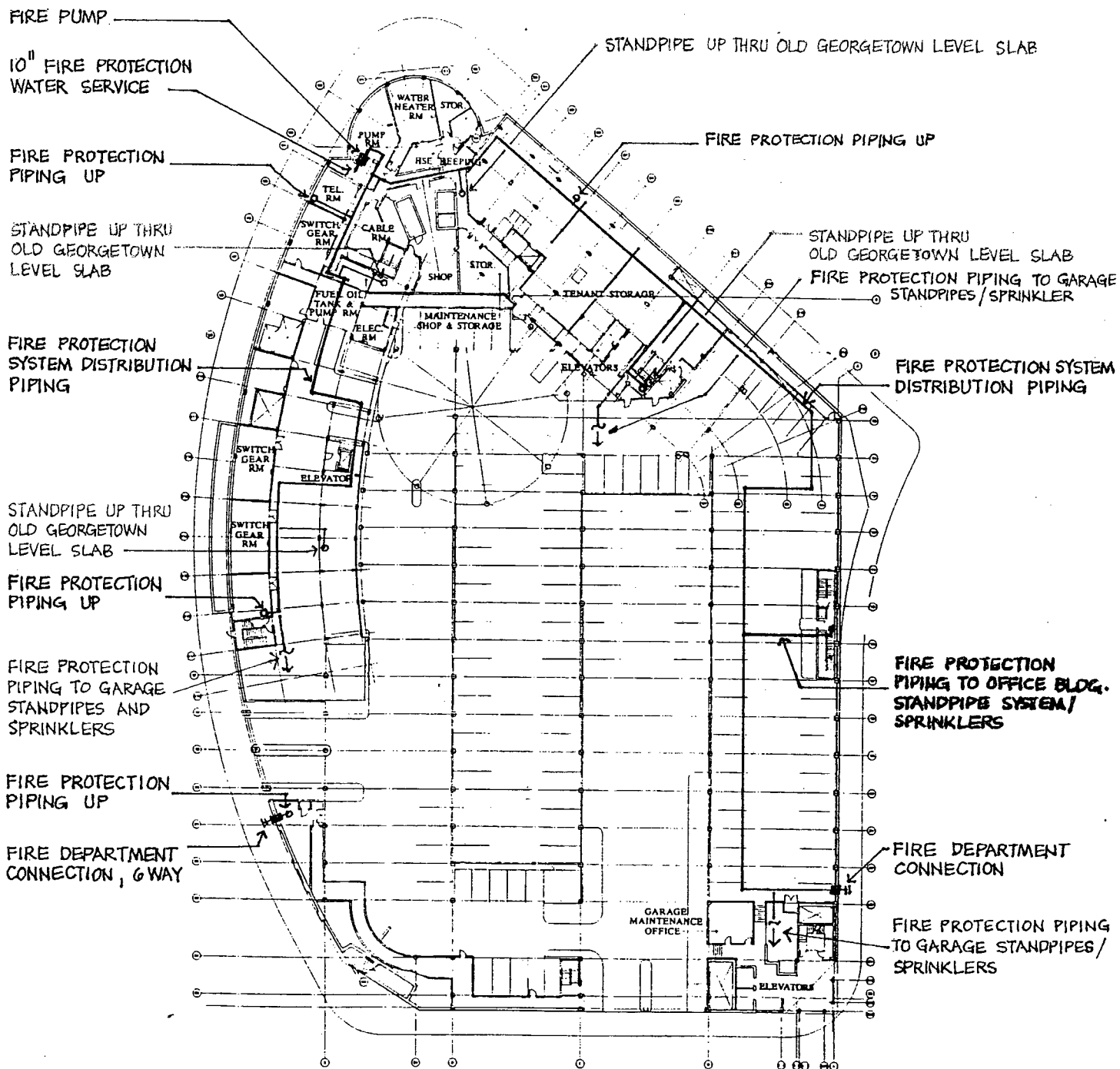


The Metropolitan

Old Georgetown Road Level

Fire Protection  
System Easements

E-2



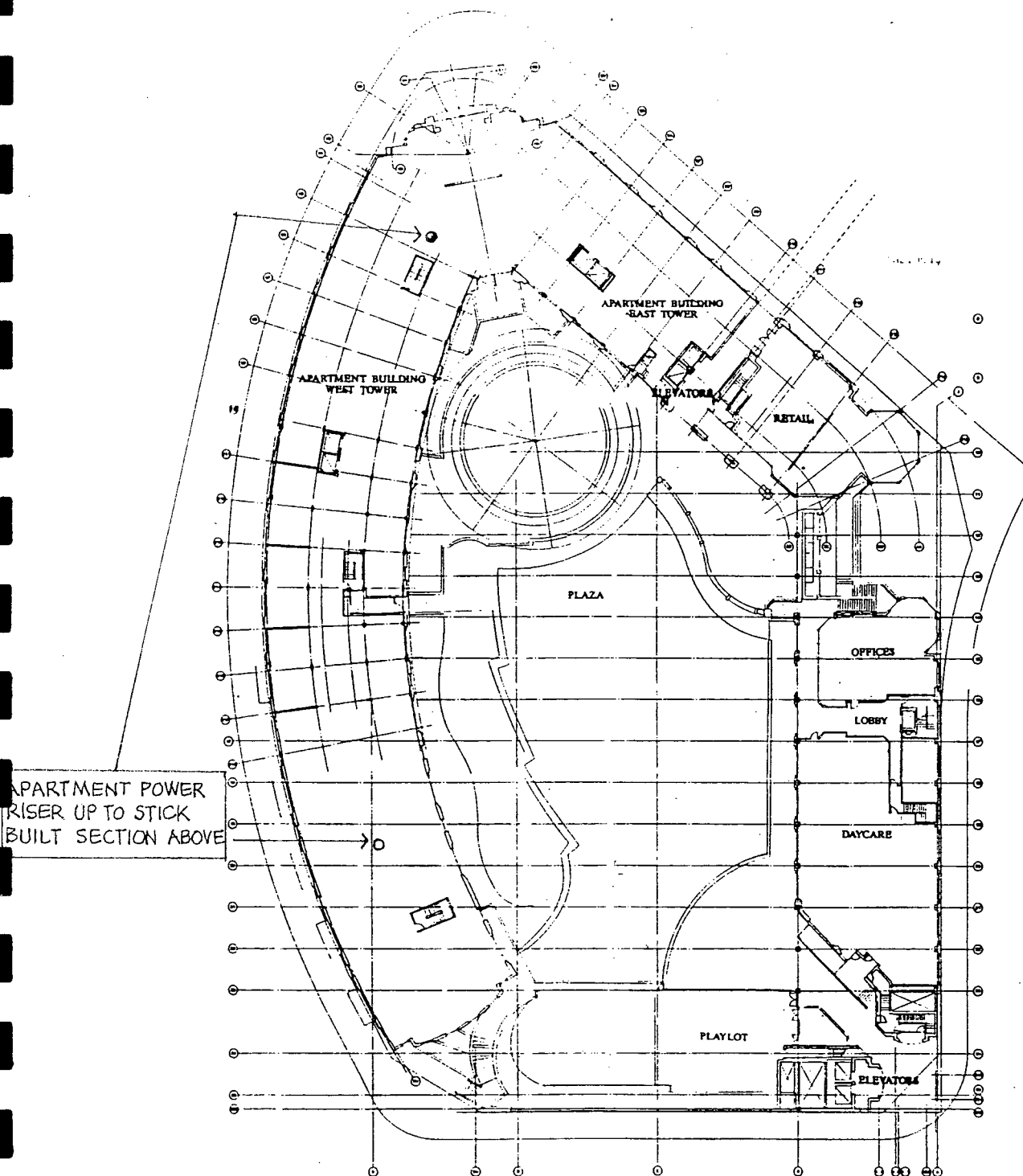
The Metropolitan

Fire Protection  
System Easements

Edgemoor Lane Level

E-3





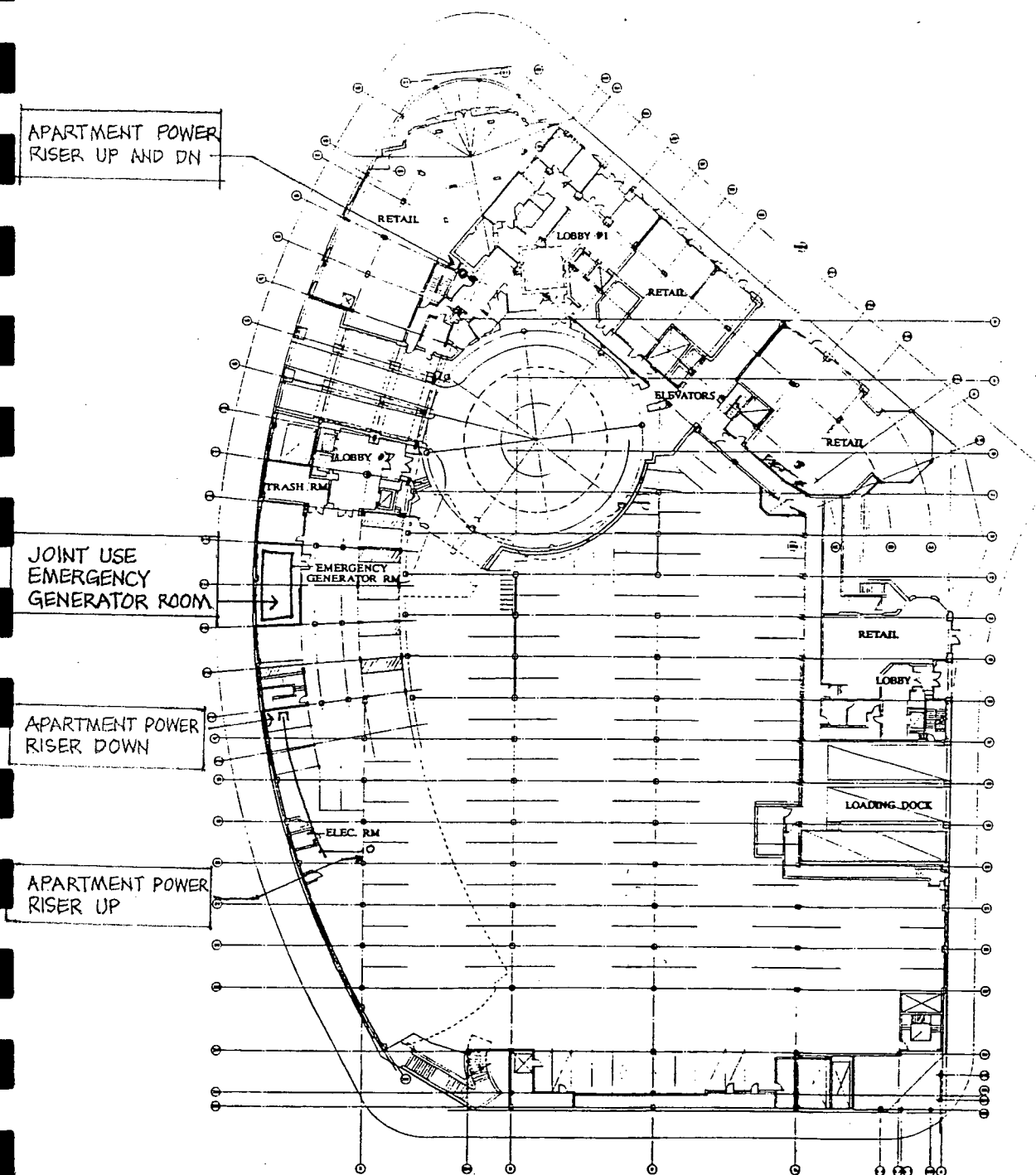
# The Metropolitan

Plaza Level

Utilities Easements

Electric, Telephone & Telecommunication Systems

F-1



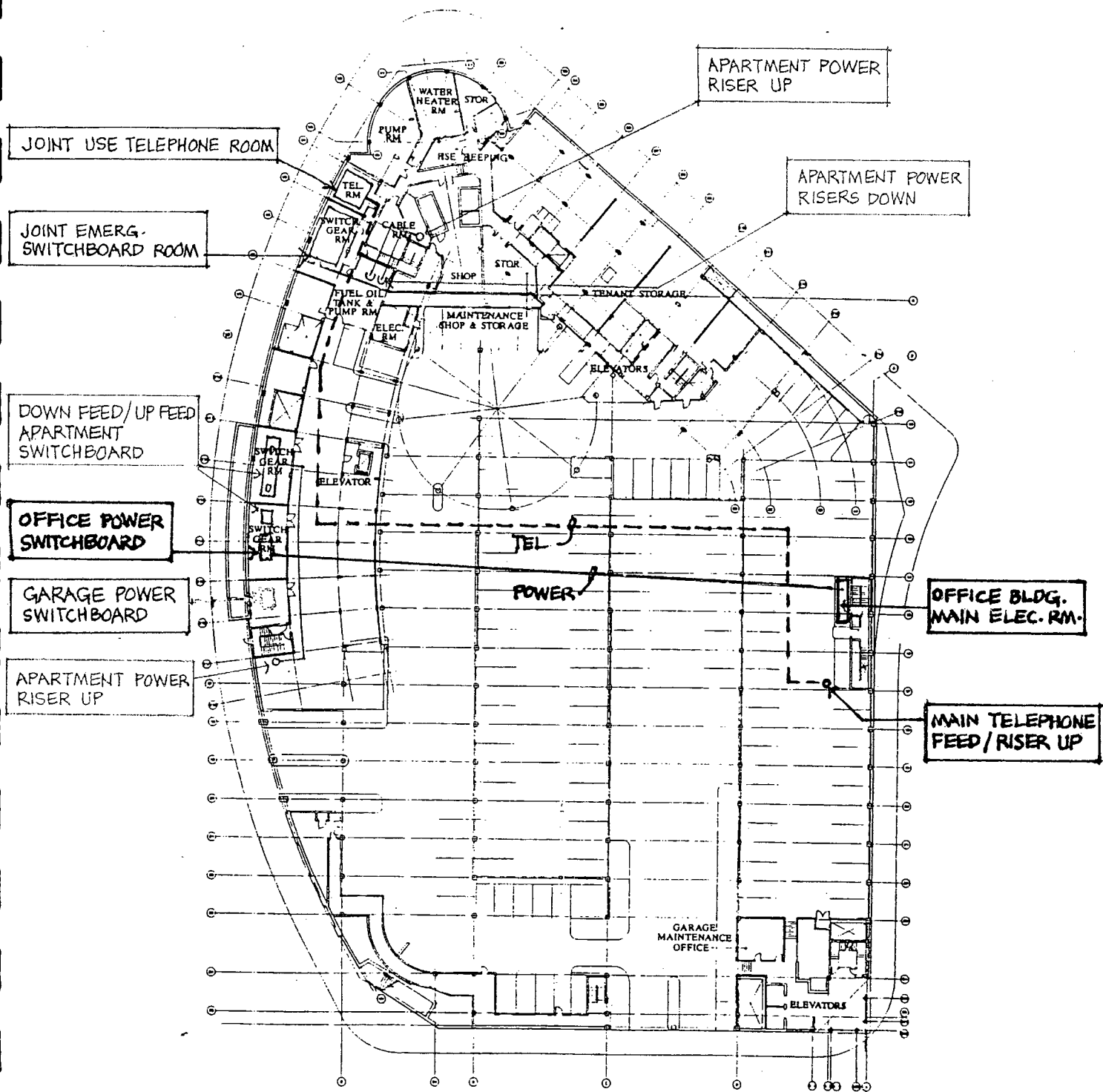
The Metropolitan

Old Georgetown Road Level

Utilities Easements

Electric, Telephone &  
Telecommunication Systems

F-2



The Metropolitan

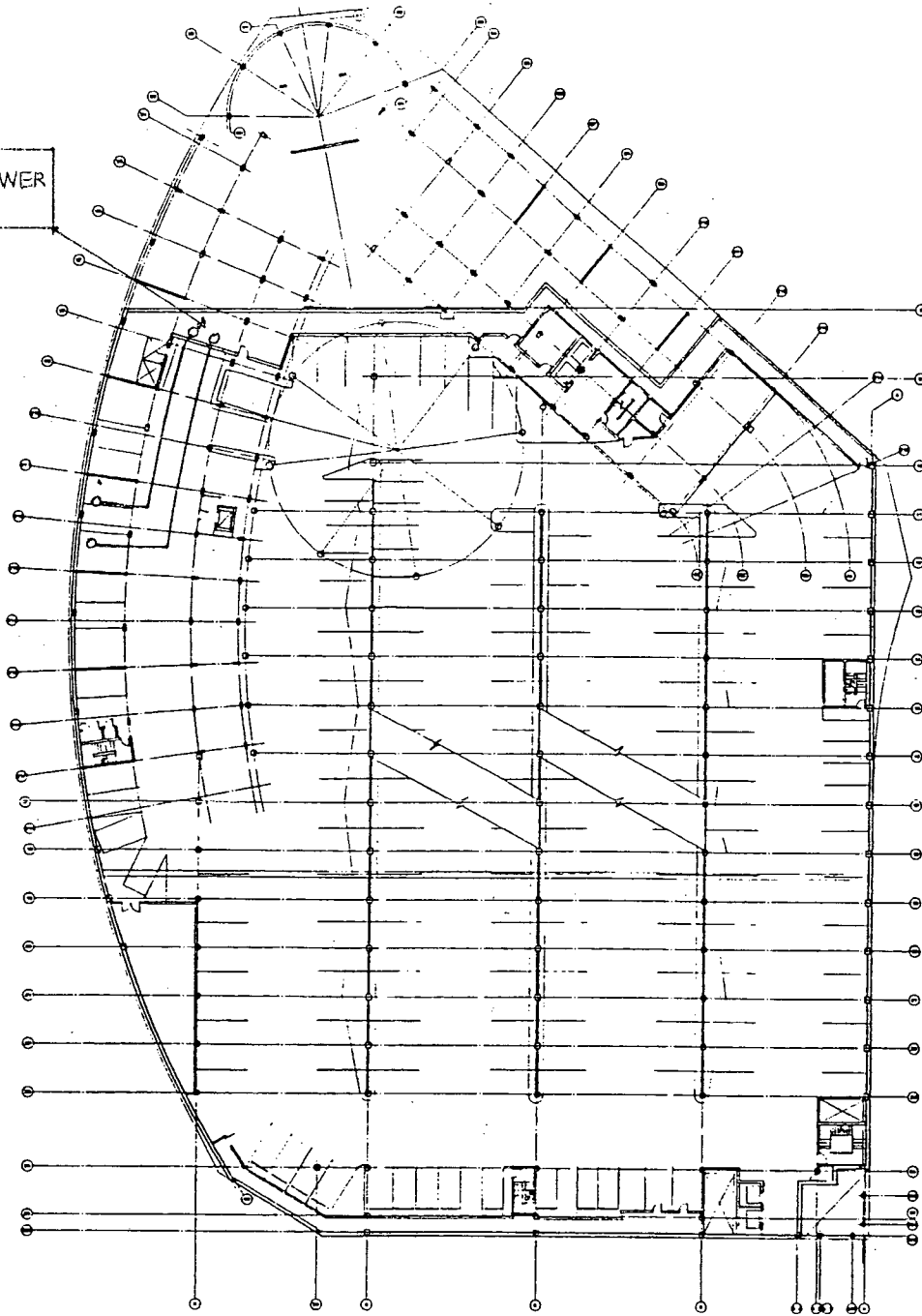
Edgemoor Lane Level

Utilities Easements

Electric, Telephone &  
Telecommunication Systems

F-3

APARTMENT POWER  
RISERS UP



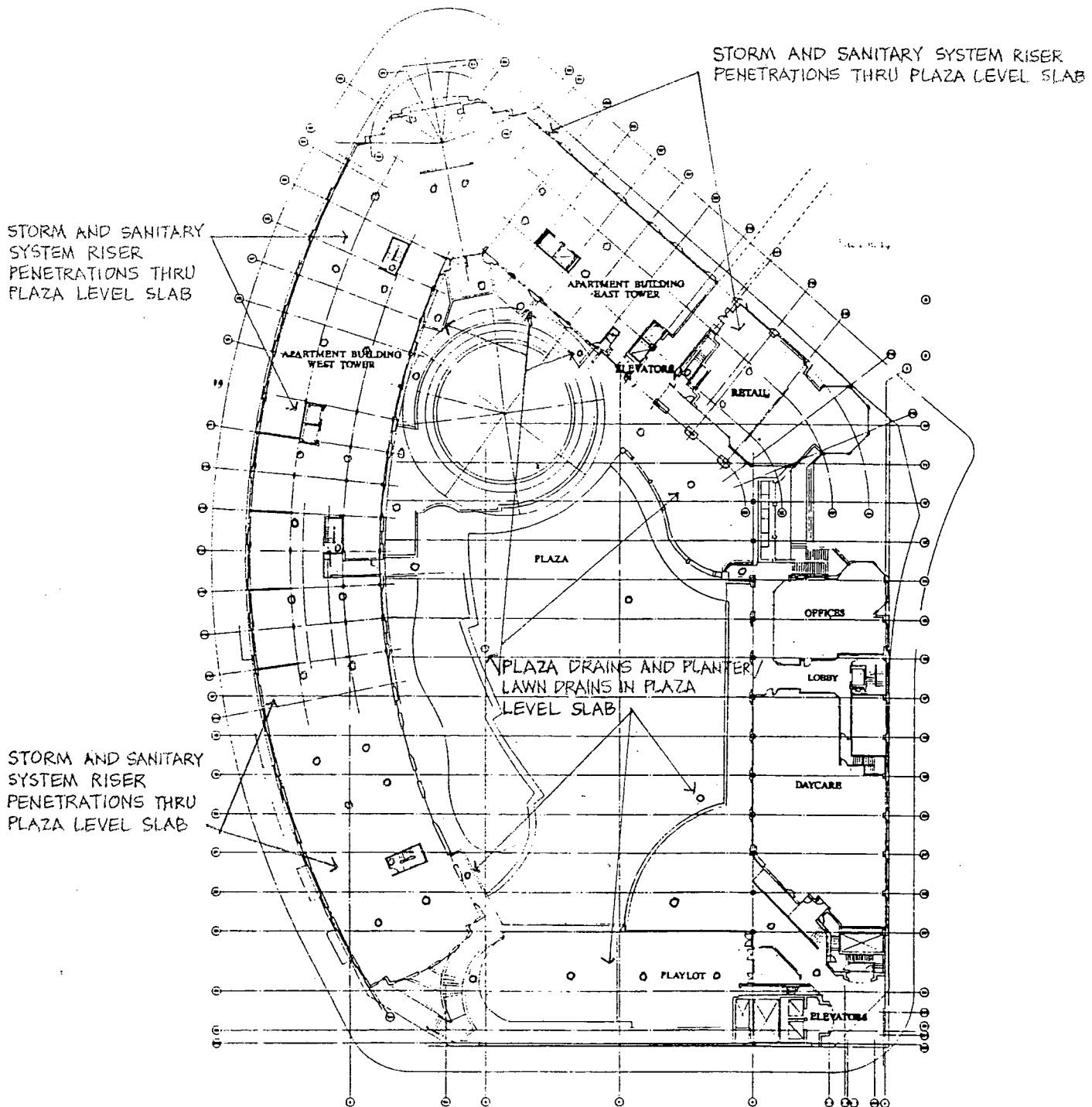
The Metropolitan

P2 Parking Level

Utilities Easements

Electric, Telephone &  
Telecommunication Systems

F-4

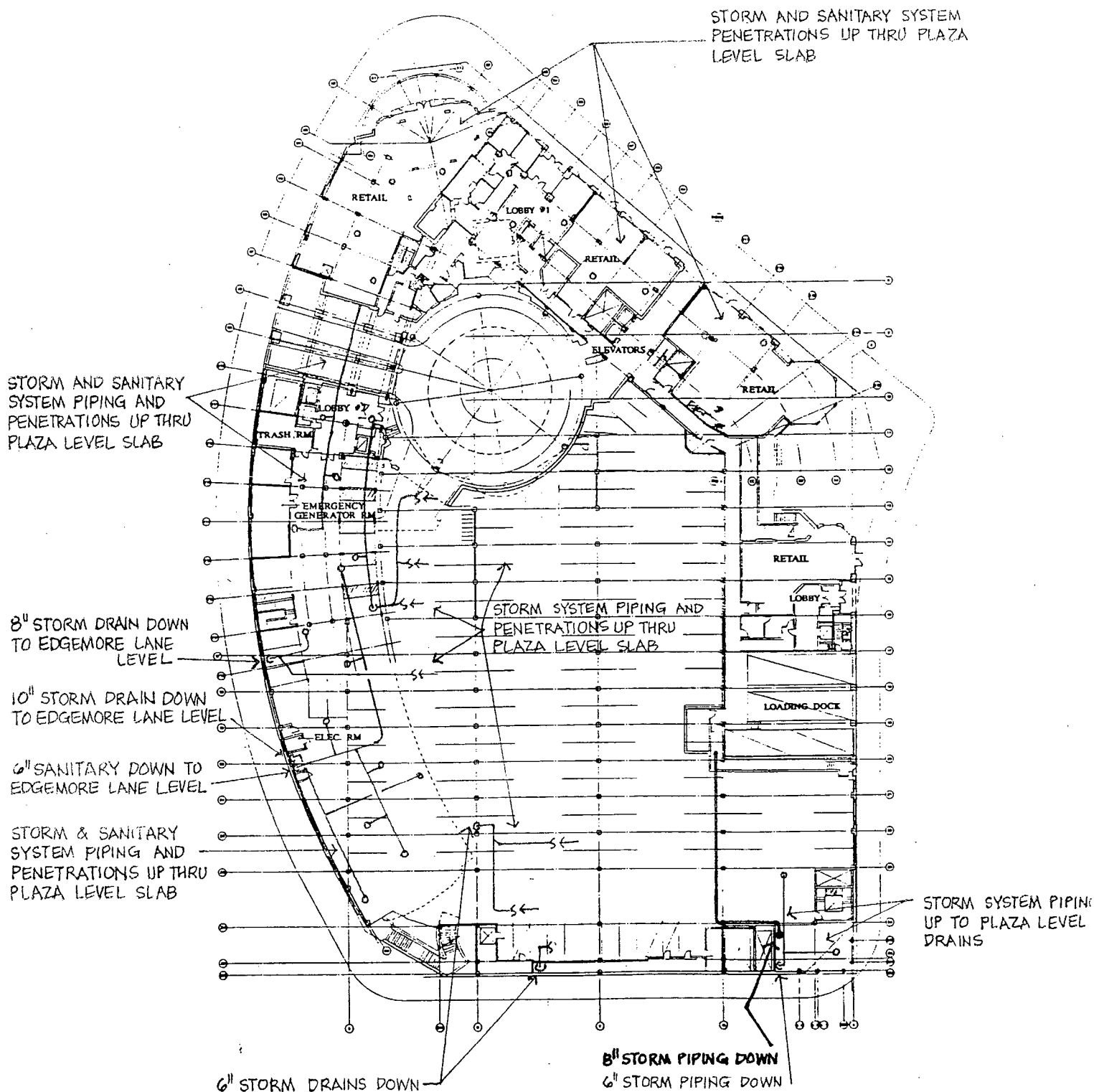


# The Metropolitan

## Storm and Sanitary Sewer Easements

Plaza Level

G-1



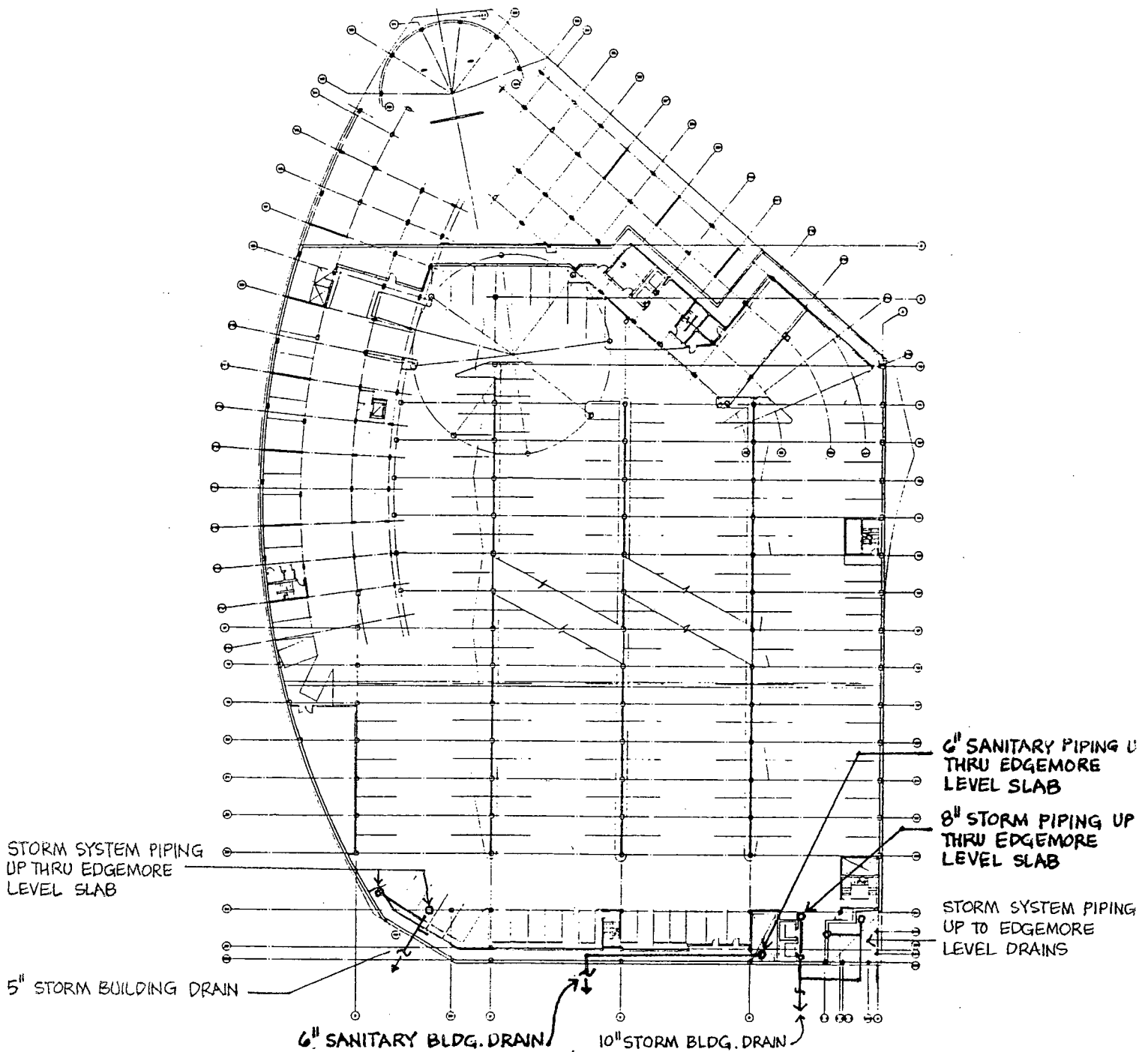
The Metropolitan

Old Georgetown Road Level

Storm and Sanitary  
Sewer Easements

G-2





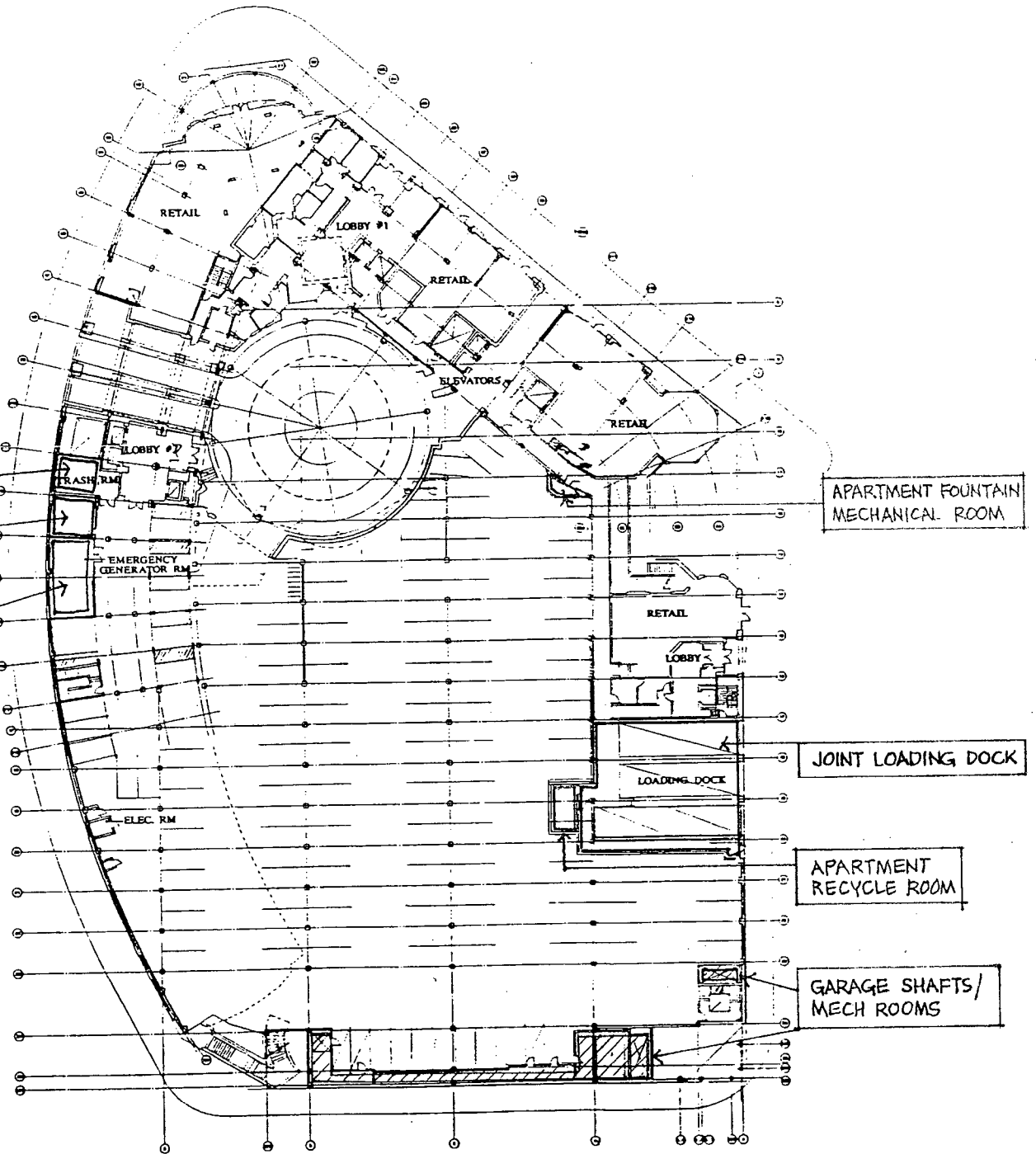
The Metropolitan

Storm and Sanitary Easements

P2 Parking Level

G-4





The Metropolitan

Mechanical Room Easements

Old Georgetown Road Level

H-1

JOINT USE SEWAGE EJECTOR ROOM

Mechanical Room Easements



JOINT USE FIRE PUMP ROOM

JOINT USE TELEPHONE ROOM

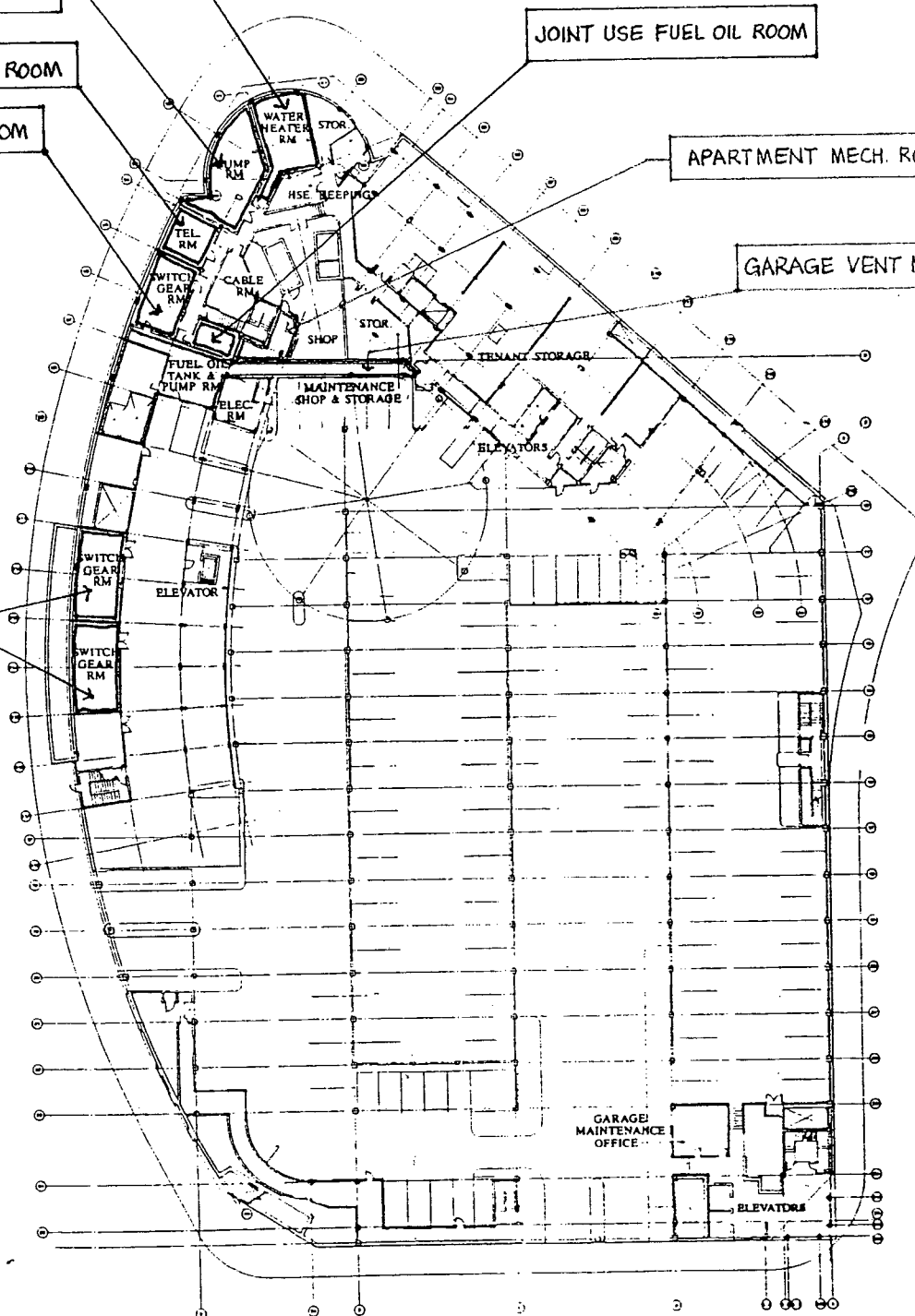
JOINT USE ELECTRIC ROOM

JOINT USE FUEL OIL ROOM

APARTMENT MECH. ROOM

GARAGE VENT MECH ROOMS

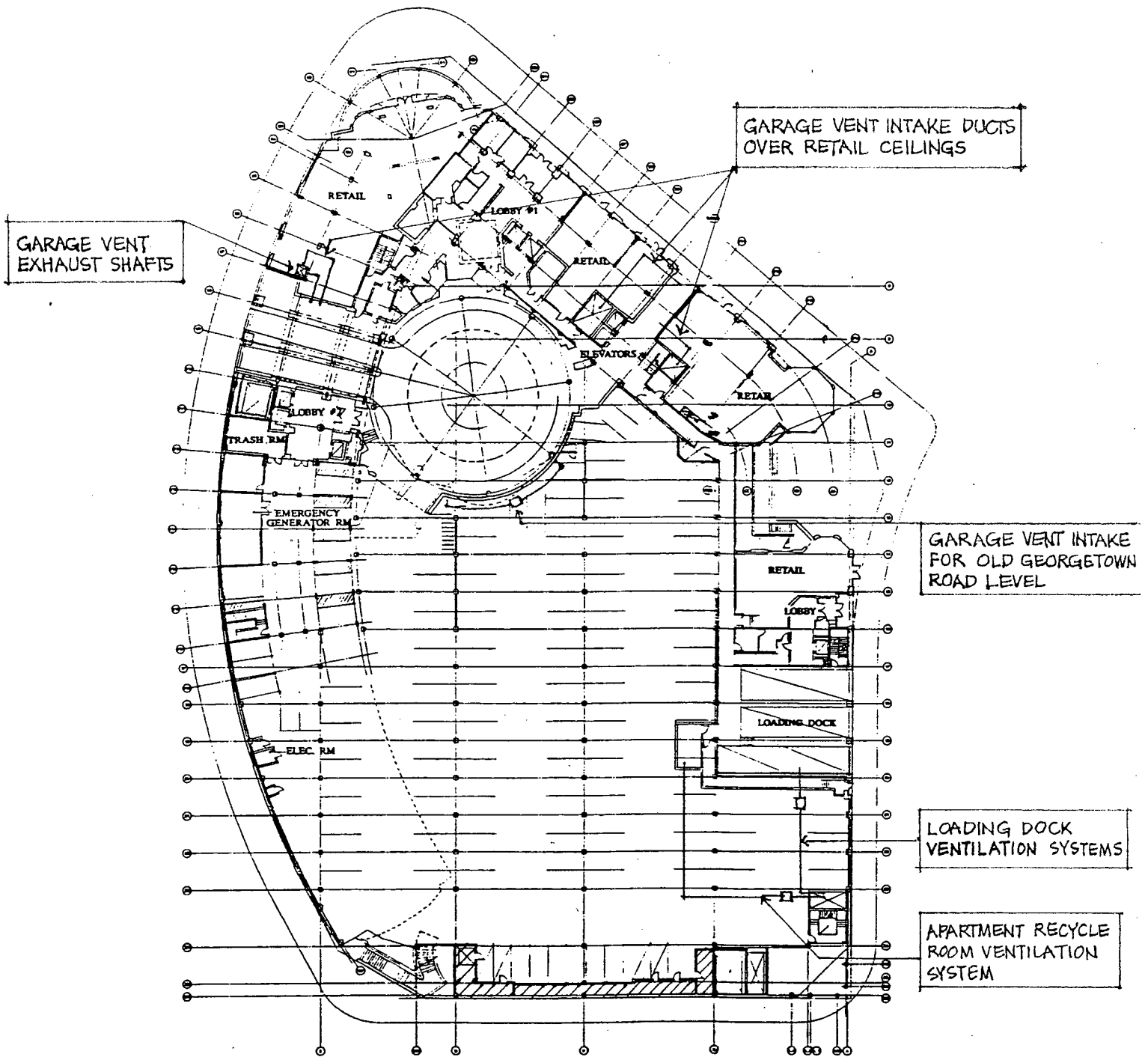
JOINT USE  
ELECTRIC ROOMS



The Metropolitan  
Edgemoor Lane Level

Mechanical Room Easements

H-2

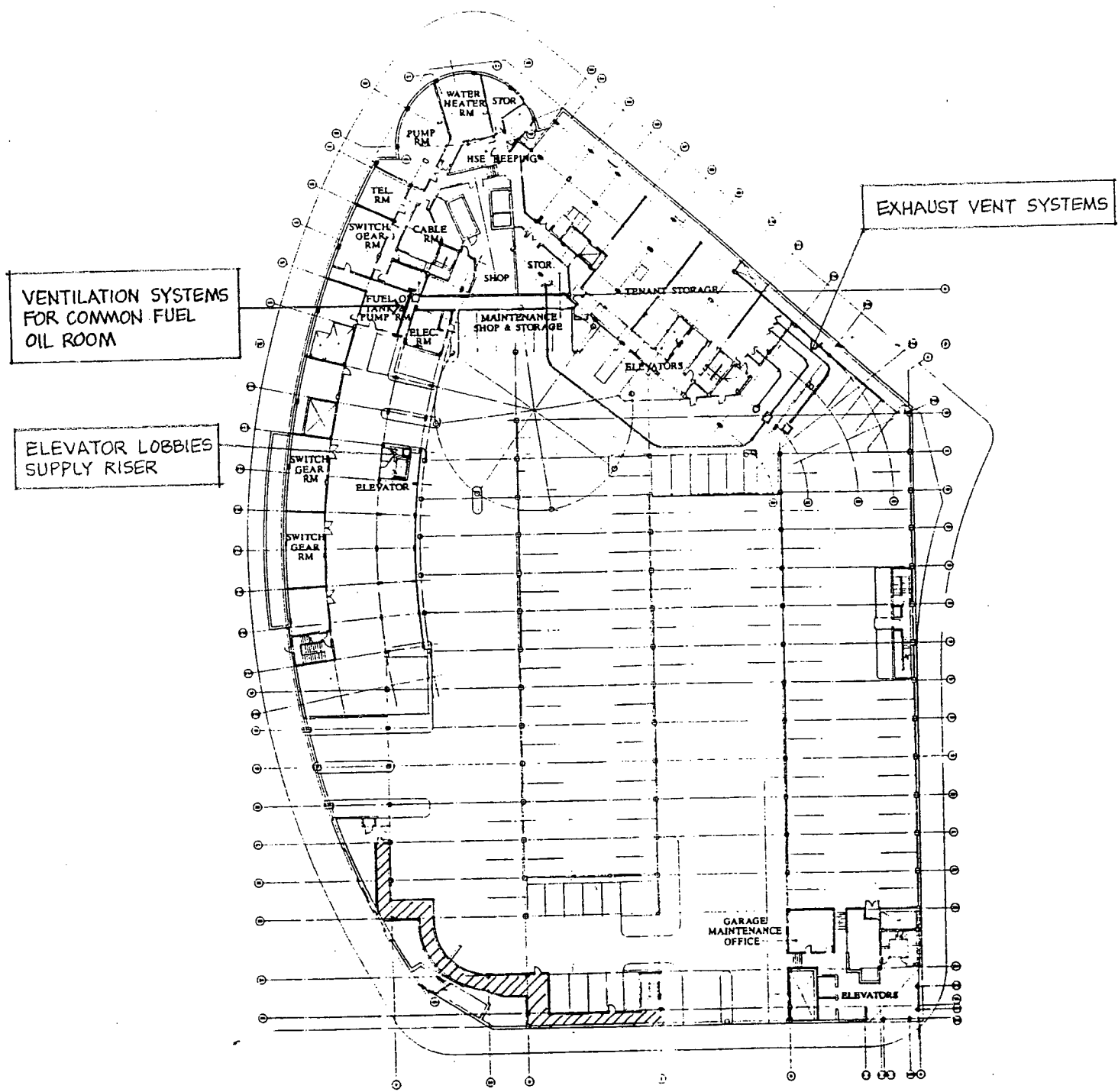


The Metropolitan

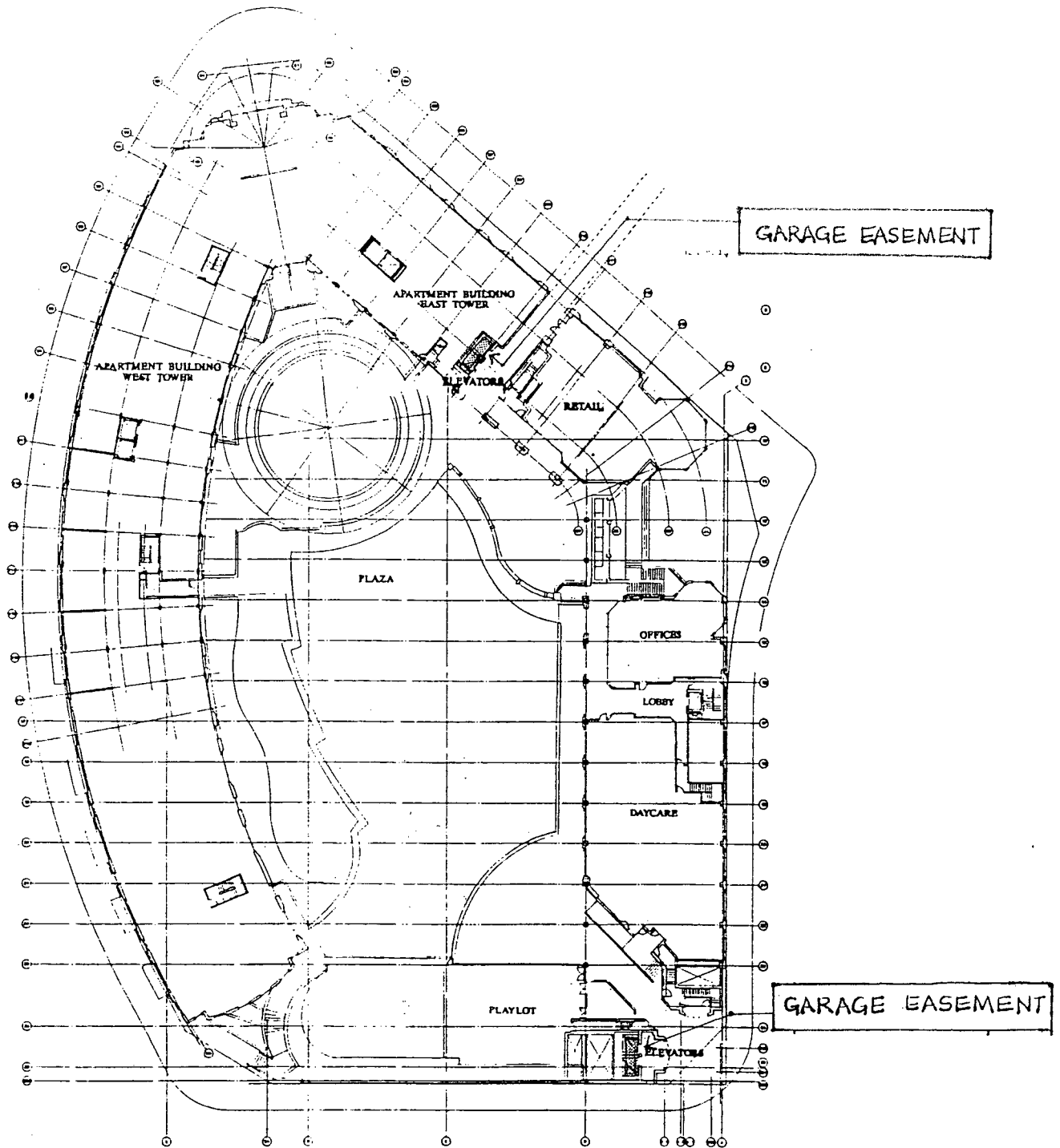
Ventilation Easements

Old Georgetown Road Level

I-1



Elevator Easements

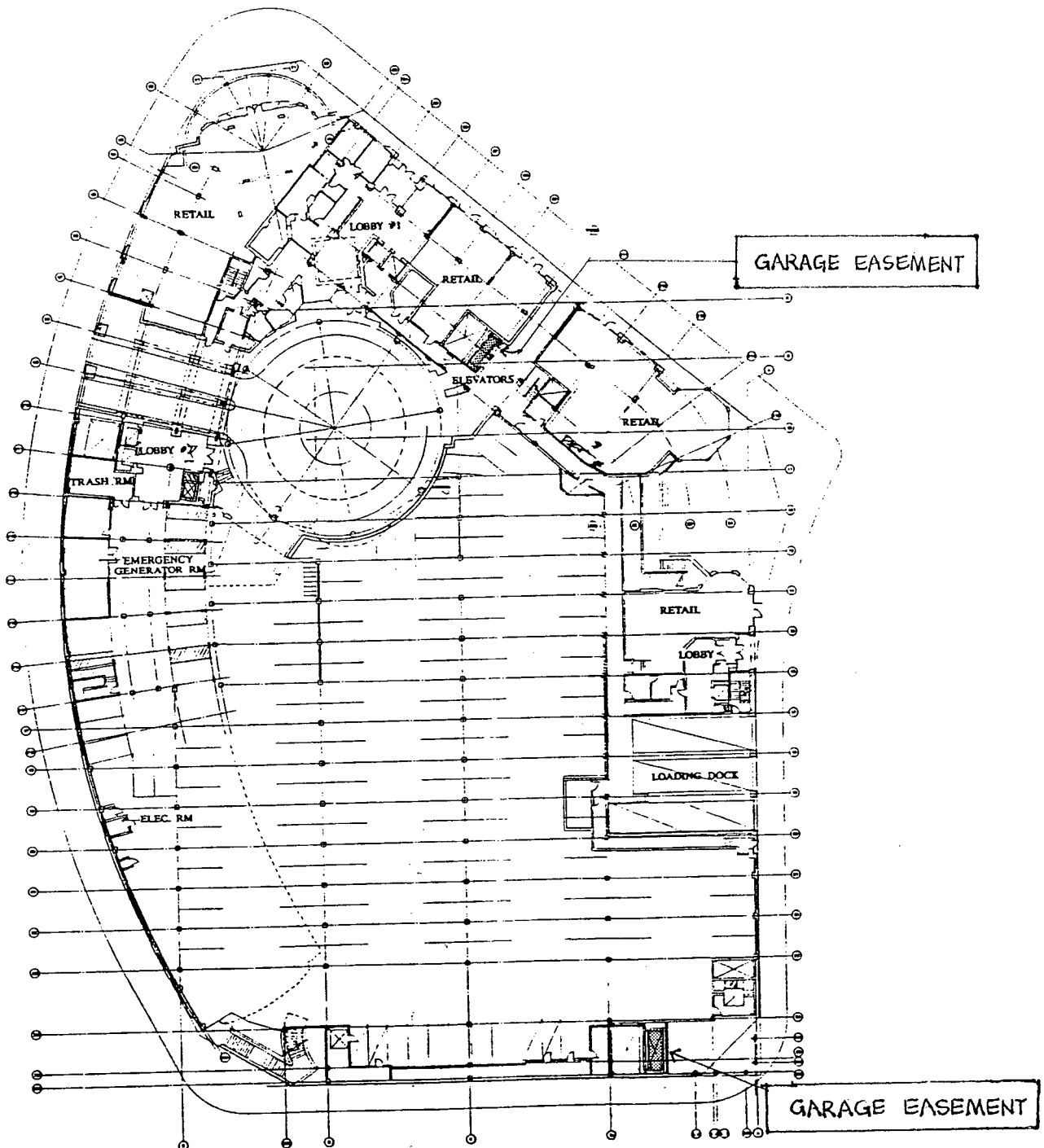


The Metropolitan

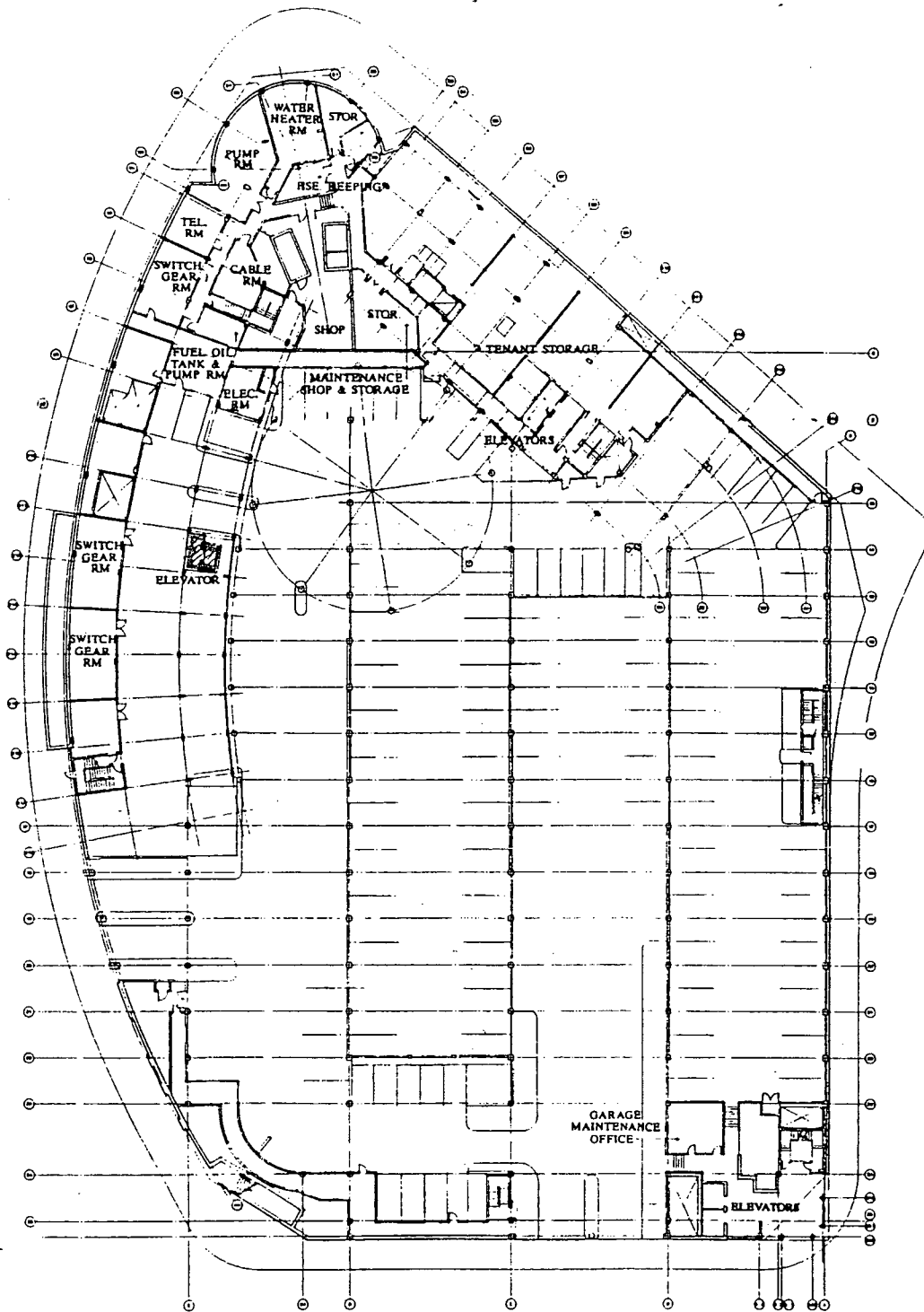
Elevator Easements

Plaza Level

J-1



# Elevator Easements



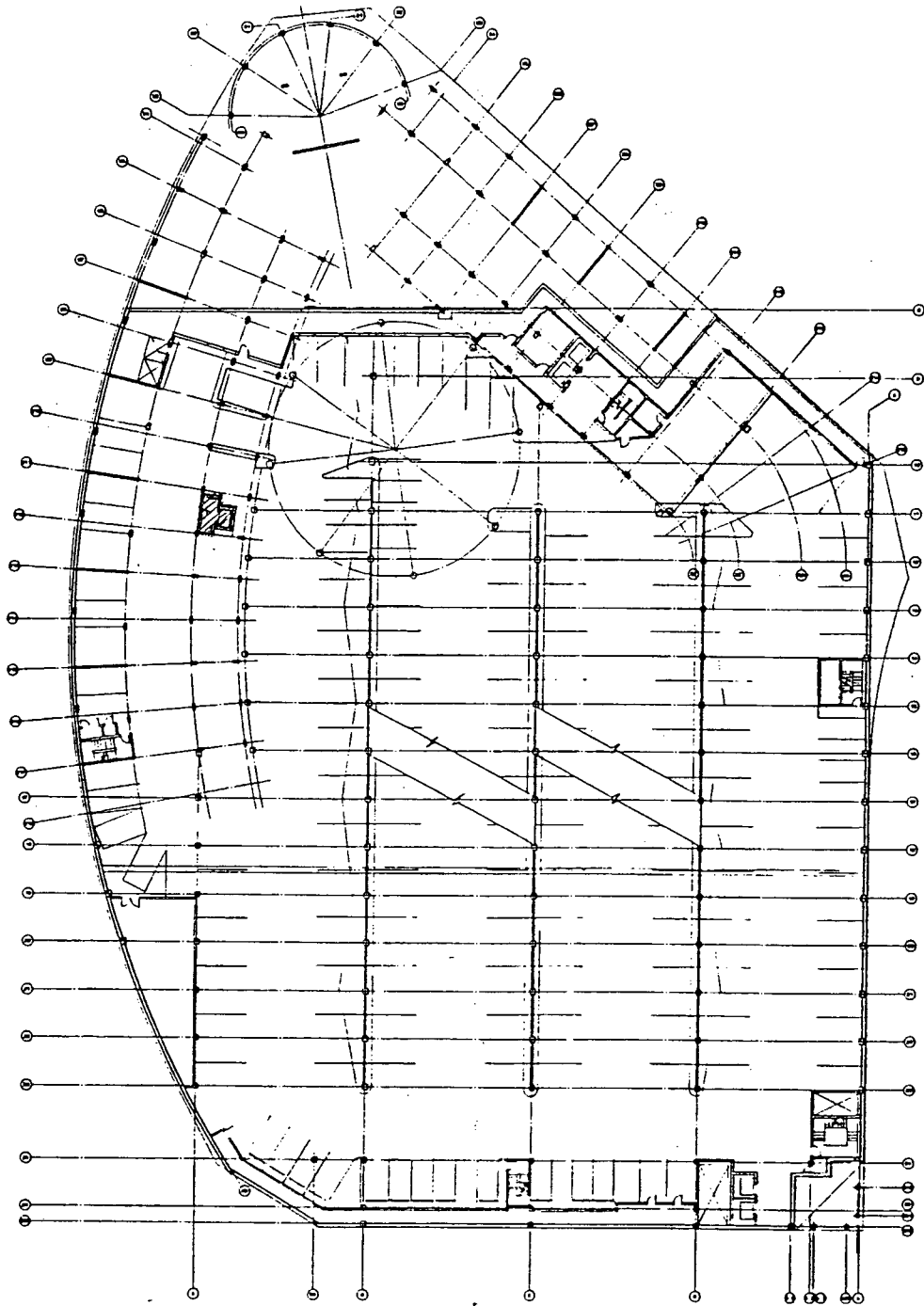
The Metropolitan

Edgemoor Lane Level

Elevator Easements

to Lessee

J-3

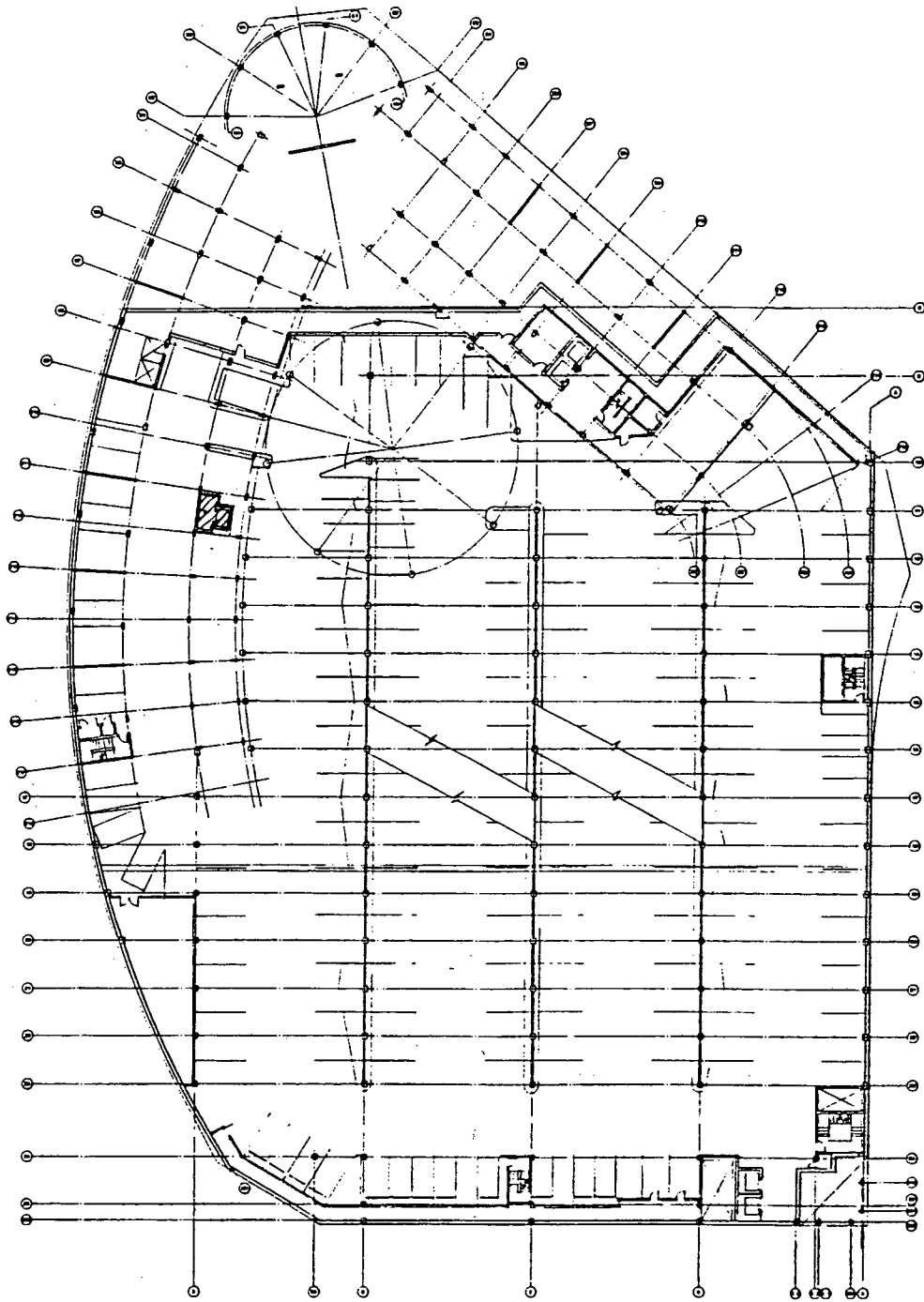


The Metropolitan  
P2 Parking Level

Elevator Easements  
to Lessee

J-4



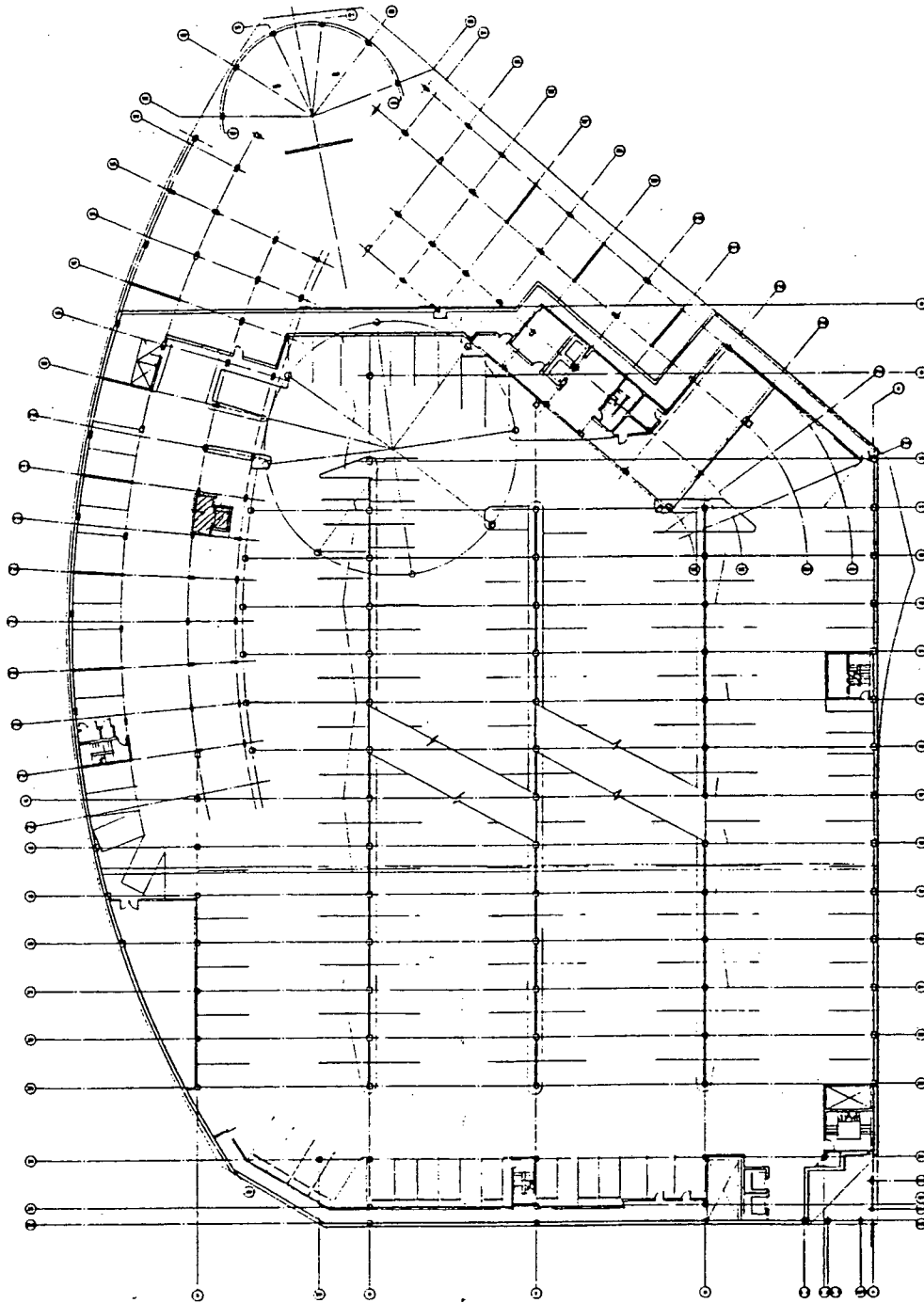


The Metropolitan

P3 Parking Level

Elevator Easements  
to Lessee

J-5



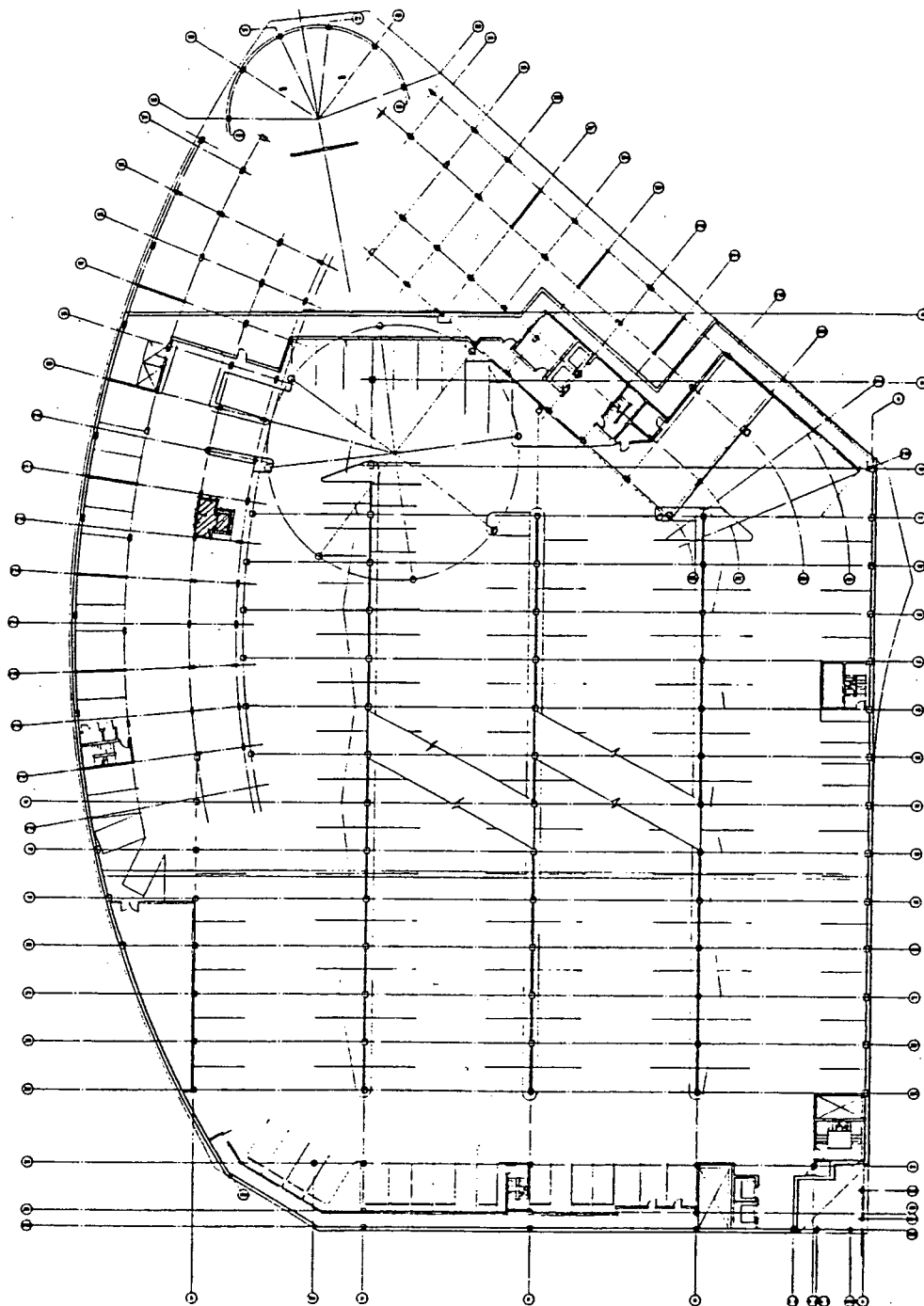
The Metropolitan

P4 Parking Level

Elevator Easements

to Lessee

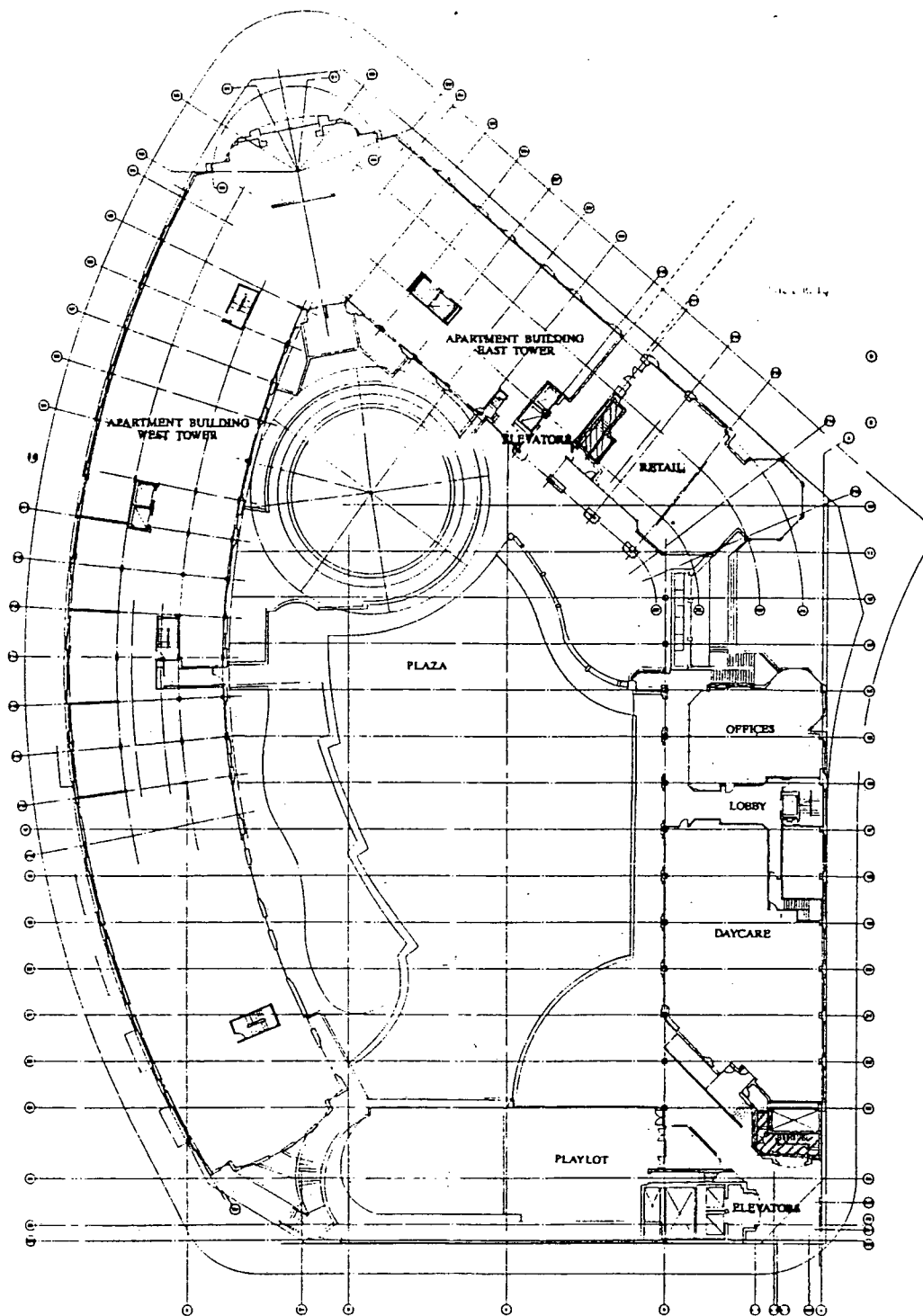
J-6



The Metropolitan  
P5 Parking Level

Elevator Easements  
to Lessee

# Ingress and Egress Easements



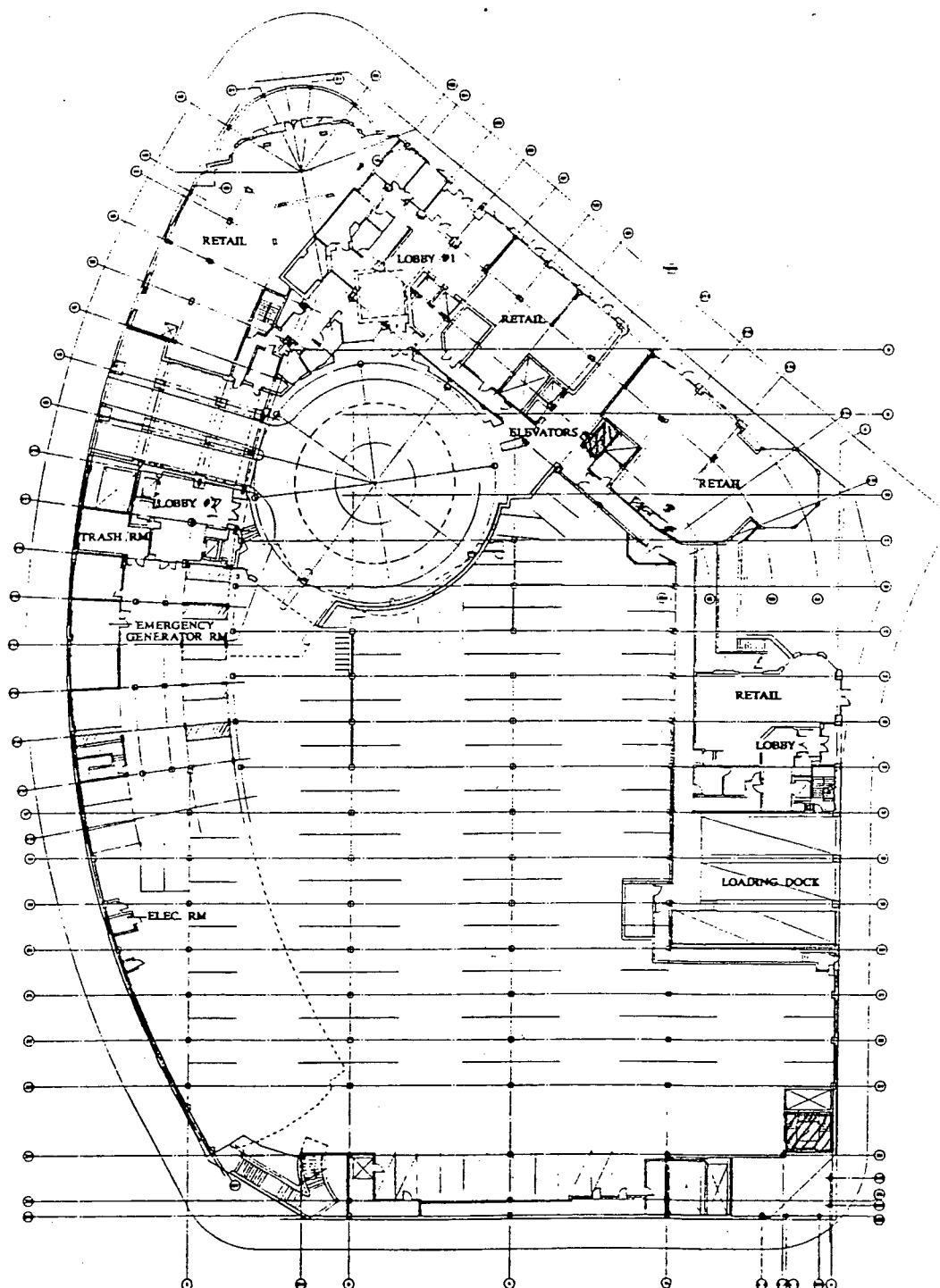
The Metropolitan

Ingress and Egress Easements

Plaza Level

K-1

# Ingress and Egress Easements




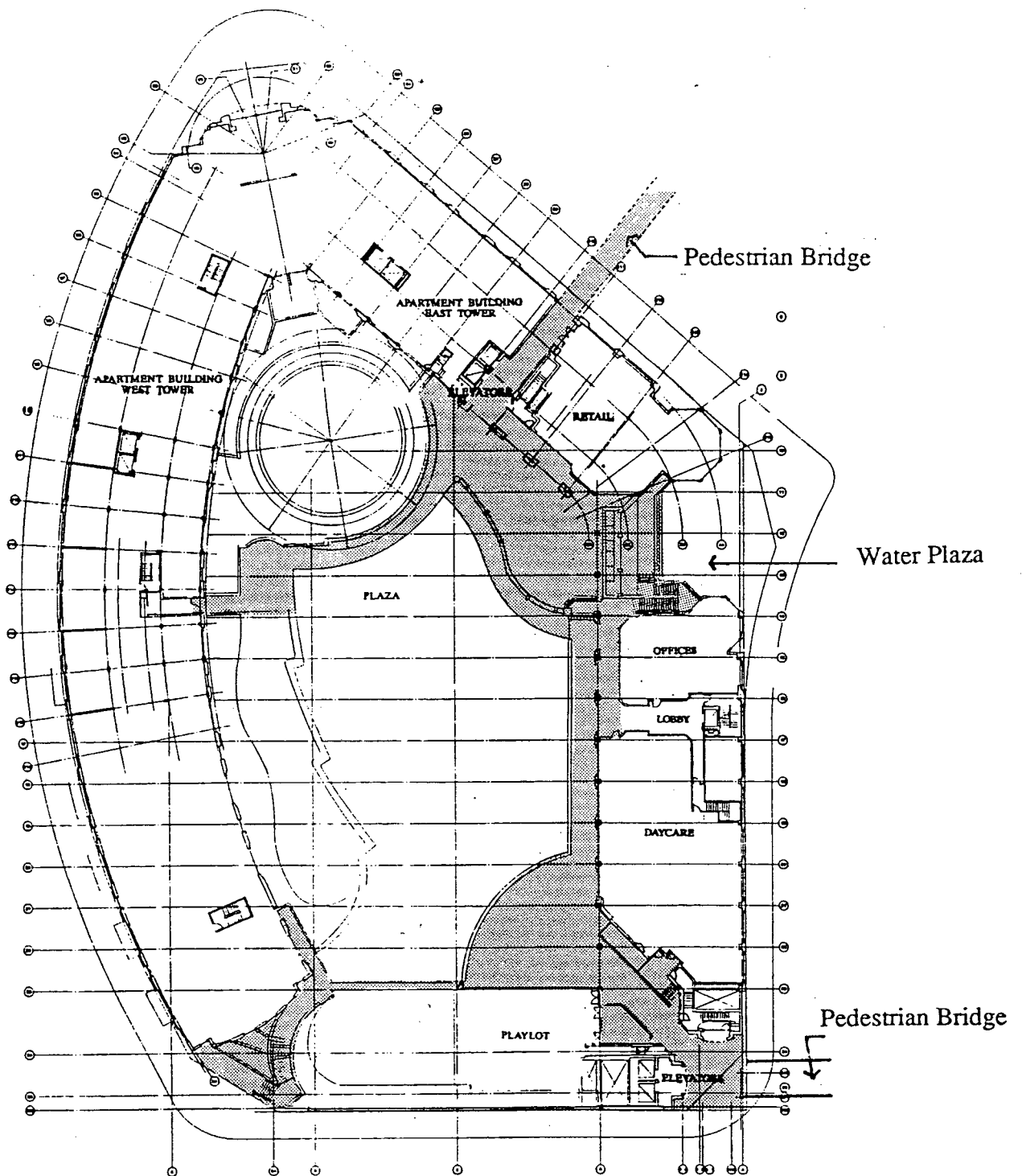
The Metropolitan

Ingress and Egress Easements

Old Georgetown Road Level

K-2

Pedestrian System 




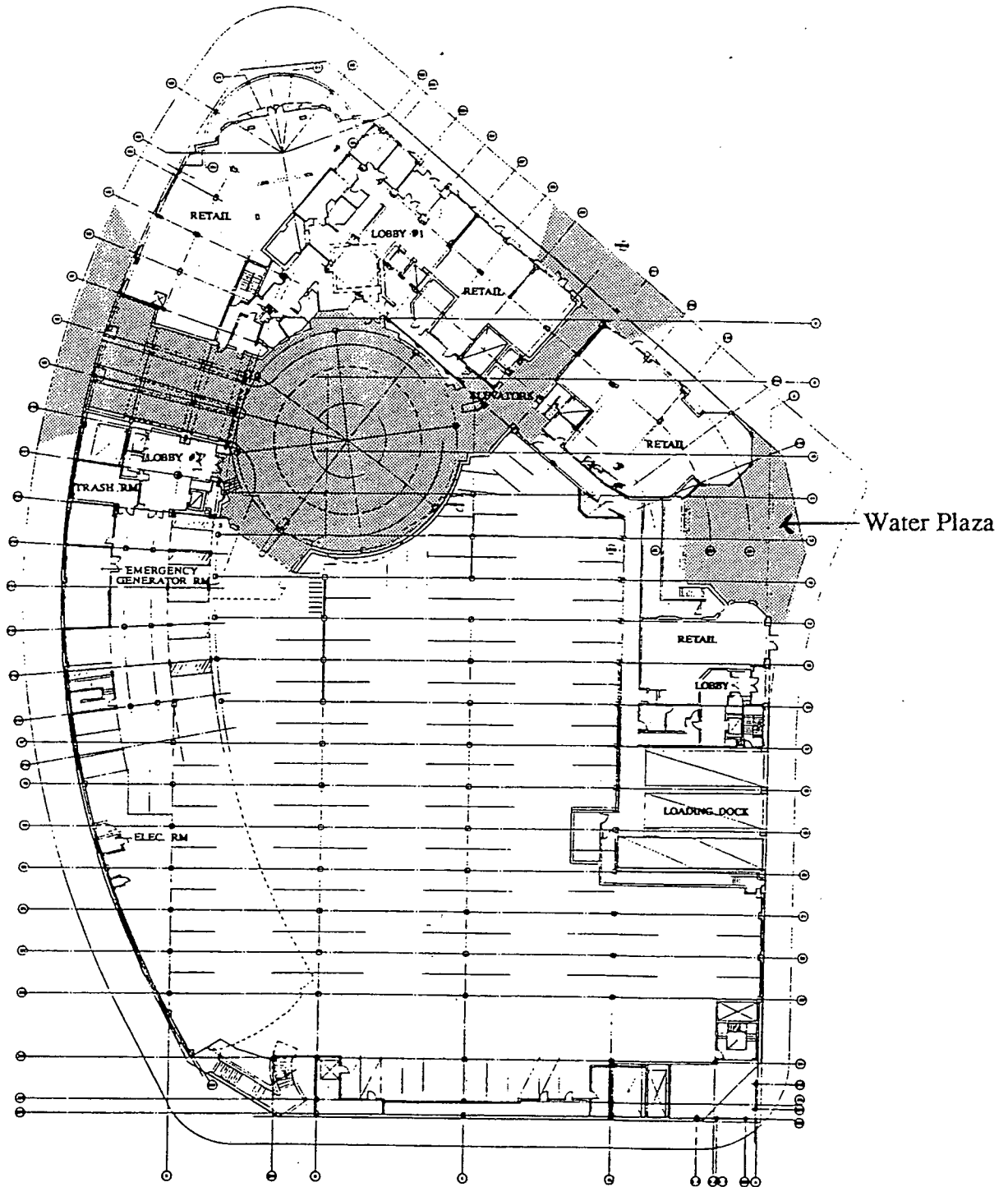
The Metropolitan

Open Space System

Site Plan

