

To: The Honorable, the City Council for Sept. 11, 2000 meeting
From: Cambridgeport Neighborhood Initiative (CNI)
Re: Copy of Settlement Agreement between neighbors and 784 Memorial Drive
LLC, with recorded Covenant.
SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 21st day of June, 2000 with respect to the redevelopment and use of the vacant land behind 784 Memorial Drive between Pleasant Street and Putnam Avenue, Cambridge, Massachusetts.

A. Parties

1. (a) 784 Memorial Drive LLC is a Delaware limited liability company ("784 Mem Drive") whose members are Polaroid Corporation, a Delaware corporation, and Spaulding and Slye Memorial Drive LLC, a Delaware limited liability company, on the one hand, and (b) Elizabeth Glaser, Peter Desnoyers, Elie Yarden, Daphne Abeel, Gordon Fellman and Stash Horowitz and John Moot (the "Garage Litigation Plaintiffs"), and Elizabeth Glaser, Peter Desnoyers, Elie Yarden, Daphne Abeel, Gordon Fellman and Stash Horowitz, Laurie Taymor-Berry, John Berry and Maureen Van Stry (the "IPOP Plaintiffs"), and Cambridgeport Neighborhood Initiative, an unincorporated neighborhood association in Cambridge, Massachusetts ("CNI"), on the other hand. The Garage Litigation Plaintiffs and the IPOP Plaintiffs are sometimes referred to together as the "Neighborhood Groups".

2. 784 Mem Drive is the owner of the land beneath 784 Memorial Drive and the vacant land behind that building between Putnam Avenue and Pleasant Street, Cambridge, Massachusetts (the "Site").

B. Background

1. 784 Mem Drive undertook the renovation and expansion of the building at 784 Memorial Drive, which project has been completed. The building is leased to and occupied by Polaroid Corporation.

2. 784 Mem Drive thereafter proposed the development of the site for two office buildings and a garage structure containing 577 cars. This project was commenced by 784 Mem Drive obtaining a building permit for the garage and commencing construction. The Garage Plaintiffs challenged the validity of the building permit in Superior Court in an action entitled: Elie Yarden, et al vs. Bersani, Middlesex Superior Court No. 99-103C. This case is still pending and discovery is scheduled to recommence shortly.

3. 784 Mem Drive subsequently filed for the Site an Interim Planning Overlay Project ("IPOP") Special Permit from the Cambridge Planning Board for the construction of two smaller office buildings with parking beneath each and the construction of 120 units of housing, also with parking beneath (the "Project"). Following public hearings, a Special Permit was issued by the Cambridge Planning

Board on April 3, 2000. The IPOP Plaintiffs subsequently brought suit challenging the validity of the Special Permit in a case entitled: Elizabeth Glaser, et al vs. Brown, Middlesex Superior Court No. 00-1955C. This case is also currently pending and discovery may commence shortly.

C. Settlement

1. 784 Mem Drive and the Neighborhood Groups desire to settle and compromise their disputes. Therefore, in consideration of the mutual agreements contained in this Settlement Agreement, the parties agree as follows:

1. Following execution of this Settlement Agreement, the Neighborhood Groups agree to:
 - (a) Dismiss with prejudice the litigation regarding the Garage;
 - (b) Dismiss with prejudice the litigation regarding the IPOP Special Permit;
 - (c) Support the request to be made by 784 Mem Drive to the Cambridge City Council to modify the curb cuts on Putnam Avenue and Pleasant Street in accordance with the development plan approved by the Cambridge Planning Board;
 - (d) Support the request to the Metropolitan District Commission ("MDC") for a traffic light at the intersection of Memorial Drive and Pleasant Street; and
 - (e) Work cooperatively with 784 Mem Drive on any other issues requested by 784 Mem Drive regarding permitting, design, construction or use of the Project as authorized by the IPOP Special Permit.
 - (f) Refrain from bringing suit against 784 Mem Drive or the City of Cambridge in connection with any steps taken to develop the Project in accordance with the plan authorized by the IPOP Special Permit.
2. Following execution of this Settlement Agreement, 784 Mem Drive agrees to:
 - (a) Pursue promptly and with diligence and pay for the installation of a traffic light at the intersection of Memorial Drive and Pleasant Street and specifically request that such light (as well as those at Western Avenue and River Street) include a pedestrian crossing phase;

- (b) Grant a pedestrian easement to a legal entity designated by the CNI solely for pedestrian access between Pleasant Street and the shopping area being developed by Bread and Circus to the north of the development;
- (c) Support a request by the Neighborhood Groups and/or CNI to the City of Cambridge for the installation of a stop sign at Putnam Avenue and Pleasant Street; provided, however, that if the City agrees to install a traffic signal at this intersection within five years after the date of this agreement, the cost of such signal shall be paid by 784 Mem Drive;
- (d) Obtain construction financing for the residential component of the Project, obtain a building permit for the residential units and commence work on their construction prior to requesting a certificate of occupancy for the second office building on the Site;
- (e) Pay Bracken and Baram \$10,000 to defray a portion of the Neighborhood Group's legal fees.
- (f) 784 Mem Drive agrees to arrange for and pay for a state police officer at the intersection of Memorial Drive and Pleasant Street from 7- 9 a.m. and 4-7 p.m. weekdays commencing with the issuance of the first certificate of occupancy, until a traffic light is installed at that intersection.

