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**IMMEDIATE
ATTENTION**

EBAP/92/145

October 7, 1992

To: Members of the Executive Board

From: The Secretary

Subject: Acquisition of Western Presbyterian Church - Initiation
of Legal Action to Preserve Development Rights

It is not proposed to bring the attached memorandum to the agenda of the Executive Board for discussion unless an Executive Director so requests by noon on Tuesday, October 13, 1992. In the absence of such a request, the draft decision that appears on page 2 will be deemed approved by the Executive Board and it will be so recorded in the minutes of the next meeting thereafter.

Mr. Gianviti (ext. 38329) is available to answer technical or factual questions relating to this paper.

Att: (1)

Other Distribution:
Department Heads

INTERNATIONAL MONETARY FUND

Acquisition of Western Presbyterian Church--
Initiation of Legal Action to Preserve Development Rights

Prepared by the Legal Department

(In consultation with the Administration Department)

Approved by François Gianviti

October 6, 1992

This paper seeks the approval of the Executive Board to initiate proceedings in order to prevent a reversal by an agency of the D.C. government of its earlier finding that the Western Presbyterian Church building is not a historic landmark, which would have the effect of precluding the further development of the existing church site adjacent to the Fund. The background is as follows:

I. Background

In September, 1991, the Foggy Bottom neighborhood association that has opposed the Fund's planned relocation of the Western Presbyterian Church (WPC), which is a necessary antecedent for the future development of the remainder of Square 120, filed an application with the District of Columbia Historic Preservation Review Board (HPRB), an agency of the local government, to have the existing church building designated as a historic landmark. Such designation has the effect of precluding the issuance of a demolition permit for the structure, and effectively forecloses any other development of the property on which it is located.

In October, 1991, the Fund and the WPC, as property owners of the church and its interior components, applied for a demolition permit in respect of the church, which had the effect, under D.C. law, of triggering a 90-day period after which time the failure of the HPRB to designate the church as a landmark would deprive the agency of authority to act on the landmark application.

The HPRB held a hearing on the matter in December, 1991 at which evidence on the issue of landmark status was presented, but the HPRB took no decision at that time. On February 19, 1992, after the expiration of the 90-day period prescribed by law, the HPRB met again to consider the matter and was informed that, in the opinion of the D.C. Corporation Counsel's Office (the lawyers for the District of Columbia), its authority had lapsed by virtue of the expiration of the 90-day period in which it was obliged to take a decision; in consequence, any decision which it took would be

advisory in nature. Nevertheless, the HPRB proceeded to vote on the matter, and decided not to designate the church as a landmark. The Fund was formally advised that the HPRB's decision was final. Given these developments, the Fund proceeded with excavation of the site for the new church building at 2401 Virginia Avenue and other construction-related activities.

On June 29, 1992, the Foggy Bottom neighborhood association that had originally filed the landmark application requested the HPRB to "reconsider" the application. On September 1, 1992, notwithstanding the lack of any legal basis for doing so, the HPRB voted to "reconsider" the matter. A hearing has been scheduled for October 21, 1992.

II. Conclusion and Recommendation

In the opinion of the Fund's outside zoning counsel, which is shared by the Legal Department, the HPRB has no authority whatsoever to reconsider the question of landmark designation of the church. Contacts with the Office of the D.C. Corporation Counsel indicate that they share that view as well, but efforts to prevent the HPRB from proceeding with its scheduled reconsideration have been unsuccessful. The Fund has therefore been advised that, in order to foreclose the reopening of the landmark issue, its only legal recourse is to initiate judicial proceedings and that such proceedings should be brought as soon as possible. The Fund's outside zoning counsel believe that the probability of success of such an action is excellent.

The ability of the Fund to develop the remainder of Square 120 in the future depends upon the relocation of the WPC to another site. Designation of the existing church as a landmark would wholly frustrate those goals. It is, therefore, recommended that the Fund initiate a lawsuit against the District of Columbia in order to prevent the HPRB, as an agency of the city, from taking further action in this matter. However, insofar as initiation of a lawsuit would constitute a limited waiver of the Fund's immunity from judicial process, the approval of the Executive Board is thus sought before such action is undertaken.

Accordingly, the following decision is proposed for approval by the Executive Board:

Proposed Decision

The Managing Director is authorized to initiate legal proceedings to challenge the decision of the D.C. Historic Preservation Board to reconsider HPRB Case No. 91-10 concerning landmark designation of the Western Presbyterian Church and to take all necessary actions relating thereto.