L-1

Pedestrian System 



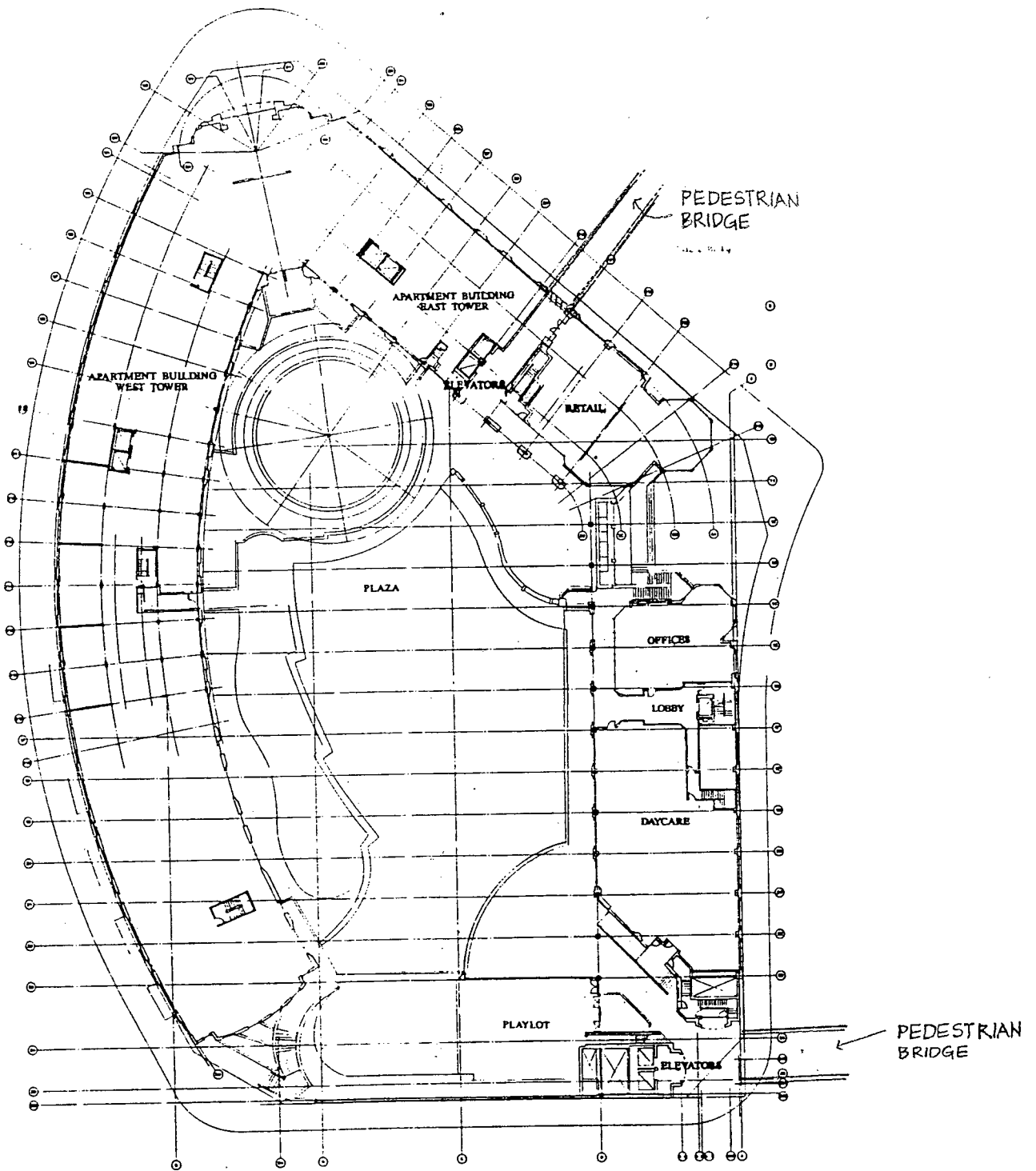
The Metropolitan

Open Space System

Old Georgetown Road Level

L-2

# Bridge Support Easements



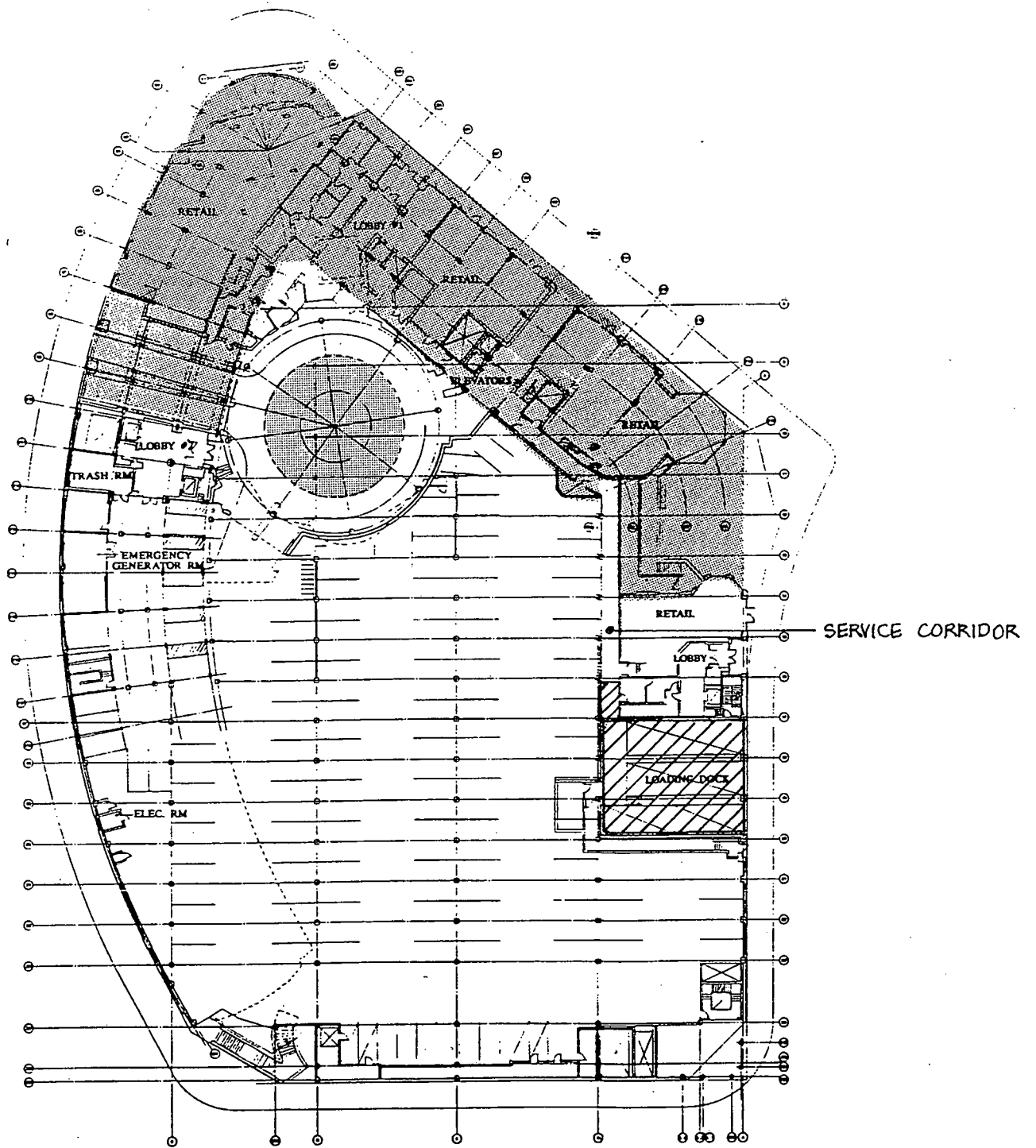
Metropolitan Park

Plaza Level

Easements for support of  
Pedestrian Bridges

M



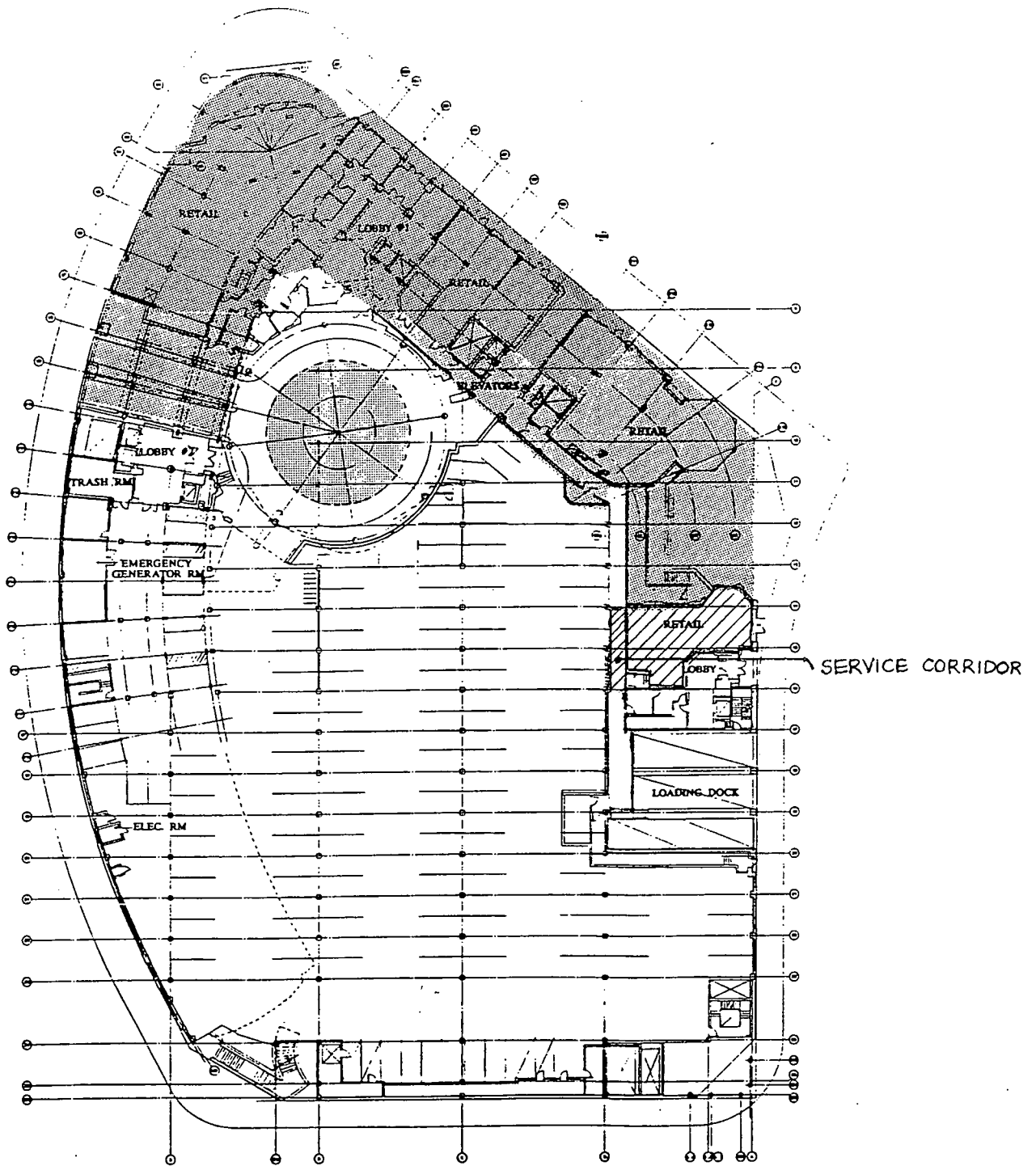


The Metropolitan

Loading Dock Easement

Old Georgetown Road Level

N



The Metropolitan

Old Georgetown Road Level

Retail and Service Corridor

Easements

O



COLLATERAL ASSIGNMENT OF PLANS AND AGREEMENTS

THIS COLLATERAL ASSIGNMENT OF PLANS AND AGREEMENTS (the "Collateral Assignment") is made this 23 day of June, 1995, by the Housing Opportunities Commission of Montgomery County (the "Assignor"), to and for the benefit of Montgomery County, Maryland (the "Assignee").

WHEREAS, the Assignor and Assignee have entered into an Air Rights Lease (the "Lease"), of even date herewith, pursuant to which the Assignor has agreed to design and construct, at its own cost and expense a (the "Improvements") in a portion of the airspace above, upon and along the sides of a parking garage owned by the Assignee;

WHEREAS, the Assignee is willing to permit the Assignor to construct such Improvements only upon the condition that the obligations of the Assignor under the Lease be secured by, among other things, a collateral assignment of certain plans and agreements in order to permit the Assignee to cause the completion of such Improvements in the event of a default by the Assignor under the Lease;

WHEREAS, the Assignor desires to make such assignment to the Assignee as additional security for the obligations of the Assignor under the Lease; and

WHEREAS, all capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to them in or pursuant to the Lease.

NOW, THEREFORE, in consideration of the foregoing and of the

mutual covenants and agreements set forth herein and in the Lease, the Assignor, as additional security for its obligations under the Lease, hereby transfers, sets over and assigns to the Assignee all of the Assignor's right, title and interest in and to, and all of its remedies, but none of its obligations, under, (a) the Plans and Specifications, all development work and materials prepared in connection with the design and construction of the Improvements or any part thereof, including, without limitation, all surveys, all engineering, drainage, traffic and soil tests, all utility, water, sewer, gas, electrical and telephone approvals, taps and agreements and fees, all working drawings, plans and specifications, and all zoning materials and approvals, together with all additions thereto, modifications thereof and substitutions for any of the foregoing, whether now or hereafter existing or in effect (the Plans and Specifications and all such development work and materials, together with all such additions thereto, modifications thereof and substitutions therefor, being hereinafter collectively referred to as the "Plans"), and (b) all agreements, leases or contracts now or hereafter in effect between or among the Assignor and any other party or parties relating to the construction, improvement or lease of the Improvements, or any part thereof, including, without limitation, all security deposits, profits and revenue now due to the Assignor or hereafter to become due, together with all additions to, products, proceeds and modifications of and substitutions for any of the foregoing (all