D. Procedural Matters

1. Contemporaneously with the execution of this Settlement Agreement, 784 Mem Drive shall record with the Middlesex South District Registry of Deeds a covenant authorizing any five unrelated persons each of whom own either a residential property or a residential condominium unit abutting or across the street from the site on either Putnam Avenue or Pleasant Street together to enforce in Superior Court the terms of this Settlement Agreement and the fourteen conditions contained in the IPOP Special Permit.

2. 784 Mem Drive agrees neither to pursue nor accept an amendment to the IPOP Special Permit which changes the use of the site for 120 residential units.

3. Within thirty days of the execution of this Settlement Agreement, 784 Mem Drive shall pay Bracken and Baram.

4. Contemporaneously with the execution of this Settlement Agreement, the Neighborhood Groups shall dismiss with prejudice the litigation regarding the parking garage and the litigation regarding the IPOP Permit by notice or stipulation filed with the Court and 784 Mem Drive shall surrender to the Cambridge Building Department the building permit for the garage.

5. 784 Mem Drive shall promptly and with diligence (a) pursue the approvals necessary from MEPA and the MDC for approval of the traffic light at Memorial Drive and Pleasant Street including submission of the ENF and traffic study by July 14, 2000 and (b) pursue from the Cambridge City Council the approvals to alter the curb cuts at the site in accordance with the development plan approved by the Planning Board. 784 Mem Drive shall insert in all commercial leases a provision that tenants are prohibited from making left turns onto Pleasant Street from the commercial curb cuts during the hours of 7-9 a.m. and 4-7 p.m. weekdays. It will cause the City to post signs to that effect.

6. Should the curb cut approval be obtained by December 31, 2000 but the MDC does not agree to permit the installation of the traffic light, 784 Mem Drive shall (a) be obligated to reapply to the MDC on July 1, 2001 and also pursue such application with diligence and support any efforts by the Neighborhood Groups to obtain such approval until December 31, 2001, and (b) if then so permitted or approved, shall pay for its installation and (c) shall arrange for and pay for a state police officer at the intersection of Memorial Drive and Pleasant Street from 7-9 a.m. and 4-7 p.m. weekdays until a traffic light is installed at that intersection.

7. Should the MDC approval be obtained by December 31, 2000 but not the curb cut approvals, the Neighborhood Groups will work cooperatively, promptly and diligently with 784 Mem Drive to secure City Council approval of alternate locations.

8. Should any party to this Agreement violate the provisions of this Settlement Agreement, the party aggrieved by such action may notify such breaching party and all the other parties in writing and, upon such notification, all parties shall within ten days at a time and place specified in such notice meet and discuss such violation and work cooperatively to resolve their disputes. If such negotiation does not resolve outstanding differences within thirty days of such meeting and such breach remains uncured, any non-breaching party to this Agreement may notify the others in writing and, if such notification is given, this Agreement shall terminate and be of no further force or effect.

9. At the request of 784 Mem Drive, any party shall provide 784 Mem Drive or such entity designated by it with a certificate certifying as to the status of this Settlement Agreement and the compliance of 784 Mem Drive to its terms specifying in detail any matters to which it believes 784 Mem Drive is in default. The Neighborhood Groups shall be estopped from alleging any default then exists which was not specified in such certificate.

10. This Settlement Agreement shall be binding upon the parties hereto and their respective successors and assigns as owners of their respective properties. In

that regard, it shall be deemed to touch and concern their respective properties and run with their land.

11. It is the intention of the parties that the provisions of the IPOP Special Permit, this Agreement and the recorded covenant shall be cumulative.

E. Notices

1. Notices shall be given by certified mail, return receipt requested and simultaneously by regular mail or delivery by a recognized courier service and shall be deemed effective three days after dispatched.

2. Notices provided to 784 Mem Drive shall be effective if sent to:

- a. 784 Memorial Drive LLC
c/o Spaulding and Slye Company
255 State Street
Boston, MA 02109

and to

- b. Polaroid Corporation
784 Memorial Drive
Cambridge, MA 02138
Attention: Director of Real Estate

3. Notices for the other parties shall be effective if sent to:

- a. Cambridgeport Neighborhood Initiative
c/o Elie Yarden
143 Pleasant Street, Unit 2A
Cambridge, MA 02139

- b. Stash Horowitz
12 Florence Street
Cambridge, MA 02139
- c. Elie Yarden
143 Pleasant Street, Unit 2A
Cambridge, MA 02139
- d. Elizabeth Glaser and
Peter Desnoyers
162 Pleasant Street
Cambridge, MA 02139
- e. Daphne Abeel
148 Pleasant Street
Cambridge, MA 02139
- f. Gordon Fellman
143 Pleasant Street, Unit 3C
Cambridge, MA 02139
- g. John Moot
44 Coolidge Hill Avenue
Cambridge, MA 02139
- h. Laurie Taymor-Berry
John Berry
164 Pleasant Street
Cambridge, MA 02139
- i. Maureen Van Stry
251 Chestnut Street
Cambridge, MA 02139

EXECUTED as a sealed instrument.