such agreements, leases and contracts, together with all such additions to, modifications of and substitutions for any of the foregoing, being hereinafter individually referred to as an "Agreement" and collectively referred to as the "Agreements"), upon the following terms and conditions:

1. Neither this Collateral Assignment nor any action taken or failed to be taken by the Assignee shall constitute an assumption by the Assignee of any obligations under the Plans or under any Agreement, and the Assignor shall continue to be liable for all obligations of the Assignor thereunder. The Assignor hereby agrees to perform all of its obligations thereunder.

2. The Assignor represents and warrants that it has not assigned, conveyed, transferred, pledged, sold or otherwise disposed, and covenants that it will not, without the prior written consent of the Assignee, assign, convey, transfer, pledge, sell or otherwise dispose, of all or any part of its right, title or interest in and to, or remedies under, any Plans or Agreement.

3. The Assignee shall have the right (but not the obligation) at any time to take in its name or in the name of the Assignor such action as the Assignee may at anytime reasonably determine to be necessary or advisable to cure any default or Agreement to protect the rights of the Assignor or the Assignee thereunder.

4. The Assignor covenants that, promptly after approval by the Assignee of each Agreement, the Assignor shall deliver to the

Assignee a consent to the assignment of such Agreement executed by the contractor thereunder, substantially in the form attached hereto.

5. The Assignor hereby irrevocably constitutes and appoints the Assignee as the Assignor's attorney-in-fact, in the Assignor's name or in the Assignee's name, to enforce all rights of the Assignor under or with respect to any Plans or any Agreement. Such appointment of the Assignee as the Assignor's attorney-in-fact is effective as of the date hereof, but the Assignee agrees not to exercise its rights pursuant to this Section 4 prior to the occurrence of an Event of Default under the Lease.

6. Prior to the occurrence of an Event of Default under the Lease, the Assignor shall have the right to exercise its rights under and with respect to the Plans and the Agreements. The Assignee shall be entitled to exercise any and all of its rights hereunder only upon the occurrence of such Event of Default, and the Assignor hereby authorizes and directs all third parties to perform their respective obligations under or in connection with the Plans and Agreements and to complete their performance thereunder for the benefit of the Assignee upon the occurrence of any such Event of Default.

7. Subject to the terms and conditions of the Lease, the Assignor shall not, without the prior written consent of the Assignee, modify or amend any Plans, or modify, amend or terminate any Agreement.

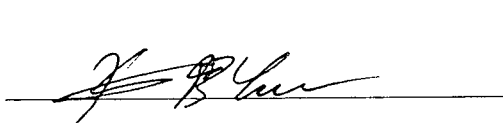
8. This Collateral Assignment shall be binding upon the Assignor and its heirs, legal representatives, successors and assigns, and shall inure to the benefit of the Assignee, its successors and assigns.


9. This Collateral Agreement shall be governed by and construed in accordance with the laws of the State of Maryland (but not including the choice of law rules thereof).

IN WITNESS WHEREOF, the Assignor had caused this Collateral Assignment to be duly executed on its behalf as of the day and year first set forth hereinabove.

ASSIGNOR:

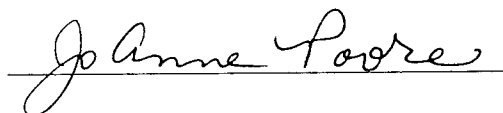
HOUSING OPPORTUNITIES COMMISSION  
OF MONTGOMERY COUNTY

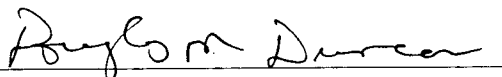


By:   
Bernard L. Tetreault  
Executive Director

ASSIGNEE:

MONTGOMERY COUNTY, MARYLAND



By:   
Douglas M. Duncan  
County Executive



## CONSENT AND AGREEMENT OF CONTRACTOR

(Attached to Collateral Assignment of Plans and Agreements from \_\_\_\_\_)

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, \_\_\_\_\_ (the "Contractor"), the Contractor that executed or will execute one or more of the Agreements referred to in the foregoing Collateral Assignment, hereby consents to and agrees to be bound by all provisions of such Collateral Assignment. The terms used in this Consent and Agreement shall have the same meanings specified in the Collateral Assignment. The Contractor further agrees with and represents and warrants to the Assignee as follows:

1. Upon receipt of written notice from the Assignee that an Event of Default has occurred under the Lease, the Contractor shall continue performance on the Assignee's behalf under the Agreements to which the Contractor is a party in accordance with the terms thereof, provided that the Contractor shall be reimbursed in accordance with such Agreements for all work, labor and materials rendered on the Assignee's behalf following such request.

2. If the Assignor defaults in making any payment or in performing any other obligation under such Agreements, the Contractor shall promptly give the Assignee written notice thereof.

3. Subject to the terms and conditions of the Lease, the Contractor shall not perform work under any change order or agree

to any amendment, supplement or modification of such Agreements without first securing the Assignee's written consent thereto, which consent shall not constitute an assumption by the Assignee of any obligations under such Agreements.

4. The Contractor acknowledges that the Assignee is not obligated to the Contractor under the Lease. The Contractor is executing this Consent and Agreement to induce the Assignee to permit construction of the Improvements under the Lease, and the Contractor understands that the Assignee would not do so but for the Contractor's execution and delivery of this Consent and Agreement.