784 Memorial Drive LLC

By: Polaroid Corporation

By: Benjamin C. Byrd

Spaulding and Slye Memorial Drive LLC

By: David A. Norky

Stash Horowitz
Stash Horowitz

Elie Yarden
Elie Yarden

Elizabeth Glaser
Elizabeth Glaser

Peter Desnoyers
Peter Desnoyers

Daphne Abell
Daphne ~~Abell~~ Abell / D.A.

Gordon Fellman
Gordon Fellman

JOINDER

Cambridgeport Neighborhood Initiative joins in this Settlement Agreement solely for the purpose of agreeing with the provisions of Sections C1 (c) through (f) and those provisions to which specific reference is made to CNI.

Cambridgeport Neighborhood Initiative

By: *Elic Yarden*

COVENANT

This Covenant is given by 784 Memorial Drive LLC, a Delaware limited liability company ("784 Mem") for the benefit of certain owners of properties on Putnam Avenue and Pleasant Street, Cambridge, Massachusetts identified on Exhibit A attached hereto (the "Abutters").

A. Background

1. 784 Mem is the owner of a parcel of land bounded by Memorial Drive, Pleasant Street, Putnam Avenue and land of others in Cambridge, Massachusetts as more particularly described on Exhibit B attached hereto.

2. 784 Mem has ^{been} ~~proposed~~ **granted an IPOP special permit for the** construction of two office buildings **with 237 parking spaces** and 120 units of residential housing and **associated 120 parking spaces** on the land owned by 784 Mem (the "Site"). Pursuant to the Cambridge Zoning Ordinance, an IPOP Special Permit was granted by the Cambridge Planning Board on March 28, 2000, a copy of which is attached hereto as Exhibit C and a notice of which is to be filed with the Middlesex South Registry of Deeds.

3. Certain of the Abutters and other interested parties appealed the Planning Board decision to the Middlesex Superior Court.

4. 784 Mem Drive and the plaintiffs to that litigation have agreed to compromise their disputes and have entered into a Settlement Agreement dated June 21, 2000, a copy of which is attached hereto as Exhibit D. One of the provisions of the Settlement Agreement is that 784 Mem grant and record this Covenant for the benefit of the Abutters.

B. Covenant

1. 784 Mem acknowledges that the fourteen conditions and limitations enumerated in the IPOP Special Permit and the terms and agreements set forth in the Settlement Agreement are for the benefit of the Abutters, amongst others.

2. Should 784 Mem violate any of the conditions and limitations set forth in the IPOP Special Permit or, should 784 Mem violate any of the provisions of the Settlement Agreement and such breach is not resolved in accordance with Section D 8 of the Settlement Agreement, then any five unrelated persons, each of whom either is an Abutter or the successor or assignee of an Abutter as an owner of a residential property or residential condominium unit abutting or across the street from the Site on either Putnam Avenue or Pleasant Street, may together enforce in **Middlesex** Superior Court **in Cambridge** against 784 Mem the terms of the Settlement Agreement or the fourteen

conditions and limitations contained in the IPOP Special Permit. In any complaint brought hereunder, each plaintiff shall establish ~~with copies of~~ by reference to identified recorded documents ~~from in~~ the Registry of Deeds that he or she is either an Abutter or a successor or assign of an Abutter.

3. This Covenant shall be binding upon 784 Mem and its successors and assigns and run with the land described in Exhibit B.

EXECUTED as a sealed instrument this _____ day of July, 2000.

784 Memorial Drive LLC

By: Polaroid Corporation, Member

By: _____
Name:
Title: Vice President and
Treasurer

784 Memorial Drive LLC

By: Spaulding and Slye Real Estate Services
Company, Inc., Member

By: _____
Name: James B. Karman,
President

By: _____
Name: David A. Neskey,
Treasurer

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

July _____, 2000

Then personally appeared the above-named James B. Karman, President of Spaulding and Slye Real Estate Services Company, Inc., a Member of Spaulding and Slye Memorial Drive LLC, in turn a Member of 784 Memorial Drive LLC, who acknowledged the foregoing to be the free act and deed of such corporation, before me

Notary Public

S 284

Consent Communication #14

A communciation was received from
the Cambridgeport Neighborhood Initiative
(CNI) transmitting a copy of the Settlement
Agreement between neighbors and 784 Memorial
Drive LLC, with recorded covenant.

In City Council Septmeber 11, 2000

PLACED ON FILE