EXECUTED as of \_\_\_\_\_.

CONTRACTOR:

\_\_\_\_\_

CONSENT AND AGREEMENT OF ARCHITECT/ENGINEER

(Attached to Collateral Assignment of Plans and Agreements from \_\_\_\_\_)

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, \_\_\_\_\_, the architects/engineers that executed or will execute one or more of the Agreements referred to in the foregoing Collateral Assignment (the "Architect/Engineer"), hereby consents to and agrees to be used in this Consent and Agreement shall have the same meanings specified in the Collateral Assignment. The Architect/Engineer further agrees with and represents and warrants to the Assignee as follows:

1. Upon receipt of written notice from the Assignee that an Event of Default has occurred under the Lease, the Architect/Engineer shall continue performance on the Assignee's behalf under the Agreements to which the Architect/Engineer is a party in accordance with the terms thereof, provided that the Architect/Engineer shall be reimbursed in accordance with such Agreements for all work, labor, and materials rendered on the Assignee's behalf following such request.

2. If the Assignor defaults in making any payment or in performing any other obligation under such Agreements, the Architect/Engineer shall promptly give the Assignee written notice thereof.

3. Subject to the terms and conditions of the Lease, the Architect/Engineer shall not perform work under any change order or agree to any amendment, supplement or modification of such

Agreements without first securing the Assignee's written consent thereto, which consent shall not constitute an assumption by the Assignee of any obligations under such Agreements.

4. The Architect/Engineer acknowledges that the Assignee is not obligated to the Architect/Engineer under the Lease. The Architect/Engineer is executing this Consent and Agreement to induce the Assignee to permit construction of the Improvements under the Lease, and the Architect/Engineer understands that the Assignee would not do so but for the Architect/Engineer's execution and delivery of this Consent and Agreement.

EXECUTED as of \_\_\_\_\_.

ARCHITECT/ENGINEER

\_\_\_\_\_

CONSENT AND AGREEMENT OF ENGINEER  
(Attached to Collateral Assignment of Plans and Agreements  
\_\_\_\_\_)

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, \_\_\_\_\_, the engineers that executed or will execute one or more of the Agreements referred to in the foregoing Collateral Assignment (the "Engineer"), hereby consents to and agrees to be bound by all provisions of such Collateral Agreement. The terms used in this Consent and Agreement shall have the same meanings specified in the Collateral Assignment. The Engineer further agrees with and represents and warrants to the Assignee as follows:

1. Upon receipt of written notice from the Assignee that an Event of Default has occurred under the Lease, the Engineer shall continue performance on the Assignee's behalf under the Agreements to which the Engineer is a party in accordance with the terms thereof, provided that the Engineer shall be reimbursed in accordance with such Agreements for all work, labor, and materials rendered on Assignee's behalf following such request.
2. If the Assignor defaults in making any payment or in performing any other obligation under such Agreements, the Engineer shall promptly give the Assignee written notice thereof.
3. Subject to the terms and conditions of the Lease, the Engineer shall not perform work under any change order under such Agreements or agree to any amendment, supplement or modification of such Agreements without first securing the Assignee's written

by the Assignee of any obligations under such Agreements.

4. The Engineer acknowledges that the Assignee is not obligated to the Engineer under the Lease. The Engineer is executing this Consent and Agreement to induce the Assignee to permit construction of the Improvements under the Lease, and the Engineer understands that the Assignee would not do so but for the Engineer's execution and delivery of this Consent and Agreement.

EXECUTED as of \_\_\_\_\_.

ENGINEER:

\_\_\_\_\_

arl\engr.agr

## TheWeihePartnership

### CONSENT AND AGREEMENT OF ARCHITECT

(Attached to Collateral Assignment of Plans)

Partners

Byron Black  
Roger Strassman  
George Dove  
Mark Bellonby  
Marc Mathanson

Assoc. Partner

Jeffrey Morris

Director

Joe Radick

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, The Weihe Partnership (the "Architect"), the architects that executed or will execute one or more of the Agreements referred to in the foregoing Collateral Assignment, hereby consents to and agrees that terms to be used in this Consent and Agreement shall have the same meanings specified in the Collateral Assignment. The Architect further agrees with and represents to the Assignee as follows:

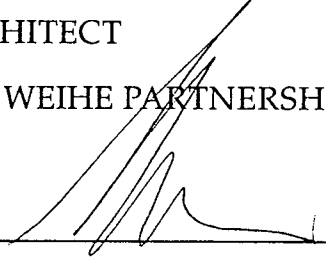
1. Upon receipt of written notice from the Assignee that an Event of Default has occurred under the Lease, the Architect shall continue performance on the Assignee's behalf under the Agreements to which the Architect is a party in accordance with the terms thereof, provided that the Architect shall be reimbursed in accordance with such Agreement for all services, labor, and materials rendered on the Assignee's behalf following such request.
2. If the Assignor defaults in making any payment or in performing any other obligation under such Agreements, the Architect shall promptly give the Assignee written notice thereof.
3. Subject to the terms and conditions of the Lease, the Architect shall not perform services under any change order or agree to any amendment, supplement or modification of such Agreements without first securing the Assignee's written consent thereto, which consent shall not constitute an assumption by the Assignee of any obligations under such Agreements, except as provided for in paragraph 1 hereof.
4. The Architect acknowledges that the Assignee is not obligated to the Architect under the Lease, and that the Architect is not obligated to the Assignee under the Lease. The Architect is

executing this Consent and Agreement to assist the Assignee to arrange for construction of the Improvements under the Lease, and Assignee and the Architect understand that Architect does not assume any duties or responsibilities to Assignee except as to Assignee's right hereunder, and as provided in Architect's Agreement with Owner.

EXECUTED as of June 26, 1995.

ARCHITECT

THE WEIHE PARTNERSHIP

By: \_\_\_\_\_



## CONSENT AND AGREEMENT OF CONSTRUCTION CONSULTANT

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Warner Construction Consultants, Inc. (the "Construction Consultant"), <sup>which has</sup> executed or will execute <sup>per</sup> one or more of the Agreements referred to in the foregoing attached <sup>per</sup> Collateral Assignment <sup>(Exhibit R)</sup>, hereby consents to and agrees to be bound by all provisions of such Collateral Assignment. The terms used in this Consent and Agreement shall have the same meanings as those <sup>per</sup> specified in the Collateral Assignment. The Construction Consultant further agrees with and represents and warrants to the Assignee as follows:

1. Upon receipt of written notice from the Assignee that an Event of Default has occurred under the Lease, the Construction Consultant shall continue performance on the Assignee's behalf under the Agreements to which the Construction Consultant is a party in accordance with the terms thereof, <sup>payment to</sup> provided that <sup>by the assignor</sup> the Construction Consultant <sup>guaranteed by the assignee</sup> shall <sup>thereafter</sup> be reimbursed in accordance with such Agreements for all work, labor and materials rendered on the Assignee's behalf following such request.

2. If the Assignor defaults in making any payment or in performing any other obligation under such Agreements, the Construction Consultant shall promptly give the Assignee written notice thereof.

3. Subject to the terms and conditions of the Lease, the Construction Consultant shall not perform work under any change

order or agree to any amendment, supplement or modification of such Agreements without first securing the Assignee's written consent thereto, which consent shall not constitute an assumption by the Assignee of any obligations under such Agreements.

4. The Construction Consultant acknowledges that the Assignee is not obligated to the Construction Consultant under the Lease. The Construction Consultant is executing this Consent and Agreement to induce the Assignee to permit construction of the Improvements under the Lease, and the Construction Consultant understands that the Assignee would not do so but for the Construction Consultant's execution and delivery of this Consent and Agreement.

EXECUTED as of JUNE 19, 1995.

CONSTRUCTION CONSULTANT:

Warner Construction Consultants, Inc.

By: 

EXHIBIT R

COLLATERAL ASSIGNMENT OF PLANS AND AGREEMENTS

THIS COLLATERAL ASSIGNMENT OF PLANS AND AGREEMENTS (the "Collateral Assignment") is made this \_\_\_\_\_ day of \_\_\_\_\_, 1995, by the Housing Opportunities Commission of Montgomery County (the "Assignor"), to and for the benefit of Montgomery County, Maryland (the "Assignee").

WHEREAS, the Assignor and Assignee have entered into an Air Rights Lease (the "Lease"), of even date herewith, pursuant to which the Assignor has agreed to design and construct, at its own cost and expense a (the "Improvements") in a portion of the airspace above, upon and along the sides of a parking garage owned by the Assignee;

WHEREAS, the Assignee is willing to permit the Assignor to construct such Improvements only upon the condition that the obligations of the Assignor under the Lease be secured by, among other things, a collateral assignment of certain plans and agreements in order to permit the Assignee to cause the completion of such Improvements in the event of a default by the Assignor under the Lease;

WHEREAS, the Assignor desires to make such assignment to the Assignee as additional security for the obligations of the Assignor under the Lease; and

WHEREAS, all capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to them in or pursuant to the Lease.

NOW, THEREFORE, in consideration of the foregoing and of the

mutual covenants and agreements set forth herein and in the Lease, the Assignor, as additional security for its obligations under the Lease, hereby transfers, sets over and assigns to the Assignee all of the Assignor's right, title and interest in and to, and all of its remedies, but none of its obligations, under, (a) the Plans and Specifications, all development work and materials prepared in connection with the design and construction of the Improvements or any part thereof, including, without limitation, all surveys, all engineering, drainage, traffic and soil tests, all utility, water, sewer, gas, electrical and telephone approvals, taps and agreements and fees, all working drawings, plans and specifications, and all zoning materials and approvals, together with all additions thereto, modifications thereof and substitutions for any of the foregoing, whether now or hereafter existing or in effect (the Plans and Specifications and all such development work and materials, together with all such additions thereto, modifications thereof and substitutions therefor, being hereinafter collectively referred to as the "Plans"), and (b) all agreements, leases or contracts now or hereafter in effect between or among the Assignor and any other party or parties relating to the construction, improvement or lease of the Improvements, or any part thereof, including, without limitation, all security deposits, profits and revenue now due to the Assignor or hereafter to become due, together with all additions to, products, proceeds and modifications of and substitutions for any of the foregoing (all

such agreements, leases and contracts, together with all such additions to, modifications of and substitutions for any of the foregoing, being hereinafter individually referred to as an "Agreement" and collectively referred to as the "Agreements"), upon the following terms and conditions:

1. Neither this Collateral Assignment nor any action taken or failed to be taken by the Assignee shall constitute an assumption by the Assignee of any obligations under the Plans or under any Agreement, and the Assignor shall continue to be liable for all obligations of the Assignor thereunder. The Assignor hereby agrees to perform all of its obligations thereunder.

2. The Assignor represents and warrants that it has not assigned, conveyed, transferred, pledged, sold or otherwise disposed, and covenants that it will not, without the prior written consent of the Assignee, assign, convey, transfer, pledge, sell or otherwise dispose, of all or any part of its right, title or interest in and to, or remedies under, any Plans or Agreement.

3. The Assignee shall have the right (but not the obligation) at any time to take in its name or in the name of the Assignor such action as the Assignee may at anytime reasonably determine to be necessary or advisable to cure any default or Agreement to protect the rights of the Assignor or the Assignee thereunder.

4. The Assignor covenants that, promptly after approval by the Assignee of each Agreement, the Assignor shall deliver to the

Assignee a consent to the assignment of such Agreement executed by the contractor thereunder, substantially in the form attached hereto.

5. The Assignor hereby irrevocably constitutes and appoints the Assignee as the Assignor's attorney-in-fact, in the Assignor's name or in the Assignee's name, to enforce all rights of the Assignor under or with respect to any Plans or any Agreement. Such appointment of the Assignee as the Assignor's attorney-in-fact is effective as of the date hereof, but the Assignee agrees not to exercise its rights pursuant to this Section 4 prior to the occurrence of an Event of Default under the Lease.

6. Prior to the occurrence of an Event of Default under the Lease, the Assignor shall have the right to exercise its rights under and with respect to the Plans and the Agreements. The Assignee shall be entitled to exercise any and all of its rights hereunder only upon the occurrence of such Event of Default, and the Assignor hereby authorizes and directs all third parties to perform their respective obligations under or in connection with the Plans and Agreements and to complete their performance thereunder for the benefit of the Assignee upon the occurrence of any such Event of Default.

7. Subject to the terms and conditions of the Lease, the Assignor shall not, without the prior written consent of the Assignee, modify or amend any Plans, or modify, amend or terminate any Agreement.

8. This Collateral Assignment shall be binding upon the Assignor and its heirs, legal representatives, successors and assigns, and shall inure to the benefit of the Assignee, its successors and assigns.

9. This Collateral Agreement shall be governed by and construed in accordance with the laws of the State of Maryland (but not including the choice of law rules thereof).

IN WITNESS WHEREOF, the Assignor had caused this Collateral Assignment to be duly executed on its behalf as of the day and year first set forth hereinabove.

ASSIGNOR:

\_\_\_\_\_

\_\_\_\_\_

ASSIGNEE:

\_\_\_\_\_

\_\_\_\_\_

arl\col-asgn

## CONSENT AND AGREEMENT OF PROPERTY MANAGER

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Legum and Norman, Inc. (the "Property Manager"), executed or will execute one or more of the Agreements referred to in the foregoing Collateral Assignment, hereby consents to and agrees to be bound by all provisions of such Collateral Assignment. The terms used in this Consent and Agreement shall have the same meanings specified in the Collateral Assignment. The Property Manager further agrees with and represents and warrants to the Assignee as follows:

1. Upon receipt of written notice from the Assignee that an Event of Default has occurred under the Lease, the Property Manager shall continue performance on the Assignee's behalf under the Agreements to which the Property Manager is a party in accordance with the terms thereof, provided that the Property Manager shall be reimbursed in accordance with such Agreements for all work, labor and materials rendered on the Assignee's behalf following such request.

2. If the Assignor defaults in making any payment or in performing any other obligation under such Agreements, the Property Manager shall promptly give the Assignee written notice thereof.

3. Subject to the terms and conditions of the Lease, the Property Manager shall not perform work under any change order or agree to any amendment, supplement or modification of such



Agreements without first securing the Assignee's written consent thereto, which consent shall not constitute an assumption by the Assignee of any obligations under such Agreements.

4. The Property Manager acknowledges that the Assignee is not obligated to the Property Manager under the Lease. The Property Manager is executing this Consent and Agreement to induce the Assignee to permit construction of the Improvements under the Lease, and the Property Manager understands that the Assignee would not do so but for the Property Manager's execution and delivery of this Consent and Agreement.

EXECUTED as of

June 20, 1995.

PROPERTY MANAGER:

Legum and Norman, Inc.

By: 

## CONSENT AND AGREEMENT OF CONTRACTOR

(Attached to Collateral Assignment of Plans and Agreements from  
~~HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY~~ to  
~~MONTGOMERY COUNTY, Maryland~~)

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OMNI Construction, Inc. (the "Contractor"), the Contractor that executed or will execute one or more of the Agreements referred to in the foregoing Collateral Assignment, hereby consents to and agrees to be bound by all provisions of such Collateral Assignment except as modified herein. The terms used in this Consent and Agreement shall have the same meanings specified in the Collateral Assignment. The Contractor further agrees with and represents and warrants to the Assignee as follows:

1. Upon receipt of written notice from the Assignee that an Event of Default has occurred under the Lease and certification that the provisions of paragraph 4.07 of the Lease have been met permitting Assignee to exercise its right under the Collateral Assignment, the Contractor shall continue performance on the Assignee's behalf under the Agreements to which the Contractor is a party in accordance with the terms thereof. Thereafter, the Contractor shall be reimbursed by Assignee in accordance with such Agreements for all work, labor and materials rendered on the Assignee's behalf following such request provided that Assignee provides written notice to Contractor to commence work on its behalf within sixty (60) days after notice of an

Event of Default and, as part of such notice, agrees to reimburse contractor for work performed on behalf of Assignee hereunder. Should Assignee issue written notice to commence work on its behalf later than fifteen (15) days after notice of an Event of Default or thirty (30) days after Assignee has received written notice from Contractor of a material default under its contract with Assignor, Contractor shall be entitled to make a claim for losses or damages for resulting delay expenses from Assignee.

2. If the Assignor defaults in making any payment or in performing any other obligation under such Agreements, the Contractor shall promptly give the Assignee written notice thereof.

3. Except as provided in Section 4.09 of the Lease, the Contractor shall not perform work under any change order or agree to any amendment, supplement or modification of such Agreements without first securing the Assignee's written consent thereto, which consent shall not constitute an assumption by the Assignee of any obligations under such Agreements. Contractor will not be required to perform any change order work except to the extent Assignor demonstrates to Contractor that funds are available for payment of such work.

4. The Contractor acknowledges that the Assignee is not obligated to the Contractor under the Lease. The Contractor is executing this Consent and Agreement to induce the Assignee to permit construction of the Improvements under the Lease, and the Contractor understands that the Assignee would not do so but for

the Contractor's execution and delivery of this Consent and Agreement.

5. Construction financing for the Improvements has been provided by Assignor's Housing Development Bonds 1995 Issue A, 1995 Issue B and 1995 Issue C the Metropolitan (the "Metropolitan") pursuant to an Indenture by and between Assignor and Crestar Bank (the "Bank") as Trustee which provides for the Bank to hold deposits and earnings thereon in a Development Fund (the "Development Fund") to be disbursed to Assignor upon monthly draw requests pursuant to a Building Loan Agreement between Assignor and the Bank (the "Building Loan Agreement"). The Building Loan Agreement provides for the retention of certain funds (the "Retainages") from each draw in order to assist in assuring completion of the Improvements.

6. Upon receipt by Contractor of written notice of an Event of Default pursuant to paragraph 1 hereof, Assignor releases any claim on the funds held by the Bank as Retainages or in the Development Fund, to the extent such funds or any portion thereof may be due to Contractor and assigns such funds to the Assignee to be applied to sums due to Contractor for work, services and materials provided to Assignor prior to receipt of such notice regardless of whether Assignee chooses to request Contractor to commence work on its behalf. The disbursement of such funds shall be subject to the provisions of the contract between Assignor and Contractor which provides for appropriate certification by the Architect of satisfactory completion of the

work. The Assignee shall not withhold or otherwise refuse disbursement of the funds in the Development Fund or the Retainages except for requirements identified in the contract between Assignor and Contractor. Assignee will cooperate with Contractor in making the application for draws to which it may be entitled for work, services and materials provided prior to receipt of the notice of an Event of Default pursuant to paragraph 1.

7. As a further assurance to Contractor unless paid directly to Contractor, Assignor will request checks made payable to Assignor and Contractor from the Bank from the Development Fund with respect to any payments due to Contractor made pursuant to any draw request under the Building Loan Agreement.

8. Nothing herein contained shall be considered a waiver of any of Contractor's rights against Assignor.

EXECUTED as of July 5, 1995.

CONTRACTOR:

OMNI Construction, Inc.

By: William L. O'Connell  
Executive Vice President

AGREED TO:

HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY

By: Melvin J. Adams

4/10/95/05/05/05/05

## CONSENT AND AGREEMENT OF CONTRACTOR

(Attached to Collateral Assignment of Plans and Agreements from  
Housing Opportunities Commission of Montgomery County to  
Montgomery County, Maryland)

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OMNI Construction, Inc. (the "Contractor"), the Contractor that executed or will execute one or more of the Agreements referred to in the foregoing Collateral Assignment, hereby consents to and agrees to be bound by all provisions of such Collateral Assignment except as modified herein. The terms used in this Consent and Agreement shall have the same meanings specified in the Collateral Assignment. The Contractor further agrees with and represents and warrants to the Assignee as follows:

1. Upon receipt of written notice from the Assignee that an Event of Default has occurred under the Lease and certification that the provisions of paragraph 4.07 of the Lease have been met permitting Assignee to exercise its right under the Collateral Assignment, the Contractor shall continue performance on the Assignee's behalf under the Agreements to which the Contractor is a party in accordance with the terms thereof. Thereafter, the Contractor shall be reimbursed by Assignee in accordance with such Agreements for all work, labor and materials rendered on the Assignee's behalf following such request provided that Assignee provides written notice to Contractor to commence work on its behalf within sixty (60) days after notice of an

Event of Default and, as part of such notice, agrees to reimburse contractor for work performed on behalf of Assignee hereunder. Should Assignee issue written notice to commence work on its behalf later than fifteen (15) days after notice of an Event of Default or thirty (30) days after Assignee has received written notice from Contractor of a material default under its contract with Assignor, Contractor shall be entitled to make a claim for losses or damages for resulting delay expenses from Assignee.

2. If the Assignor defaults in making any payment or in performing any other obligation under such Agreements, the Contractor shall promptly give the Assignee written notice thereof.

3. Except as provided in Section 4.09 of the Lease, the Contractor shall not perform work under any change order or agree to any amendment, supplement or modification of such Agreements without first securing the Assignee's written consent thereto, which consent shall not constitute an assumption by the Assignee of any obligations under such Agreements. Contractor will not be required to perform any change order work except to the extent Assignor demonstrates to Contractor that funds are available for payment of such work.

4. The Contractor acknowledges that the Assignee is not obligated to the Contractor under the Lease. The Contractor is executing this Consent and Agreement to induce the Assignee to permit construction of the Improvements under the Lease, and the Contractor understands that the Assignee would not do so but for

JUL 05 '95 12:12 00000000

P.4

the Contractor's execution and delivery of this Consent and Agreement.

5. Construction financing for the Improvements has been provided by Assignor's Housing Development Bonds 1995 Issue A, 1995 Issue B and 1995 Issue C the Metropolitan (the "Metropolitan") pursuant to an Indenture by and between Assignor and Crestar Bank (the "Bank") as Trustee which provides for the Bank to hold deposits and earnings thereon in a Development Fund (the "Development Fund") to be disbursed to Assignor upon monthly draw requests pursuant to a Building Loan Agreement between Assignor and the Bank (the "Building Loan Agreement"). The Building Loan Agreement provides for the retention of certain funds (the "Retainages") from each draw in order to assist in assuring completion of the Improvements.

6. Upon receipt by Contractor of written notice of an Event of Default pursuant to paragraph 1 hereof, Assignor releases any claim on the funds held by the Bank as Retainages or in the Development Fund, to the extent such funds or any portion thereof may be due to Contractor and assigns such funds to the Assignee to be applied to sums due to Contractor for work, services and materials provided to Assignor prior to receipt of such notice regardless of whether Assignee chooses to request Contractor to commence work on its behalf. The disbursement of such funds shall be subject to the provisions of the contract between Assignor and Contractor which provides for appropriate certification by the Architect of satisfactory completion of the



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P.5

work. The Assignee shall not withhold or otherwise refuse disbursement of the funds in the Development Fund or the Retainages except for requirements identified in the contract between Assignor and Contractor. Assignee will cooperate with Contractor in making the application for draws to which it may be entitled for work, services and materials provided prior to receipt of the notice of an Event of Default pursuant to paragraph 1.

7. As a further assurance to Contractor unless paid directly to Contractor, Assignor will request checks made payable to Assignor and Contractor from the Bank from the Development Fund with respect to any payments due to Contractor made pursuant to any draw request under the Building Loan Agreement.

8. Nothing herein contained shall be considered a waiver of any of Contractor's rights against Assignor.

EXECUTED as of July 5, 1995.

CONTRACTOR:

OMNI Construction, Inc.

By: William L. Tamm  
Executive Vice President

AGREED TO:

HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY

By: \_\_\_\_\_



## ADDITIONAL PARKING MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the "Additional Parking MOU") dated this 23 day of June, 1995, by and between Montgomery County, Maryland, a political subdivision of the State of Maryland ("Montgomery County") and The Housing Opportunities Commission of Montgomery County, a housing authority established under the provisions of Article 44A of the Annotated Code of Maryland ("HOC").

WHEREAS, HOC is authorized to provide housing for persons of low and moderate qualified income in Montgomery County;

WHEREAS, Montgomery County is the Owner of a structure containing approximately 984 parking spaces, to be operated by the County as a public parking facility, located in Bethesda, Maryland in the area bounded by Old Georgetown Road, Woodmont Avenue and Edgemoor Lane ("Garage 49");

WHEREAS, HOC, with the approval of the County, has filed an application with the Montgomery County Planning Board (the "Planning Board") for the development of a certain portion of the air rights above Garage 49;

WHEREAS, by Opinion Site Plan # 8-93005A, the Planning Board approved a development which includes: (i) a residential building containing 308 dwelling units and 13,109 square feet of retail space (hereinafter the "Residential/Retail Building"); (ii) an office building containing approximately 13,990 square feet of office space, a 5,050 square foot day care facility, 1,610 square feet of retail space and a loading dock serving the entire development (hereinafter the "Office/Day Care Building"); and (iii) certain common facilities, including a landscaped plaza, a pedestrian walkway system, a park with a waterfall at the street level and related sidewalk improvements (hereinafter the "Common Elements");

WHEREAS, simultaneously with the execution of this Memorandum of Understanding, HOC is entering into a lease agreement with the County providing for a lease of those portions of the air rights above Garage 49, the existing Garage 49 structure and the parcel of land within the property bounded by Old Georgetown Road, Woodmont Avenue and Edgemoor Lane as is necessary to facilitate the development of the Residential/Retail Building and related facilities all as set forth therein (the "Air Rights Lease");

WHEREAS, HOC's ownership of all or a portion of the apartment units in the Residential/Retail Building (the "HOC Units") qualifies under the Internal Revenue Code as a governmental activity carried on by a public purpose entity;

WHEREAS, HOC and the County have certain understandings with respect to the operation and maintenance of the existing Garage 49.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual undertakings as set forth herein and for good and valuable consideration the receipt and sufficiency of which the parties acknowledge, the County and HOC agree as follows:

1. The County shall keep and maintain Garage 49 in a safe, clean, attractive first class condition similar to other County-owned parking facilities.

2. The County shall operate Garage 49 pursuant to rules, regulations, procedures and fee schedules, adopted from time to time, designed to encourage use and occupancy by the general public, including occupants of the Residential/Retail Building and their visitors. Such rules, regulations, procedures and fee schedules shall allow occupants of the Residential/Retail Building the opportunity to purchase monthly parking permits, or similar revenue collection method which provides for payment of parking fees and allows twenty-four (24) hour access to Garage 49 at rates no less favorable than those in effect for monthly parkers in the Bethesda Parking Lot District.

3. The County shall keep Garage 49 as follows:

(a) Repair and maintenance shall be promptly performed and scheduled to minimize inconvenience to the public, consistent with the nature and urgency of the required work.

(b) Cleaning shall be performed in accordance with the then current contract for Montgomery County Parking Facilities.

(c) Security will be provided in accordance with the then current contract for Montgomery County Parking Facilities.

4. The parties acknowledge, understand and agree that Garage 49 is to be a public parking garage in the Bethesda Parking Lot District and that nothing in this agreement is to be a limitation on the use or operation of Garage 49 as a public parking garage.

5. The parties agree that, from time to time, HOC shall have the right to furnish the County with a written notice of its intent to use all or a portion of the area shown on Exhibit A for the exclusive use of residential occupants of the portion of the Residential/Retail Building owned by a public purpose entity. Such area shall be used only for the parking of vehicles owned or leased by residential occupants of the HOC Units. Such written notice shall be accompanied by plans detailing all modifications of Garage 49 to be made to segregate the designated parking area from the general public. All plans shall comply with all applicable rules, regulations and codes. The plans shall be reviewed by the County and approved if they do not interfere with the operation of the remainder of Garage 49 which approval shall not be unreasonably withheld. Within 30 days of receipt of written notice accompanied by all required permit approvals, the County shall furnish HOC a right of entry authorizing HOC or its designees to enter upon the parking facility to erect, at its sole cost and expense, fences, gates and such other equipment shown on the permit approved plans.

6. The following shall apply to the operation, maintenance and use of the parking area(s) established pursuant to Section 5:

(a) HOC shall purchase from the County the monthly permits in a quantity equal to the number of spaces designated in the parking area and at a rate no less favorable than those in effect for monthly parking in the Bethesda Parking Lot District.

(b) HOC and the County will cooperate in developing a method acceptable to the County for identifying vehicles permitted to park in the designated parking area.

(c) The cost and the process, if any, for replacement, refund, cancellation, revalidation, etc. of permits shall be in accordance with costs and processes for other monthly permit holders in Garage 49. All reasonable costs of any additional service provided by the County to operate the parking area(s) established pursuant to Section 5 shall be paid by HOC.

(d) HOC will be responsible for the installation use and maintenance of any fences or other equipment it installs pursuant to this Section 5

(e) HOC will be responsible for the installation, use, maintenance and security of the area enclosed pursuant to Section 5 hereof. Notwithstanding the provisions of Subsection (c) of this Section 6, the County shall be responsible for providing all utilities that were

provided prior to HOC enclosing the designated parking area. Capital structural repairs required for all such enclosed parking areas shall be provided by the County at its cost.

(f) The County shall have immediate access to the designated parking area for access to storage rooms or other areas necessary to operate Garage 49. However, the County will provide 24 hour notice to HOC if such access is not required for emergency operations.

(g) HOC indemnifies and holds harmless the County from and against any claims or causes of action arising out of or relating to injuries or damages claimed to have occurred within any portion of the Garage secured and restricted by HOC as provided in this Additional Parking MOU.

7. Notwithstanding anything herein to the contrary, it is mutually agreed that this Additional Parking MOU shall at all times be interpreted in a manner that is consistent with, and which does not compromise, the tax exempt financing of Garage 49.

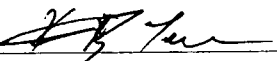
8. Unless sooner terminated by the mutual consent of the parties, this Additional Parking MOU shall remain in effect for so long as the Air Rights Lease remains in full force and effect.


9. Notwithstanding anything herein to the contrary, the parties intend that only Section 5 and Section 6 (a), (c) and (g) of this Additional Parking MOU shall create legally enforceable obligations. It is the further intention of the parties that to the extent the provisions of this Additional Parking MOU are inconsistent with the provisions of the Air Rights Lease, the provisions of the Air Rights Lease shall prevail and be legally enforceable.

IN WITNESS WHEREOF, the parties hereto have caused their hands to be affixed the day and year first above written.

WITNESS:

THE HOUSING OPPORTUNITIES  
COMMISSION OF MONTGOMERY COUNTY

  
\_\_\_\_\_

By:   
Bernard L. Tetreault  
Title: Executive Director

Date: \_\_\_\_\_

WITNESS:

Jo Anne Peore

MONTGOMERY COUNTY, MARYLAND

By: Douglas M. Duncan

Title: County Executive

Date: JUN 23 1995


RECOMMEND APPROVAL

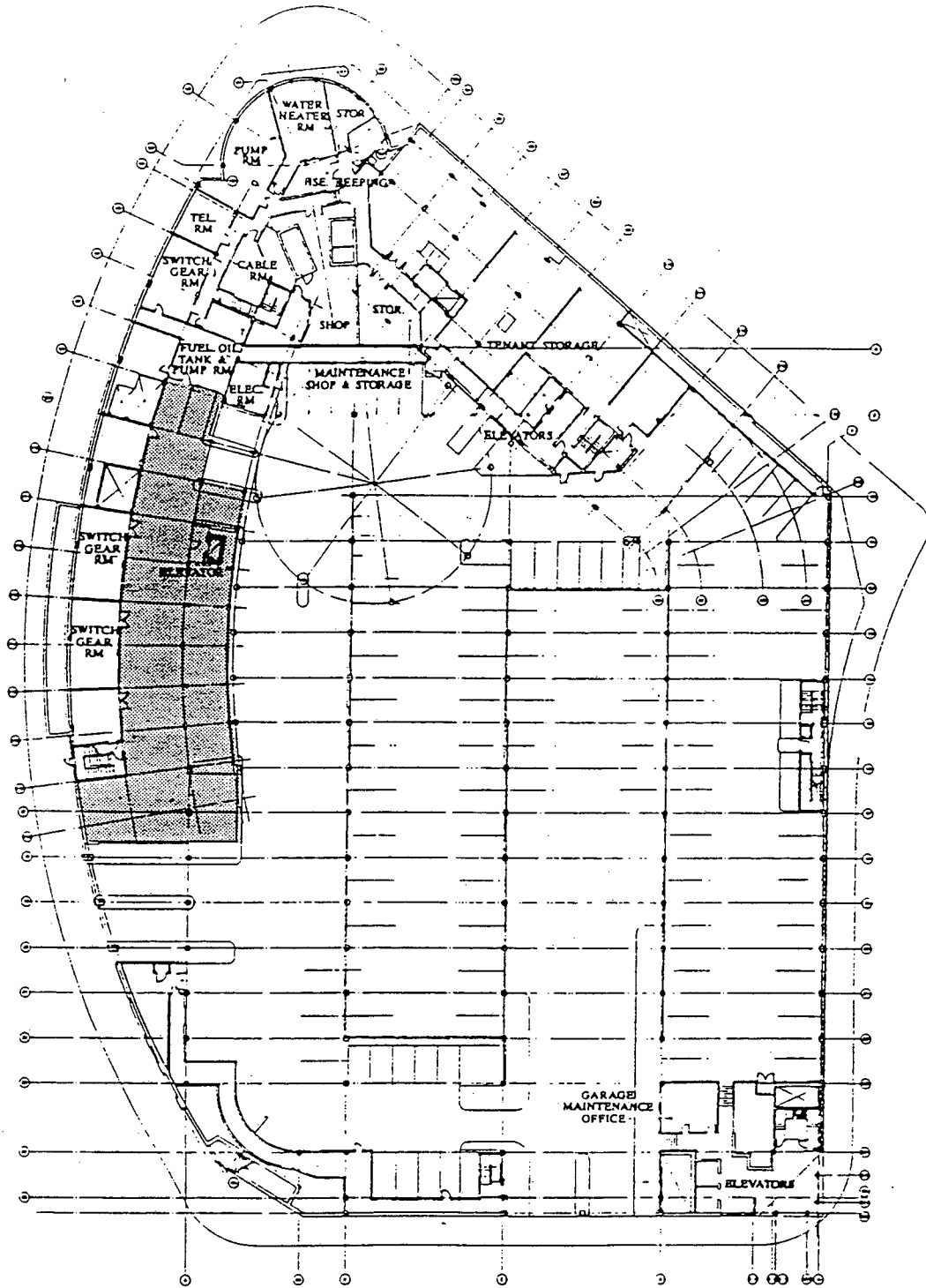
Graham Norton, Director,  
Department of Transportation

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:

Christopher Hitchens Christopher Hitchens  
Asst. County Attorney Charles W. Thompson, Jr.  
Date: 6.22.95

Additional Parking 



The Metropolitan

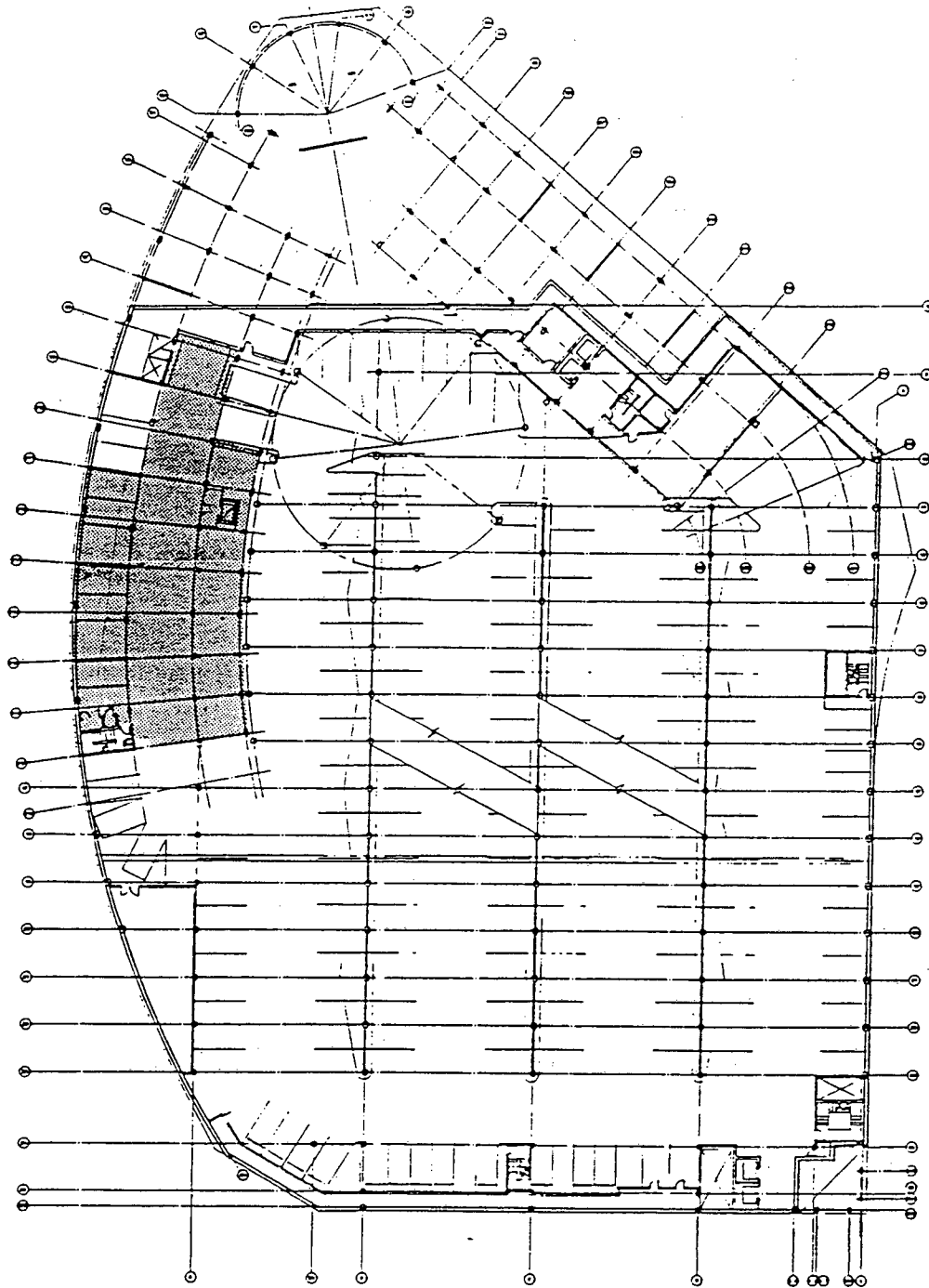
Additional Parking

Edgemoor Lane Level

I-1



Additional Parking



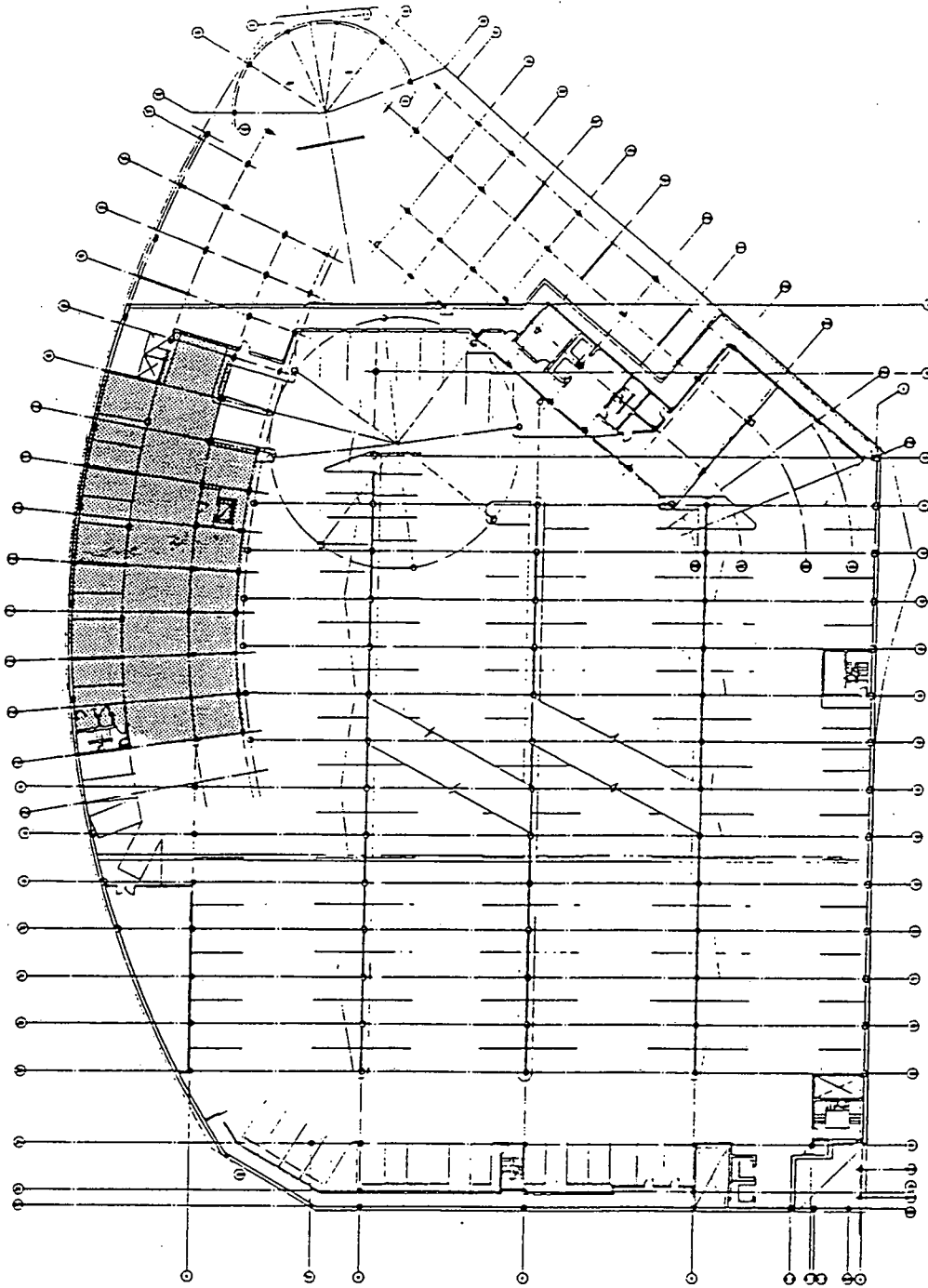
The Metropolitan

Additional Parking

P2 Parking Level

I-2

Additional Parking



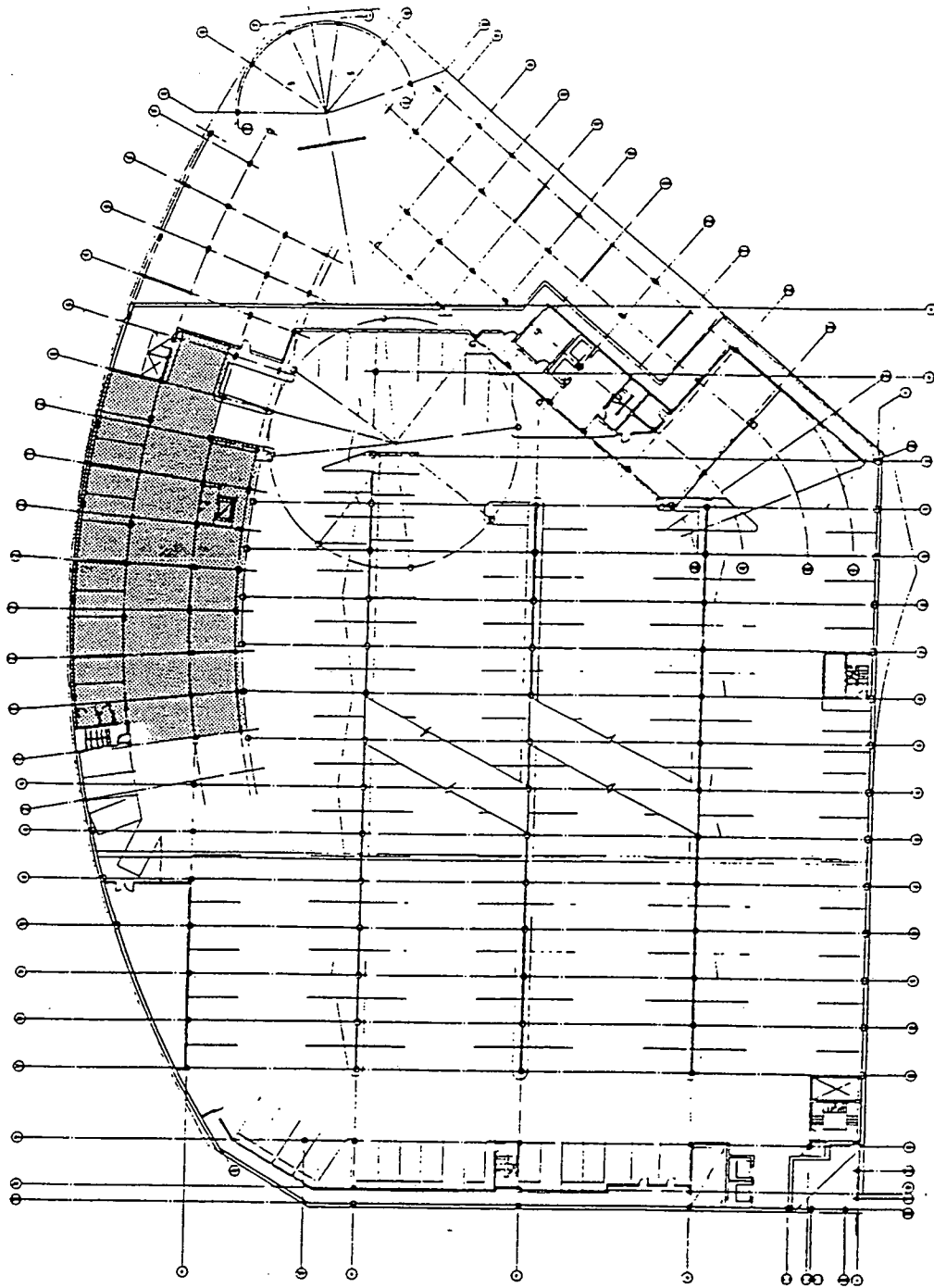
The Metropolitan

Additional Parking

P3 Parking Level

I-3

Additional Parking



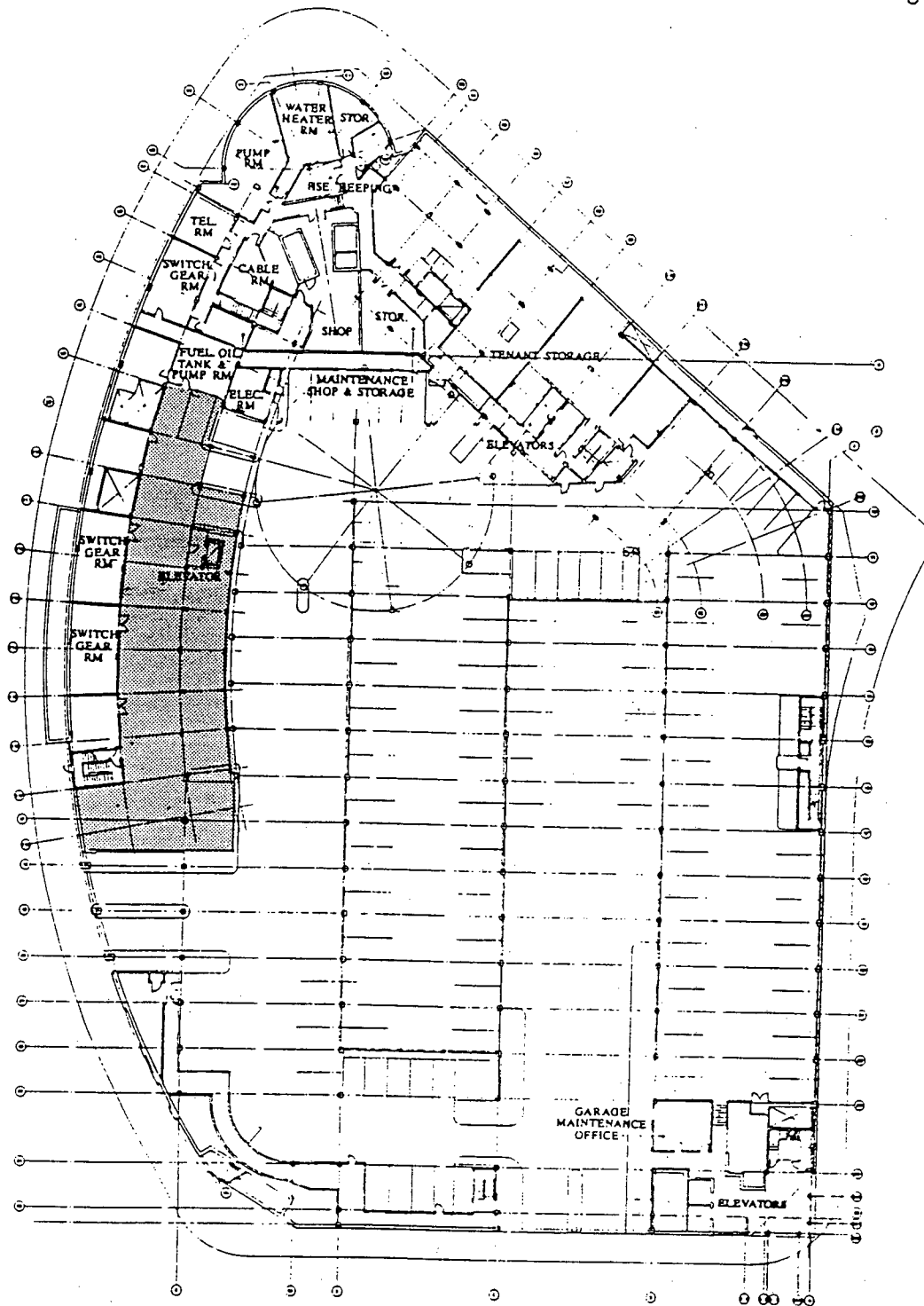
The Metropolitan

Additional Parking

P4 Parking Level

I-4


Additional Parking

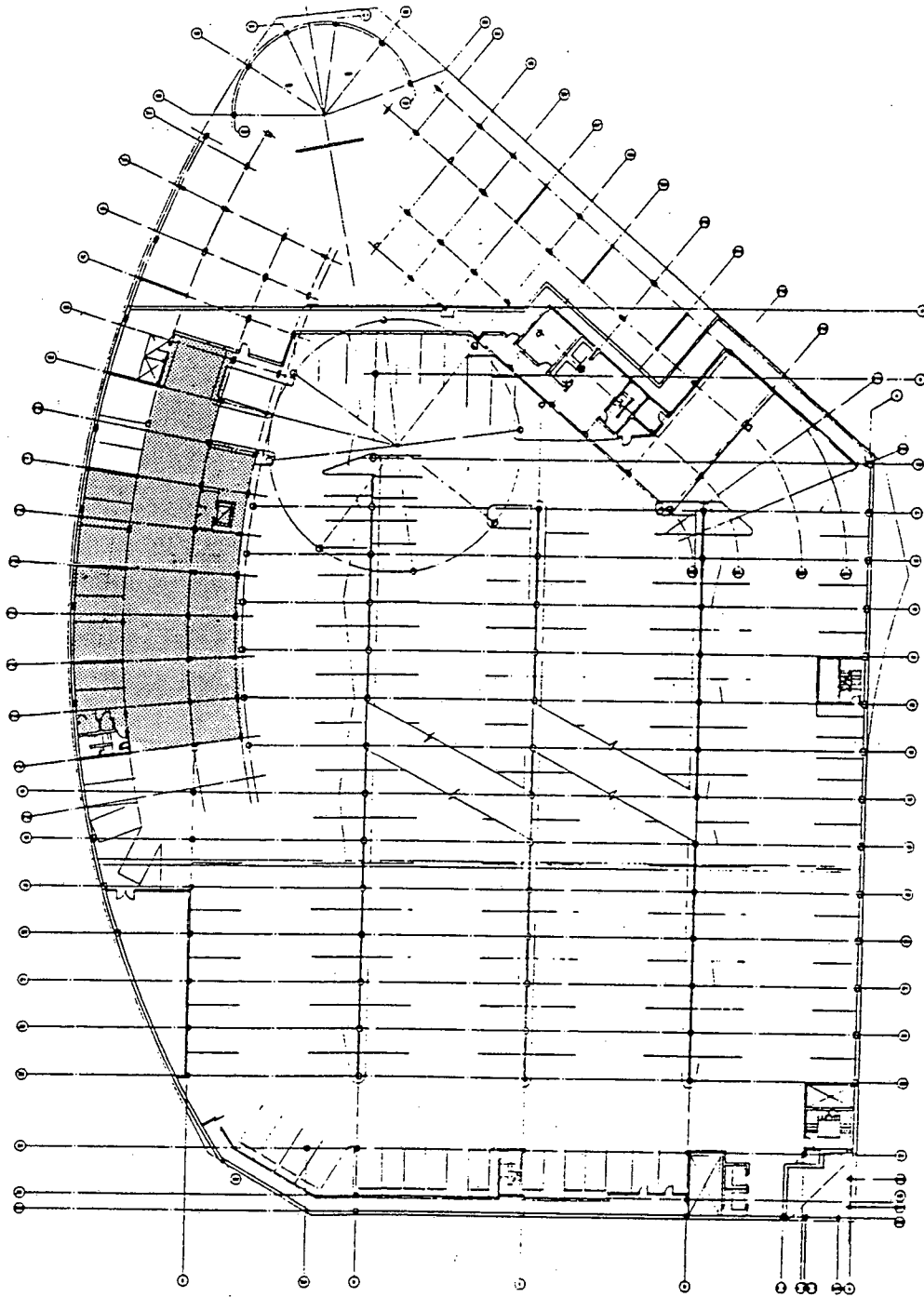


The Metropolitan  
Edgemoor Lane Level

Additional Parking

I-1

Additional Parking 

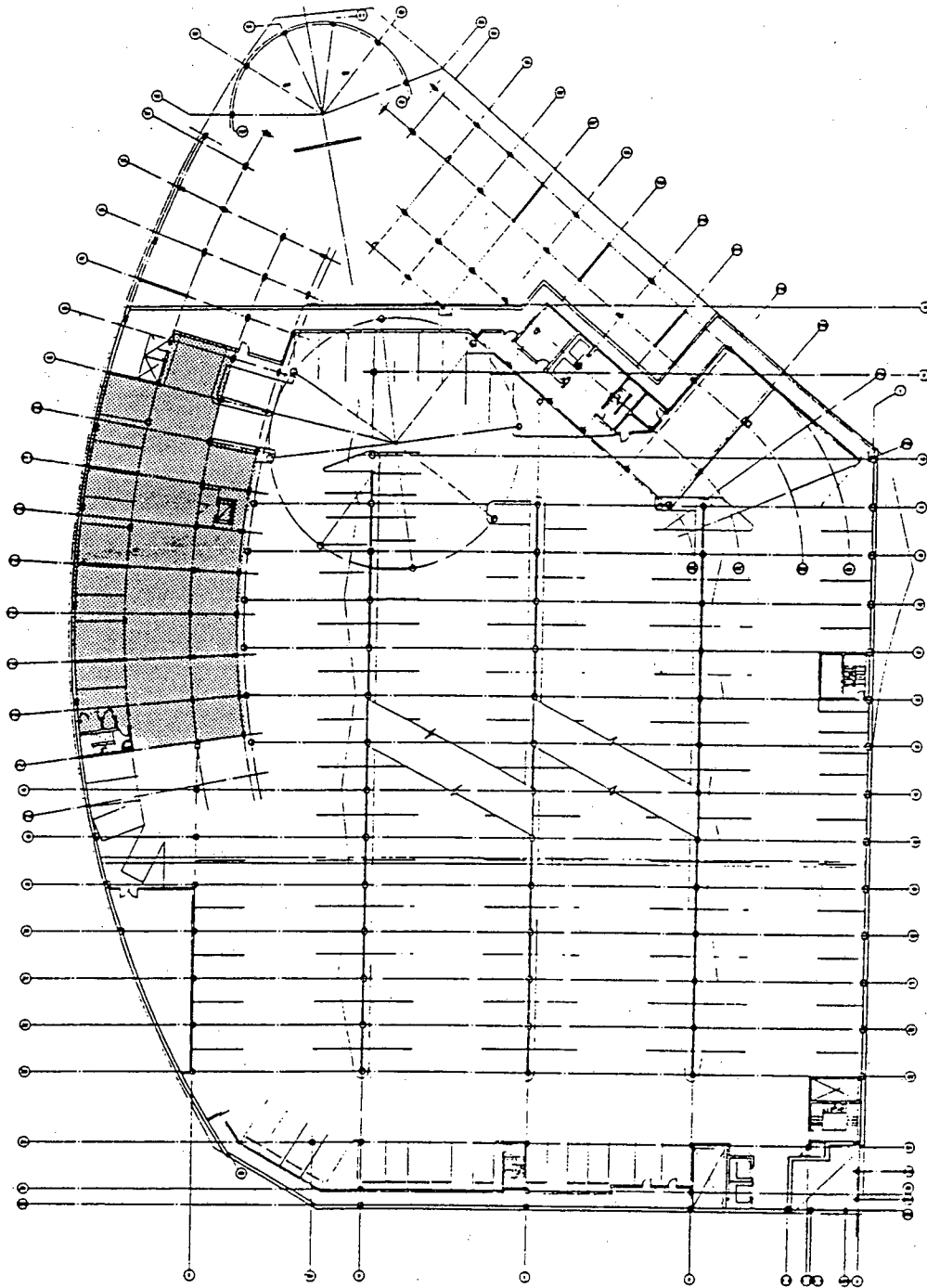


The Metropolitan  
P2 Parking Level

Additional Parking

I-2

Additional Parking




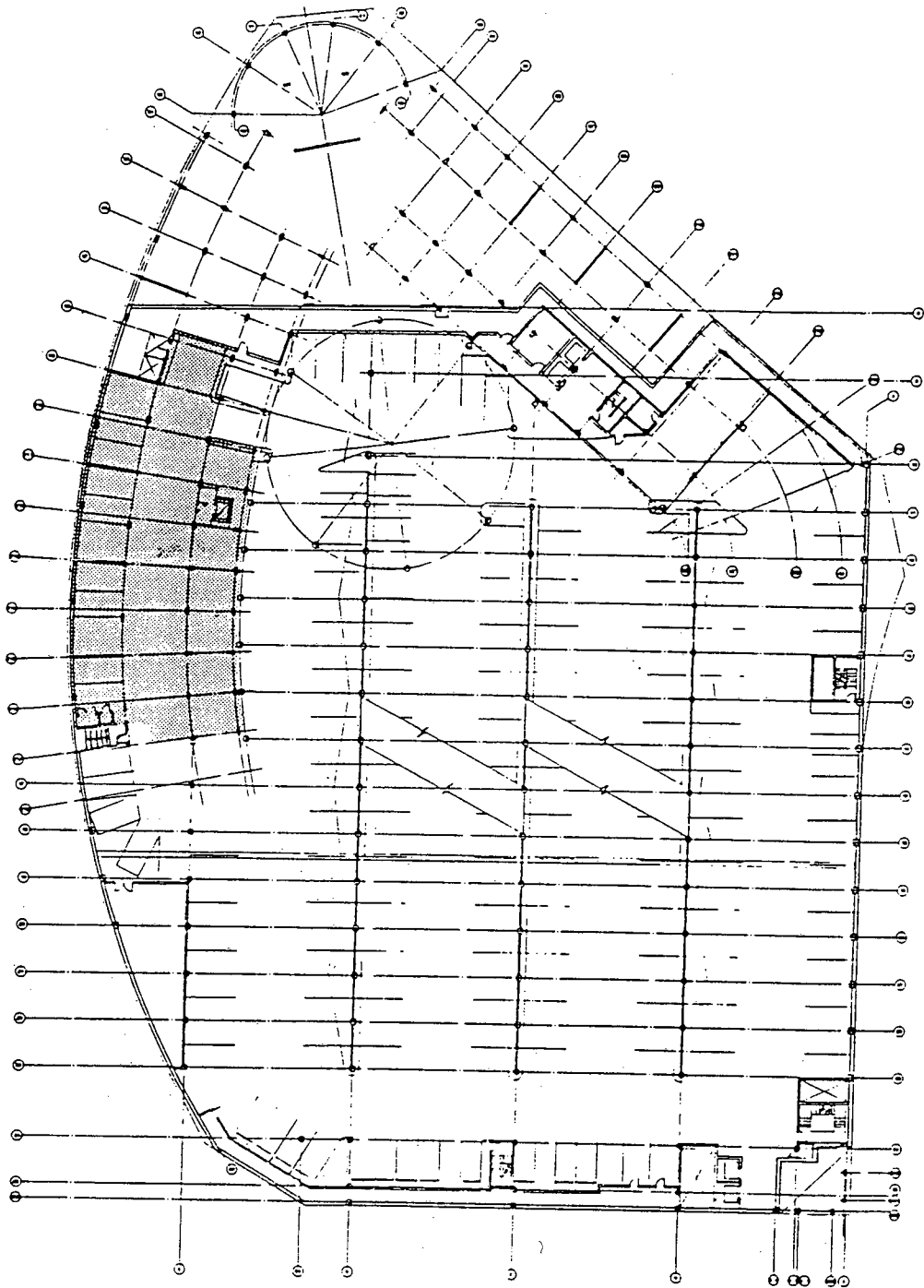
The Metropolitan

P3 Parking Level

Additional Parking

I-3

Additional Parking 



The Metropolitan

P4 Parking Level

Additional Parking

I-4





EXHIBIT S

6/20/95

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
MONTGOMERY COUNTY  
AND  
MONTGOMERY COUNTY HOUSING OPPORTUNITIES COMMISSION  
FOR  
THE METROPOLITAN OFFICE BUILDING AND  
RESIDENTIAL DEVELOPMENT

OFFICE BUILDING AND RESIDENTIAL DEVELOPMENT

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (the MOU) dated this 23<sup>rd</sup> day of June, 1995 is entered into by and between Montgomery County Maryland, a political subdivision of the State of Maryland (Montgomery County), acting through its Department of Facilities and Services (DFS), and the Housing Opportunities Commission of Montgomery County (HOC), a housing authority established under the provisions of Article 44A of the Annotated Code of Maryland.

RECITALS

WHEREAS, the parties wish to act jointly for the purpose of constructing a facility to be known as The Metropolitan to house a residential complex to be owned and operated by HOC and a County building to be owned and operated by Montgomery County.

WHEREAS the scope of the HOC and County project and requirements for operations and maintenance are contained in the Air Rights Lease.

WHEREAS, HOC has advertised an invitation to bid (IFB) through their regular procurement procedures for a general contractor (the General Contractor) to construct the project, and Omni Construction Company has been declared the low bidder by HOC.

WHEREAS the County's procurement regulations allow the County to enter into a construction contract using bids resulting from the HOC IFB.

WHEREAS the scope of the County's project contained in the IFB is not the same as the scope contained in the Air Rights Lease.

WHEREAS the low bid exceeded budget estimate.

WHEREAS, the parties each entered into separate contracts with Weihe Partnership for architectural/engineering services in connection with the design of their respective projects.

WHEREAS, HOC has entered into a contract with Warner Construction Consultants (Warner) for construction management services.

NOW, THEREFORE, Montgomery County and HOC do hereby agree as follows:

1. HOC and Montgomery County will enter into separate contracts with Omni Construction Company for construction of their respective projects. It is anticipated that each party will execute contracts on or before July 1, 1995; however the County will not enter into contract with Omni until (1) HOC has signed a construction contract for construction of the residential/retail project and (2) Omni meets County procurement requirements e.g. bonding, insurance.

2. The Parties shall cooperate fully with one another to accomplish timely and successful completion of the project. Each party shall appoint a project management staff to manage construction. The project management staff shall meet jointly with each other and the Project Architect as detailed in paragraph 5 below in order to review progress and outstanding issues relating to 1) the office project, 2) the plaza and other common areas, and 3) The Metropolitan. The County's Project Manager and the construction supervisor of HOC are designated as the heads of the respective project management staffs.
3. Day Care Play Lot - HOC will design the play lot that will meet the license requirements of the day care. The lot will include separate play areas for pre-schoolers and infants/toddlers. County project includes surfacing the play lot and the labor for installing the play equipment. HOC's project will provide play equipment required to license the day care and perimeter fencing.
4. The contract time for each party's construction contract will be 15 months.
5. Construction Management. Construction management will be carried out as follows:
  - a. Construction Consulting Services. HOC has hired Warner to provide construction consulting services for both projects in accordance with contract, a copy of which has been made available to DFS. This work will be performed without cost to DFS or liability of HOC, provided, DFS will be responsible for any payments due Warner as a result of changes in scope or level of effort requested by DFS.
  - b. On-Site Clerk. Warner will provide on site clerk to monitor progress of both projects in accordance with their contract with HOC.
  - c. Regular Meetings. Parties will attend a regularly scheduled meeting every two weeks to meet with contractor, Warner, and the architects to review and discuss:
    - i. Construction schedules prepared by the contractor and any modifications thereto;
    - ii. Construction Draws;
    - iii. Change Orders;
    - iv. Claims for extension of time and/or extras;

- v. Construction progress.
- d. Special Meetings. Parties will attend such special meetings as shall be reasonably required to discuss progress of work, claims made by contractor or claims which HOC or the County may have against the contractor.
- e. Inspection and Testing.
  - i. The parties will be responsible for payment for the inspection and testing of the work for their respective projects. HOC will solicit the inspection and testing consultant.
  - ii. The respective parties will be responsible for compliance with Montgomery County Complex Structure regulations for their respective projects.
- 6. Either party may initiate a change proposal or change directive affecting only its portion of the Project so long as the General Contractor agrees, without reservation, that there shall be no extension of the contract time as the result thereof. The party initiating such a change proposal or change directive shall be solely responsible to the contractor for the cost thereof. The party initiating the change proposal shall give notice to the other party.
- 7. Any change proposal or change directive initiated by either party that would either affect both the HOC's and the County's portions of the project or result in an extension to the construction period shall be initiated only after coordination of the parties and impact of the change has been assessed. The party initiating such a change proposal or change directive shall be solely responsible to the contractor for the cost thereof.
- 8. The contractor's construction schedule for the office project will be provided to HOC upon submission to the County by the general contractor. The event schedule will include the concrete floor and ceiling of the Loading Dock, Retail and Service Corridor areas of the Old Georgetown Road level of the office project. Upon completion of the aforesaid floor and ceilings, the County agrees that HOC and its contractors and the contractor of the tenant of the retail space in the Office Building shall, on a schedule approval by the County general contractor, have access to the Loading Dock, Retail and Service Corridor areas of the office project to complete construction of those areas. HOC agrees such construction shall be conducted so as not to disrupt the work of the County's contractor.

9. The following items in Omni's bid price will in effect be financed by HOC to account for HOC's project elements as part of the County's project.

Loading Dock	\$40,000
Exterior wall facade of Loading Dock	16,700
Masonry wall separating the Loading Dock and Service Corridor from the Garage	10,296
Masonry Wall of the Retail Space	1,170
Exterior Wall and Storefront of the Retail Space	11,320
South Masonry Wall of the Loading Dock Stair	7,020
HOC Overcharge for Street (if in County contract)	<u>8,642</u>
Total Estimate	\$95,148

Additional items serving the HOC's project elements that have been added to County's project will be tabulated by OMNI Construction, Inc. and financed by HOC. These items shown on County's project documents include:

- a. Recycling Room Ventilation Ductwork (Intake and Exhaust Duct) Modification.
  - b. Recycling Room Unit Heater and Recycling Corridor Wall Heater.
  - c. New Corridor and Exit Door serving the Recycling Room.
  - d. Fire Dampers and Openings added to the rated partition serving the Recycling Corridor.
  - e. New Electric Conduit serving the Retail Space to HOC's Retail Trough.
  - f. New lights including emergency lighting, power outlets and equipment electrical connections serving the Recycling Room.
  - g. Plumbing Lines (Sanitary/Vent/Cold Water) for the Retail rough-in.
10. The County agrees to reimburse HOC up to \$115,000 for the cost of any architecture and engineering services or expenses incurred in connection with the Office/Day Care project including the prorated cost of general design, landscape architecture, civil engineering, as well as the

direct cost of the several office building and day care building designs and the direct costs of redesigning the plaza to accommodate moving the play lot from the roof of the day care building to the plaza to accommodate the elimination of the separate day care facility and moving the day care facility to the office building. County shall make payment within thirty (30) days of receipt of copies of a voucher and supporting billings and completion of verification/audit of vouchers; provided however \$95,148 and any costs from items added by the HOC project elements will be deducted from the payment to finance HOC's obligation listed in paragraph 9 above. HOC, in term, will reimburse the County if a credit is due.

11. The County will reimburse up to \$95,000 for reasonable administrative expenditures incurred by HOC in the project, upon completion of construction of the County building, subject to available funds.
12. The parties agree that this Memorandum of Understanding was drafted jointly by the parties and it shall not be construed strictly against one or the other as the drafter thereof.

SIGNATURE PAGE FOLLOWS

FCE:jnt\METROPK.MOU

IN WITNESS WHEREOF, this Memorandum of Understanding has been duly executed by all parties hereto, or the parties hereto have caused this Memorandum of Understanding to be duly executed on their behalf, as of the date first set forth hereinabove.

MONTGOMERY COUNTY MARYLAND

\_\_\_\_\_  
Bruce F. Romer  
Chief Administrative Officer

6/23  
\_\_\_\_\_  
Date

RECOMMENDED BY:

\_\_\_\_\_  
Jack Houghton, Acting Director  
Department of Facilities and Services

6/21  
\_\_\_\_\_  
Date

APPROVED AS TO FORM AND LEGALITY  
OFFICE OF THE COUNTY ATTORNEY:

\_\_\_\_\_  
Christopher Hitchens  
Associate County Attorney

\_\_\_\_\_  
Date

THE HOUSING OPPORTUNITIES COMMISSION OF  
MONTGOMERY COUNTY

\_\_\_\_\_  
Bernie Tetreault, Executive Director

\_\_\_\_\_  
Date

RECOMMENDED BY:

\_\_\_\_\_  
Melvin J. Adams, Assistant Director

6/21  
\_\_\_\_\_  
Date

APPROVED AS TO FORM AND LEGALITY

\_\_\_\_\_  
Date





INVESTMENT DEPOSIT AGREEMENT

THIS INVESTMENT DEPOSIT AGREEMENT dated this 23 day of June, 1995, by and between Montgomery County, a body politic and corporate (the "County") and the Housing Opportunities Commission of Montgomery County, a body politic and corporate ("HOC").

WHEREAS, HOC is the housing authority for Montgomery County established pursuant to Article 44A of the Annotated Code of Maryland; and

WHEREAS, HOC is authorized to provide housing for person of low and moderate qualified incomes in Montgomery County; and

WHEREAS, the County, through its Department of Transportation, has constructed a parking garage ("Garage 49") located in the Bethesda Central Business District; and

WHEREAS, Garage 49 is designed to permit the construction on and above it of additional facilities; and

WHEREAS, HOC is desirous of developing the air rights above Garage 49 by constructing a twelve (12) story residential rental facility with retail space, a separate office building and a day care center; and

WHEREAS, to accommodate the proposed development by HOC, the parties have entered into an Air Rights Lease ("Air Rights Lease") granting HOC the right to use the air rights for the purposes of constructing a residential rental facility thereon; and

WHEREAS, in order to assist HOC in securing its financing to meet its public purposes of providing housing for persons of low and moderate income, the County has agreed to contribute the sum of Two Million Dollars (\$2,000,000.00) (the "Investment Fund") for the payment if necessary of certain expenses associated with the construction and operation of the Residential/Retail Building; and

WHEREAS, HOC has issued its 1995 Housing Development Bonds, Issue A, B and C (the "Bonds") pursuant to a Resolution dated May 4, 1995, (the "Bond Resolution") and a Trust Indenture dated as of May 1, 1995, by and between HOC and Crestar Bank (the "Trustee"); and

WHEREAS, the Bonds were issued to provide funds for the construction and permanent financing of the Residential/Retail Building to be constructed pursuant to the Air Rights Lease; and

WHEREAS, the Commission has executed on this date Notes in the aggregate principal amount of Thirty-Three Million Nine Hundred Five Thousand Dollars (\$33,905,000.00) evidencing its obligation to repay the funds for the development provided by the Bonds (the "Loan"); and

WHEREAS, the Notes are secured by 2 Parity Leasehold Deeds of Trust, Security Agreements and Assignments of Leases (the "Deeds of Trust") of even date herewith for the benefit of the

Trustee.

WHEREAS, HOC and the County desire to set forth in this Agreement the understandings, each with the other, relating to the disbursement of the Investment Fund and their respective rights and obligations pertaining thereto.

NOW THEREFORE, for and in consideration of the mutual promises and mutual covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and intending to be legally bound, the parties to this Agreement hereby represent and agree with one another as follows:

1. Upon the execution of this Agreement, the County shall deposit the Investment Fund in a subaccount of the General Purposes Account of the Bethesda Parking Lot District Enterprise Fund. Once deposited in the General Purposes Account, the Investment Fund shall be applied for the purposes of this Agreement subject to the requirements of Resolution No. 12-241 of the Montgomery County Council and Executive Order No. B160-92 dated February 28, 1992, amended by Executive Order No. B161-92 dated April 16, 1992.

2. The Investment Fund shall be maintained and invested by the County in any investments which at the time are legal investments for the County Interest earned on the Investment Fund

may be withdrawn by the County from the Investment Fund; provided, however, the County shall always maintain a Two Million Dollar (\$2,000,000.00) principal balance less any withdrawals made in accordance with paragraph 3 or 4.

3. HOC shall be authorized to request the withdrawal of sums from the Investment Fund, solely for the payment of (i) cost overruns for construction of the Development, provided HOC shall have first used one-half (1/2) of the HOC Financing Fee pursuant to the Air Rights Lease, or (ii) Debt Service, funding of Reserve Accounts and Operating Expense shortfalls during operations of the Residential/Retail Building, which shall be paid equally with funds from one-half (1/2) of the HOC Financing Fee until no longer available. Funds shall be withdrawn by issuance to the County of a request of withdrawal (the "Request of Withdrawal"), on the form attached hereto as Exhibit A. Withdrawals from the Investment Fund for construction cost overruns shall only be permitted if HOC certifies that the actual costs for any line item of construction cost exceeds the budgeted amount as identified in the Building Loan Agreement, surpluses from other line items have been depleted, the entire contingency reserve line item has been spent for previously accrued line item cost overruns and there are no other funds available for payments of such cost.

4. Upon the occurrence of an Event of Default under either or both of the Deeds of Trust, the Trustee shall notify the County and HOC in writing of such an event. Thereafter, disbursements from the Investment Fund shall be made only upon receipt of the form attached hereto as Exhibit B (a "Direction for Payment") completed by the Trustee.

5. The County shall have no obligation to replenish the Investment Fund in the event that any sums are withdrawn therefrom pursuant to the terms of this Agreement.

6. If not sooner terminated by withdrawals, the Investment Fund shall be terminated when ninety-five percent (95%) of all the residential units in the Residential/Retail Building are occupied under lease. The balance in the Investment Fund, including interest, shall be returned to the County free of any restriction hereunder.

7. Any advances made pursuant to this Agreement shall be repaid by HOC as provided in Section 3.06 of the Air Rights Lease with interest accruing at the Weighted Average County Yield on the unpaid principal sum. Payments shall be applied first to accrued and unpaid interest and then applied to principal. If not sooner paid, the entire principal sum and accrued interest shall be due and payable on the date of the termination of the Air Rights Lease. The failure to pay any sum due under this

Agreement pursuant to the terms of the Air Rights Lease shall constitute a default under the terms of the Air Rights Lease.

8. In the event that any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

9. This Agreement shall bind the County and HOC and their respective successors and assigns and shall inure to the benefit of each party hereto and the Trustee, their respective successors and assigns.

10. All capitalized terms not defined herein shall have the meanings ascribed to them in the Air Rights Lease.

11. This Agreement is to be construed in accordance with and governed by the laws of the State of Maryland.

12. This Agreement is intended for the sole benefit of the County and HOC.

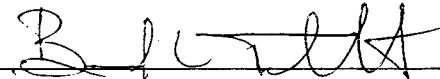
13. This Agreement sets forth the entire agreement between the parties regarding the Investment Fund and there is no verbal or other written agreement regarding this matter between them.

This Agreement may only be amended by an instrument in writing executed by all of the parties hereto and approved by the Trustee.

HOUSING OPPORTUNITIES COMMISSION  
OF MONTGOMERY COUNTY

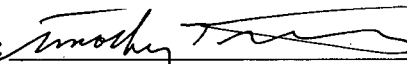
WITNESS

\_\_\_\_\_

By: \_\_\_\_\_

MONTGOMERY COUNTY, MARYLAND

\_\_\_\_\_

By: \_\_\_\_\_  
Timothy Firestine  
Department of Finance

BAINVESTMENT.DEP

Exhibit A

Request for Withdrawal by HOC  
Investment Deposit Agreement

Request No: \_\_\_\_\_  
Amount Requested: \_\_\_\_\_  
Date: \_\_\_\_\_

To: Montgomery County, Maryland  
Department of Finance

The Housing Opportunities Commission of Montgomery County ("HOC") hereby requests withdrawal of \$\_\_\_\_\_ (the "Withdrawal") from the Investment Deposit (the "Investment Deposit") created pursuant to the Investment Deposit Agreement dated \_\_\_\_\_ by and among HOC and Montgomery County, Maryland (the "County").

The Withdrawal will be used to pay the following invoices, copies of which are attached hereto: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

A. If the Withdrawal is for construction, HOC certifies that:

1. None of the costs to be paid by the Withdrawal were part of the Development Budget approved for construction of Lessee Development including a three hundred eight (308) unit highrise apartment building to be located on air rights above a public parking garage in the area bounded by Woodmont Avenue, Old Georgetown Road and Edgemoor Lane in Bethesda, Maryland, to be known as The Metropolitan (the "Development") pursuant to an Air Rights Lease dated \_\_\_\_\_ between HOC and the County (the "Lease");
2. The architect and general contractor for the Development have approved a change order authorizing the costs necessitating the Withdrawal (the "Change Order");
3. HOC has utilized one-half (1/2) of the HOC Financing Fee for payment of construction costs;
4. The contingency reserve line item in the construction cost section of the Development Budget has been exhausted;



5. There are no "Events of Default" under any of the documents evidencing, securing or otherwise relating to the loan in the amount of \$\_\_\_\_\_ providing construction and permanent financing for the Development or the Lease.

B. If the Withdrawal is for payment of operating deficits, HOC certifies that:

1. The operating deficits have been incurred.

2. To the extent available one-half (1/2) of the operating deficits have been or will be paid from the funds remaining available from one-half (1/2) of the HOC Financing Fee and no other funds exist to pay these costs.

3. There are no "Events of Default" under any of the documents evidencing, securing or otherwise relating to the loan in the amount of \$\_\_\_\_\_ providing construction and permanent financing for the Development or the Lease.

WITNESS:

HOUSING OPPORTUNITIES COMMISSION  
OF MONTGOMERY COUNTY

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit B

Certification for Direction for Payment by Trustee  
Investment Deposit Agreement

Request No: \_\_\_\_\_  
Amount Requested: \_\_\_\_\_  
Date: \_\_\_\_\_

To: Montgomery County, Maryland  
Department of Finance

Pursuant to the Deed of Trust dated \_\_\_\_\_, 1995, by and among the Housing Opportunities Commission of Montgomery County ("HOC") and \_\_\_\_\_ (the "Trustee"), the undersigned certifies that it currently has the exclusive right to exercise all rights and remedies under documents relating to the Loan in the amount of \$\_\_\_\_\_ made to provide construction and permanent financing for the Lessee Development known as The Metropolitan.

The undersigned directs Montgomery County under the Investment Deposit Agreement dated \_\_\_\_\_ by and between HOC and Montgomery County to pay the following invoices, copies of which are attached hereto: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WITNESS:

TRUSTEE:

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_



EXHIBIT T

AGREEMENT FOR PAYMENT IN LIEU OF TAXES  
BY AND BETWEEN MONTGOMERY COUNTY, MARYLAND,  
AND THE HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY

THIS AGREEMENT made this 23 day of June, 19  ,  
by and between Montgomery County, Maryland, a municipal  
corporation (the "County") and the Housing Opportunities  
Commission of Montgomery County, a body politic and corporate  
established pursuant to the provisions of Article 44A of the  
Annotated Code of Maryland ("HOC").

WHEREAS, HOC is a housing authority established pursuant to  
Article 44A of the Annotated Code of Maryland charged with the  
responsibility of providing housing for income qualified persons  
in Montgomery County; and

WHEREAS, Article 44A of the Annotated Code of Maryland  
provides that property of a housing authority is tax exempt; and

WHEREAS, Section 7-215 of the Tax-Property Article of the  
Annotated Code of Maryland provides that real property owned by a  
housing authority is entitled to an exemption from real estate  
taxation upon approval of an application for such treatment and  
the execution of an agreement with the local taxing authority  
("PILOT Agreement"); and

WHEREAS, the County is the local taxing authority; and

WHEREAS, the County's Department of Transportation has  
constructed a parking garage known as Garage 49 in the Bethesda  
Central Business District; and

WHEREAS, the County is desirous of utilizing the air rights  
above Garage 49 to permit construction of a complex of

residential facilities, retail shopping, offices, a child care center and public amenities; and

WHEREAS, HOC is willing to serve as the developer of the air rights to serve its function of providing housing for income qualified persons; and

WHEREAS, HOC and the County have entered into an Air Rights Lease dated the \_\_\_\_ day of \_\_\_\_\_, 199\_ (the "Air Rights Lease"), whereby HOC became a long term lessee of the air rights above Garage 49 on which it will develop a twelve (12) story residential rental facility (the "Residential/Parking Operations"), limited retail shopping area (the "Retail Leasing Operations") and related facilities (collectively the "Residential/Retail Building"); and

WHEREAS, the Air Rights Lease contemplates that at least thirty percent (30%) of the rental units in the Residential/Retail Building will be available for occupancy by persons whose incomes average thirty percent (30%) of the median income for the Washington Standard Metropolitan Statistical Area in compliance with the obligations and responsibilities imposed upon HOC by Article 44A of the Annotated Code of Maryland; and

WHEREAS, in order to provide additional funding for the construction of the Residential/Retail Building, HOC intends to enter into a limited partnership agreement in which HOC is the general partner for the purpose of owning, maintaining, and operating a portion of the residential units in the Residential/Retail Building in compliance with Section 42 of the

Internal Revenue Code of 1986 (the "Partnership") to obtain low income housing tax credits; and

WHEREAS, upon completion of construction, HOC intends to create a condominium of the Residential/Retail Building creating three hundred eight (308) residential facilities, retail facilities and related common elements (the "Condominium") by recordation of a Declaration, Bylaws and Condominium Plat (the "Condominium Documents") among the Land Records of Montgomery County, Maryland; and

WHEREAS, HOC will transfer ownership of ninety-two (92) residential units in the Condominium to the Partnership subject to the Air Rights Lease and retain ownership of the remainder of the units; and

WHEREAS, HOC and the Partnership shall operate the residential units in the Condominium as a rental facility; and

WHEREAS, the Air Rights Lease provides for its assignment to the Council of Unit Owners of the Condominium upon completion of construction and recordation of the Condominium Documents; and

WHEREAS, HOC will issue or has issued its 1995 Housing Development Bonds, Issues A, B and C (the "Bonds") pursuant to a resolution (the "Bond Resolution") and a Trust Indenture. The County Guaranteed Bonds are guaranteed by Montgomery County pursuant to §20-32 et seq. of the Montgomery County Code 1984, as amended; and

WHEREAS, the Bonds have been issued or will be issued to provide funds for the construction financing of the

Residential/Retail Building to be constructed under the provisions of the Air Rights Lease; and

WHEREAS, HOC will execute 2 Notes in the aggregate principal amount of Thirty-Three Million Nine Hundred Five Thousand Dollars (\$33,905,000.00) evidencing its obligation to repay the funds for the development provided by the Bonds (the "Loan") secured by 2 Leasehold Deeds of Trust (the "Deeds of Trust") with lien parity for the benefit of the Trustee for the Bonds; and

WHEREAS, upon completion of the construction, recordation of the Condominium Documents and compliance with the Partnership Agreement, it is intended that permanent financing will be provided by obtaining mortgage insurance through the FHA Risk Sharing Program which will substitute for the guarantee provided by Montgomery County pursuant to §20-32 et seq. of the Montgomery County Code for the Bonds and ninety-two (92) condominium units to be transferred to the Partnership will be collateral for one Deed of Trust and the remainder of the condominium units shall serve as collateral for the other Deed of Trust; and

WHEREAS, under Section 7-503(a) of the Tax-Property Article of the Annotated Code of Maryland, a limited partnership having as its managing partner a housing authority and engaged in the construction, operation or management of a housing project for low income families may be eligible under certain conditions to enter into a PILOT Agreement; and

WHEREAS, HOC intends that the Partnership will qualify in all respects under the provisions of Section 7-503 to enter into

a PILOT Agreement for the Residential/Retail Building; and

WHEREAS, the parties desire to enter into an agreement to provide for payment in lieu of taxes on the real property which is subject to the Air Rights Lease.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions hereof the parties agree as follows:

1. Recognition Of PILOT A payment in lieu of taxes ("PILOT") in recognition of the contribution provided by the County for public services and facilities to the Residential/Retail Building in addition to those which are obligations of the County under the Air Rights Lease shall be paid by HOC or HOC and the Partnership, as the case may be, in accordance with the terms hereof. The PILOT payment, if any, shall be paid from Remaining Cash Flow before Rent under the Air Rights Lease. The County agrees to the assignment of the rights granted to HOC hereunder to the Partnership as to the units it may own in the Condominium upon written certification from HOC that a transfer of such units has occurred and that the Partnership is in compliance with paragraph 7 hereof.

2. Definitions All capitalized terms in this Agreement not otherwise defined herein shall have the same meaning as that identified in the Air Rights Lease.

3. Governing Law This Agreement, the rights and obligations of the parties hereto and any claims or disputes thereto shall be governed by and construed in accordance with the laws of the State of Maryland.



4. Calculation of PILOT HOC or HOC and the Partnership, as the case may be, shall pay all state taxes (unless separately waived or abated by the State), front foot benefit charges and other applicable charges assessed against the Lessee of the air rights under the Air Rights Lease.

a. Annually, HOC will provide the County with detailed audited financial statements regarding operations of the Residential/Parking Operations and the Retail Leasing Operations on or before September 15 of each fiscal year as provided in the Air Rights Lease.

b. A separate PILOT will be calculated as described below for, (1) the Residential/Parking Operations and (2) the Retail Leasing Operations.

c. Any PILOT payable will be made with the delivery of the audited financial statements.

d. The PILOT will be calculated in the first year in which there is RCF as defined in paragraph 3.06 of the Air Rights Lease using the amounts stated in the aforesaid audited financial statements as follows:

First, Net Operating Income (NOI) from the combined Residential/Parking Operations of the Partnership and HOC shall be calculated as follows:

Operating Income (OI) less Operating Expense (OE) less the PILOT for the immediately preceding year, if any less the payment of Remaining Cash Flow, to the County for the immediately preceding year, if any = NOI

$\text{NOI} \div .09 = \text{Market Value (MV)}$

$\text{MV} \times .40 = \text{Assessed Value (AV)}$

$\text{AV} \times \text{the Assessment Rate} \times \text{the Market Ratio (MR)} \text{ (as defined hereinafter)} = \text{Residential/Parking Share}$

Second, Net Operating Income from the Retail Leasing Operations shall be calculated as follows:

OI less OE less the PILOT for the immediately preceding year, if any less the payment of Remaining Cash Flow, to the County for the immediately preceding year, if any = NOI

$\text{NOI} \div .09 = \text{Market Value (MV)}$

$\text{MV} \times .40 = \text{Assessed Value (AV)}$

$\text{AV} \times \text{the Assessment Rate} = \text{Retail Leasing Share.}$

Third, the Residential/Parking Share and the Retail Leasing Share shall be added together to determine the PILOT.

e. The first PILOT calculated pursuant to paragraph 2(d) shall apply for the five (5) years following the first payment hereunder and shall be paid within thirty (30) days after submission of the financial statements by HOC.

f. On the fifth anniversary of the first calculation hereunder, and on each subsequent fifth anniversary, the PILOT shall be recalculated using the same formula as above substituting the Operating Income and Operating Expenses shown on the most recent audited financial statement provided by HOC and the most recent Assessment Rate determined by County. Each PILOT shall apply for a five (5) year period.

g. (i) For purposes of this Agreement, the term "Assessment Rate" shall mean the Tax Rate for the Tax Class applicable to the Demised Premises established by Montgomery County for the year in which the payment is to be made less the State tax and adjustment, if any, for the Parking Lot District Tax as provided below.

(ii) HOC has submitted an application to the County for exemption from the Parking Lot District Tax for the Residential/Retail Building which has been approved for consideration under Chapter 60 of the Montgomery County Code. HOC will resubmit such application for exemption as required during the term of this Agreement.

(iii) For the purpose of this Agreement, the term Market Ratio shall mean the fraction the numerator of which is the number of market rate housing units in the Residential/Parking Operations and the denominator is the total number of housing units in the Residential/Parking Operations.

(iv) Payments to the County under this Agreement shall not be considered a property tax on real property as identified in Section 14-805 of the Tax-Property Article of the Annotated Code of Maryland, and shall be subordinate in all respects to the payment of debt service under the Note and Deed of Trust as provided in the Air Rights Lease.

5. Right to Appeal Nothing in this Agreement shall be construed to deny to HOC or the Partnership its right of appeal and other administrative relief, if any, as a property owner

under Section 8-401 et seq. of the Tax-Property Article of the Annotated Code of Maryland.

6. Term of PILOT as to HOC HOC shall have the right to continue making the payments calculated in accordance with this Agreement as to units pursuant to the Air Right Lease or units it owns in the Condominium, as the case may be, provided that it continues to be in compliance with the following:

(a) HOC or its successor continues to be the housing authority for Montgomery County as defined in Article 44A of the Annotated Code of Maryland.

(b) Compliance with the requirements for occupancy by low and moderate income persons established in the Air Rights Lease.

(c) HOC or its successor, as the housing authority for Montgomery County, is the lessee under the terms of the Air Rights Lease or is the owner of two hundred sixteen (216) units in the Condominium subject to the Air Rights Lease.

7. Conditions of PILOT for Partnership The continued right of the Partnership under this Agreement to make the payments calculated in accordance herewith shall be conditioned upon compliance at all times during the term of this Agreement with the following:

(a) Compliance by the Partnership, during the term of this Agreement, with Section 42 of the Internal Revenue Code, as now or hereafter amended, with all applicable regulations and rulings thereunder.

(b) Compliance with the requirements for occupancy by low and moderate income persons established in the Air Rights Lease.

(c) HOC or its successor as housing authority for Montgomery County shall serve as the sole managing general partner of the Partnership.

(d) The Partnership is the owner of the units in the Condominium for which a PILOT payment is to be made.

(e) The Partnership shall notify the Chief, Division of Revenue for Montgomery County (the "Compliance Officer") of the addition, sale or other transfer, assignment or other termination of any unit in the Condominium as an eligible property not less than thirty (30) days prior to the effective date of any such event.

(f) The Partnership complies in all respects with the provisions of Section 7-503.

8. Annual Certification by HOC Annually, HOC and the Partnership shall certify that:

(a) The occupancy of the Residential/Retail Building is in conformity with the provisions of Article 44A of the Annotated Code of Maryland and Chapter 25A and 25B of the Montgomery County Code.

(b) All residential units which are not market rate housing units in the Residential/Retail Building are occupied or available to persons of low and moderate income that qualify for Opportunity Housing as established by the County

Executive by regulation from time to time.

9. Examination of Books and Records The County shall be permitted to examine the books and records of HOC and the Partnership for compliance herewith pursuant to the terms of the Air Rights Lease.

10. Termination by County of HOC Units This Agreement may be terminated by the County as of June 30 of any tax year upon thirty (30) days written notice to HOC upon the happening of any of the following events:

(a) The County is no longer authorized to extend to HOC the benefits of this Agreement due to a repeal or a substantial amendment of the applicable sections of the Annotated Code of Maryland.

(b) Any breach or default by HOC under the terms of this Agreement.

(c) The sale, transfer, or assignment of the rights of HOC as owner of its units in the Condominium subject to the Air Rights Lease to an entity that is not the housing authority for Montgomery County or is not authorized by law to enter into a PILOT Agreement.

11. Termination by the County of Partnership Units This Agreement may be terminated by the County as of June 30 of any tax year, upon thirty (30) days' written notice to HOC as general partner of the Partnership, upon the happening of any of the following events:

(a) The County is no longer authorized to extend to

the Partnership the benefits of this Agreement, as a result of the repeal or substantial amendment of the applicable sections of the Annotated Code of Maryland;

(b) An event of bankruptcy as defined in the Partnership's Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement");

(c) Any breach of default by the Partnership of any of the provisions of this Agreement;

(d) The distribution of cash at any time to the limited partner, except under the credit adjuster and recapture provisions of the Partnership Agreement;

(e) The withdrawal or removal of HOC as sole managing general partner, except if such withdrawal is consented to by the limited partner and Montgomery County, and the substitute general partner is the duly designated successor to HOC as the housing authority for Montgomery County under Article 44 of the Annotated Code of Maryland; and

(f) The sale, transfer or assignment of the rights of the Partnership as owner of the Units in the Condominium subject to the Air Rights Lease to an entity that is not authorized by law to enter into a PILOT Agreement.

12. Amendment This Agreement may not be amended, altered or modified except by an instrument in writing duly executed by the parties hereto.

13. Entire Agreement This Agreement sets forth the entire agreement between the parties and there is no verbal or other

written agreement regarding this matter between them.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and their respective seals to be affixed and attested as of the date and year first above written.

ATTEST

HOUSING OPPORTUNITIES COMMISSION  
OF MONTGOMERY COUNTY

\_\_\_\_\_

By: \_\_\_\_\_  
Bernard L. Tetreault  
Executive Director

MONTGOMERY COUNTY, MARYLAND

\_\_\_\_\_

By: \_\_\_\_\_  
Douglas M. Duncan  
County Executive

RECOMMENDED FOR APPROVAL:

By: \_\_\_\_\_  
Timothy Firestine  
Director, Department of Finance

APPROVED AS TO FORM AND LEGALITY:

By: \_\_\_\_\_

*Signed  
on originals*



STATE OF MARYLAND  
COUNTY OF MONTGOMERY

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 1995, before me, the subscriber, a Notary Public in and for the aforesaid state and county, personally appeared Bernard L. Tetreault, Executive Director, and did acknowledge that he executed the foregoing Agreement on behalf of the Housing Opportunities Commission of Montgomery County, Maryland for the purpose therein contained, and further acknowledged the foregoing Agreement to be the act of the Housing Opportunities Commission of Montgomery County, Maryland.

As witness my hand and Notarial Seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

On this \_\_\_\_\_ day of \_\_\_\_\_, 1995, before me, the undersigned officer, personally appeared \_\_\_\_\_ of Montgomery County, Maryland, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he as such \_\_\_\_\_ executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires:



# ACORD INSURANCE BINDER

DATE (MM/DD/YY)  
06/23/95

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

PRODUCER EBERSBERGER & ASSOC		PHONE (A/C, No, Ext):		COMPANY SECURITY INS CO OF HARTF		BINDER # PPL423930	
P O BOX 959 SEVERNA PARK MD 21146		EFFECTIVE DATE 6/20/95		TIME 12:01		EXPIRATION DATE 7/01/97	
CODE: 03-5754		SUB-CODE:		X THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #: PPL423930		TIME 12:01 AM NOON	
AGENCY CUSTOMER ID: AWEIP50-1 INSURED		DESCRIPTION OF OPERATIONS/VEHICLES/PROPERTY (Including Location)					
THE WEIHE PARTNERSHIP  1666 K STREET NW SUITE 1000 WASHINGTON DC 20006							

COVERAGES		LIMITS		
TYPE OF INSURANCE	COVERAGE/FORMS	AMOUNT	DEDUCTIBLE	COINS %
PROPERTY CAUSES OF LOSS <input type="checkbox"/> BASIC <input type="checkbox"/> BROAD <input type="checkbox"/> SPEC				
GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR <input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT		GENERAL AGGREGATE	\$7,500,000	
		PRODUCTS - COMP/OP AGG	\$	
		PERSONAL & ADV INJURY	\$	
		EACH OCCURRENCE	\$7,500,000	
		FIRE DAMAGE (Any one fire)	\$	
		MED EXP (Any one person)	\$	
	RETRO DATE FOR CLAIMS MADE:	COMBINED SINGLE LIMIT	\$	
AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		BODILY INJURY (Per person)	\$	
		BODILY INJURY (Per accident)	\$	
		PROPERTY DAMAGE	\$	
		MEDICAL PAYMENTS	\$	
		PERSONAL INJURY PROT	\$	
		UNINSURED MOTORIST	\$	
			\$	
AUTO PHYSICAL DAMAGE DEDUCTIBLE <input type="checkbox"/> COLLISION: <input type="checkbox"/> OTHER THAN COL:	<input type="checkbox"/> ALL VEHICLES <input type="checkbox"/> SCHEDULED VEHICLES	ACTUAL CASH VALUE		
		STATED AMOUNT	\$	
		OTHER		
GARAGE LIABILITY <input type="checkbox"/> ANY AUTO		AUTO ONLY - EA ACCIDENT	\$	
		OTHER THAN AUTO ONLY:		
		EACH ACCIDENT	\$	
		AGGREGATE	\$	
EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	RETRO DATE FOR CLAIMS MADE:	EACH OCCURRENCE	\$	
		AGGREGATE	\$	
		SELF-INSURED RETENTION	\$	
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY		STATUTORY LIMITS		
		EACH ACCIDENT	\$	
		DISEASE - POLICY LIMIT	\$	
		DISEASE - EACH EMPLOYEE	\$	

SPECIAL CONDITIONS/OTHER COVERAGES: COVERAGE BOUND. PROJECT POLICY THE METROPOLITAN OLD GEORGETOWN RD & EDMOOR LN. LIAB LIMITS \$7500000/7500000 SUBJECT TO \$50000 DED. OWNER INTEREST END- MONTGOMERY CO MD & MONTGOMERY CO HOUSING OPPORTUNITIES COM

NAME & ADDRESS		MORTGAGEE		ADDITIONAL INSURED	
		LOSS PAYEE			
		LOAN #			
		AUTHORIZED REPRESENTATIVE			
		ARTHUR D EBERSBERGER LB (A)			

## **CONDITIONS**

This Company binds the kind(s) of insurance stipulated on the reverse side. The Insurance is subject to the terms, conditions and limitations of the policy(ies) in current use by the Company.

This binder may be cancelled by the Insured by surrender of this binder or by written notice to the Company stating when cancellation will be effective. This binder may be cancelled by the Company by notice to the Insured in accordance with the policy conditions. This binder is cancelled when replaced by a policy. If this binder is not replaced by a policy, the Company is entitled to charge a premium for the binder according to the Rules and Rates in use by the Company.

### **Applicable in Delaware**

The mortgagee or Obligee of any mortgage or other instrument given for the purpose of creating a lien on real property shall accept as evidence of insurance a written binder issued by an authorized insurer or its agent if the binder includes or is accompanied by: the name and address of the borrower; the name and address of the lender as loss payee; a description of the insured real property; a provision that the binder may not be canceled within the term of the binder unless the lender and the insured borrower receive written notice of the cancellation at least ten (10) days prior to the cancellation; except in the case of a renewal of a policy subsequent to the closing of the loan, a paid receipt of the full amount of the applicable premium, and the amount of insurance coverage.

Chapter 21 Title 25 Paragraph 2119

### **Applicable in Nevada**

Any person who refuses to accept a binder which provides coverage of less than \$1,000,000.00 when proof is required: (A) Shall be fined not more than \$500.00, and (B) is liable to the party presenting the binder as proof of insurance for actual damages sustained therefrom.



CONSENT TO LEASEHOLD MORTGAGE

THIS CONSENT TO LEASEHOLD MORTGAGE dated this 23 day of June, 1995 by and between MONTGOMERY COUNTY, MARYLAND ("Lessor") and the HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY ("Lessee").

WHEREAS, the parties hereto have entered into an Air Right Lease dated June 15, 1995 (the "Air Rights Lease"); and

WHEREAS, the Air Rights Lease provides Lessee with the right to construct, operate and maintain a three hundred eight (308) unit residential rental facility with associated common areas and retail space above the existing Parking Garage located in the area bounded by Woodmont Avenue, Old Georgetown Road, and Edgemoor Lane in Bethesda, Maryland; and

WHEREAS, the Air Rights Lease anticipated that Lessor would obtain construction and permanent financing through the issuance of Housing Development Bonds pursuant to §103(b) of the Internal Revenue Code of 1986 (the "Bonds"); and

WHEREAS, Bonds have been issued and are to be secured during construction by a guaranty from Lessor pursuant to Chapter 20 of the Montgomery County Code 1984, as amended, and Article 44A of the Annotated Code of Maryland; and

WHEREAS, the Bonds are further secured by two Promissory Notes and two Leasehold Deeds of Trust (collectively the "Leasehold

Mortgage"); and

WHEREAS, the Air Rights Lease requires that Lessor consent to the Leasehold Mortgage and that Lessor acknowledge its acceptance by an instrument in recordable form; and

WHEREAS, Lessor has reviewed the Leasehold Mortgage for compliance with the Air Rights Lease; and

WHEREAS, the Leasehold Mortgage provides that no modifications will be made without Lessor's consent to increase the principal indebtedness of the Leasehold Mortgage or otherwise modify the terms approved pursuant to Section 8.02(a) of the Air Rights Lease.

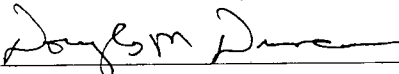
NOW, THEREFORE, in consideration of the mutual promises herein stated, the parties agree as follows:

1. Pursuant to Section 8.02(e) of the Air Rights Lease, Lessor consents to the Leasehold Mortgage.

2. Lessee agrees to obtain Lessor's prior written consent of any changes required pursuant Section 8.02(e)(iii) of the Air Right Lease.

LESSOR:

MONTGOMERY COUNTY, MARYLAND

By:   
Douglas M. Duncan  
County Executive

LESSEE:

HOUSING OPPORTUNITIES COMMISSION  
OF MONTGOMERY COUNTY

By:   
Bernard L. Tetreault  
Executive Director

State of Maryland :  
County of Montgomery, to wit:

On this 23<sup>rd</sup> day of June, 1995, before me, the undersigned officer, personally appeared Douglas M. Duncari, County Executive of Montgomery County, Maryland, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she as such County Executive executed the same for the purposes therein contained.

In Witness Whereof, I hereunto set my hand and official seal.

Jo Anne Paore  
Notary Public  
My Commission Expires: June 1, 1998

State of Maryland :  
County of Montgomery, to wit:

I hereby certify that on this 21<sup>st</sup> day of June, 1995, before me, the subscriber, a Notary Public in and for the aforesaid state and county, personally appeared Bernard L Tetreault and did acknowledge that he/she executed the foregoing Consent to Leasehold Mortgage on behalf of the Housing Opportunities Commission of Montgomery County, Maryland for the purpose therein contained, and further acknowledged the foregoing document to be the act of the Housing Opportunities Commission of Montgomery County, Maryland.

As witness my hand and Notarial Seal.

[Signature]  
Notary Public  
My Commission Expires: 2/1/99

METROPOLITAN\CONS-LSE.MOR





# CERTIFICATE OF INSURANCE

NO. 13-MPRB-1

ISSUE DATE 06/12/95

## PRODUCER

Willis Corroon Corporation of Maryland  
Construction Insurance Division  
3 Bethesda Metro Center, Suite 400  
Bethesda, Maryland 20814  
(301) 951-3300

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below.

## COMPANIES AFFORDING COVERAGE

COMPANY LETTER -  
A ST. PAUL FIRE & MARINE INSURANCE COMPANY

## INSURED

OMNI CONSTRUCTION, INC.  
7500 OLD GEORGETOWN ROAD  
BETHESDA MD 20814

COMPANY LETTER -  
B NATIONAL UNION FIRE INSURANCE CO.

COMPANY LETTER -  
C HARTFORD FIRE INS. CO. - ALEX., VA.

COMPANY LETTER -

## COVERAGES FOR JOB: MPRB - METROPOLITAN PARK RESIDENTIAL BUILDING/#10975

This is to certify that policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies. Limits shown may have been reduced by paid claims.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	ALL LIMITS IN THOUSANDS
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WVA0801297	09/30/94	09/30/95	STATUTORY EACH ACCIDENT - \$1,000 DISEASE-POLICY LIMIT - \$1,000 DISEASE-EACH EMPLOYEE - \$1,000
A	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS GARAGE LIABILITY	KK00800051/PACKAGE	09/30/94	09/30/95	CSL - \$1,000 BODILY INJURY PER PERSON - BODILY INJURY PER ACCIDENT - PROPERTY DAMAGE -

\*\* CERTIFICATE DATA CONTINUED ON THE NEXT PAGE---

## CERTIFICATE HOLDER

ATTN: MR. THOMAS DOERR

HOUSING OPPORTUNITIES COMMISSION OF  
MONTGOMERY COUNTY MARYLAND  
10400 DETRICK AVENUE  
KENSINGTON, MD 20895

## CANCELLATION

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will ~~and have to~~ mail 45 days written notice to the certificate holder named to the left. ~~but failure to~~  
~~and such notice shall impose no obligation on liability of any kind upon~~  
~~the company, its agents or representatives.~~

## AUTHORIZED REPRESENTATIVE

*Brian C. Miller*

# CERTIFICATE OF INSURANCE

PAGE 2---CONTINUED FROM PREVIOUS PAGE---

NO. 13-MPRB-1

ISSUE DATE 06/12/95

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	ALL LIMITS IN THOUSANDS
A	GENERAL LIABILITY X COMM'L GEN'L LIABILITY CLAIMS MADE X OCCURRENCE OWNERS & CONTRS PROTECTIVE	KK00800051/PACKAGE	09/30/94	09/30/95	GENERAL AGGREGATE - \$2,000 PRODUCTS-COMP/OPS--AGGR. - \$2,000 PERSONAL & ADVRTSNG INJURY - \$1,000 EACH OCCURRENCE - \$1,000 FIRE DAMAGE (ANY ONE FIRE) - \$1,000 MEDICAL EXP. (ANY 1 PERSON) - \$5
A	EXCESS WORK COMP/EMP LIAB	WVA0801278	09/30/94	09/30/95	COV A STATUTORY/COV B \$1,000 EXCESS OF RETAINED LIMITES
B	UMBRELLA EXCESS	BE3095530	04/01/95	04/01/96	EACH OCCURRENCE \$15,000
C	BUILDERS RISK	42MSAW7232EK34	06/15/95	06/15/96	\$27,975,000. (NOT IN THOUSANDS)

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

IT IS HEREBY AGREED AND UNDERSTOOD THAT HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY MARYLAND, MONTGOMERY COUNTY GOVERNMENT AND CRESTAR BANK, TRUSTEE ARE ADDITIONAL INSURED'S ON THE ABOVE REFERENCED LIABILITY POLICIES OTHER THAN WORKERS COMPENSATION WITH RESPECT TO LIABILITY ARISING OUT OF NAMED INSURED'S OPERATIONS ON THE REFERENCED PROJECT.

FURTHER, IT IS AGREED THAT THE NAMED INSURED'S ON THE ABOVE REFERENCED BUILDERS RISK POLICY INCLUDE OMNI CONSTRUCTION, INC., SUBS OF ANY TIER, HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY MARYLAND, MONTGOMERY COUNTY GOVERNMENT, AND CRESTAR BANK, TRUSTEE.

