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THE HOUSING DEVELOPMENT CORPORATION LAW (14 OF 1981)

(1997 Revision)

Consolidated with Law 11 of 1994.

Revised under the authority of the Law Revision Law (19 of 1975).

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HOUSING DEVELOPMENT CORPORATION LAW (14 OF 1981)

(1997 Revision)

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HOUSING DEVELOPMENT CORPORATION LAW (14 OF 1981)

(1997 Revision)

PART I-Introductory

1. This Law may be cited as the Housing Development Corporation Law (1997 Revision). Short title

2. In this Law- Definitions

“Chairman” means the Chairman of the Corporation appointed under section 4(3) and includes any person for the time being performing the functions of Chairman;

“Corporation” means the Housing Development Corporation established under section 3;

“financial year” means such period of twelve months as the Corporation, with the approval of the Financial Secretary, may determine to be its financial year;

“General Manager” means the General Manager of the Corporation appointed under section 12 and includes any person appointed to act as General Manager;

“Governor” means Governor in Council;

“member” means a member of the Corporation appointed under section 4(2) and includes the Chairman;

“Minister” means the member of Executive Council for the time being responsible for housing; and

“owner” in relation to any building or land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the absolute property of the building or land, whether in possession or reversion, and includes also a person holding or entitled to the rents and profits of the building or land under a lease or agreement the unexpired terms whereof exceed three years.

PART II-Establishment, Constitution, Management and Staff of Corporation

Establishment of Corporation

3. (1) There is established a body called the Housing Development Corporation.

(2) The Corporation shall be a body corporate with perpetual succession and a common seal and with power to enter into contracts, to sue and be sued in its corporate name and shall have power to acquire, hold, mortgage, lease and dispose of all kinds of property moveable or immovable and to do and perform such acts and things as may be allowed under this Law.

Constitution

4. (1) The Corporation shall consist of not less than five and not more than nine members as the Governor may, from time to time, determine.

(2) Every member shall be appointed by the Governor for such period, not exceeding three years, as the Governor may direct and shall, on ceasing to be a member, be eligible for re appointment:

Provided that -

(a) any member may, at any time, resign his office by instrument in writing addressed to the Governor; and

(b) where a member ceases to be a member for any reason, the Governor may appoint another member in his place for the remainder of the time for which the former member would have served but for his ceasing to be a member.

(3) The Governor shall appoint a Chairman from amongst the members.

(4) In the event of incapacity from illness or from any other temporary cause or of temporary absence from the Islands of any member, the Governor may appoint some other person to act as a temporary member during the time such incapacity or absence continues.

(5) The Governor may, at any time, revoke the appointment of any member if he considers it expedient so to do.

(6) The appointment of any member and the termination of office of any person as a member shall be notified in the Gazette.

Seal

5. (1) The seal of the Corporation shall be kept in the custody of the Chairman or General Manager and may be affixed to instruments pursuant to a

resolution of the Corporation and in the presence of the Chairman and of one other member and the General Manager.

(2) The seal of the Corporation shall be authenticated by the signature of the Chairman and the General Manager, and such seal shall be officially and judicially noticed.

(3) All deeds, instruments, contracts and other documents, other than those required by law to be under seal, made by, and all decisions of, the Corporation may be signified under the hand of the Chairman or General Manager.

6. Service upon the Corporation of any notice, order or other document shall be executed by delivering the same or by sending it by registered post addressed to the General Manager at the principal office of the Corporation. Service of notices, etc.

7. (1) The Corporation shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such place and time and on such days as the Corporation may determine. Procedure and meetings

(2) The Chairman may, at any time, call a special meeting of the Corporation and shall call a special meeting within seven days of a requisition for that purpose addressed to him by any three members to consider the matters contained in such requisition.

(3) The Chairman shall call a special meeting of the Corporation if directed by the Member so to do.

(4) The Chairman, or in his absence any member designated in writing by the Minister, shall preside at all meetings of the Corporation.

(5) The Chairman, or other member presiding, and four other members shall form a quorum:

Provided that, where any member is disqualified from taking part in any deliberation or decision of the Corporation with respect to any matter, he shall be disregarded for the purposes of constituting a quorum for deliberating on or deciding that matter.

(6) The decision of the Corporation with regard to any question shall be determined by vote of the majority of the members present at the meeting of the Corporation, and in any case when the votes of the members present in regard to any question shall be equally divided, the Chairman or other member presiding shall have a casting vote in the event of a tie but not an original vote.

(7) Minutes of the proceedings of each meeting of the Corporation shall be kept in such manner as the Corporation may determine and shall be confirmed by the Chairman or other member presiding (as the case may be) as soon as practicable thereafter at a subsequent meeting.

(8) The Corporation may co-opt any one or more persons to attend any particular meeting of the Corporation for the purpose of assisting or advising the Corporation, but no such co-opted person shall have any right to vote.

(9) Subject to this section, the Corporation shall have power to regulate its own proceedings.

(10) Any minutes made of meetings of the Corporation shall, if purporting to be duly signed by the Chairman or other member presiding, be receivable in evidence in all legal proceedings without further proof and every meeting of the Corporation in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members thereof to have been duly qualified to act.

Disclosure of interest
and abstaining from
voting

8. (1) A member who is in any way, whether directly or indirectly, interested in an application to the Corporation for a loan or for a contract or proposed contract with the Corporation, shall declare the nature of his interest at the first meeting of the Corporation at which it is possible for him to do so.

(2) A member shall not vote in respect of any application to the Corporation for a loan or in respect of any contract or proposed contract with the Corporation in which he is in any way interested, whether directly or indirectly.

Appointment of
committee

9. (1) The Corporation may appoint a committee of the Corporation to examine and report to it on any matter whatsoever arising out of or connected with any of its functions under this Law.

(2) Any such committee shall consist of at least one member together with such other persons, whether members or not, whose assistance or service the Corporation may desire.

(3) Where persons, other than members, are members of a committee appointed under this section, or where any person is co-opted under section 7(8), the Corporation may, with the approval of the Governor, by resolution declare the remuneration and allowance of such persons, and such sums shall properly be payable out of the funds and resources of the Corporation.

(4) The Corporation may reject the report of any such committee or adopt it either wholly or with such modifications, additions or adaptations as it may think fit.

10. Subject to this Law, the Corporation may delegate to any member or committee of the Corporation the power and authority to carry out on its behalf such duties as it may determine.

Power to delegate

11. There shall be paid from the funds of the Corporation to members who are not public officers such, if any, remuneration, fees or allowances as the Governor may determine from time to time.

Remuneration of members

12. (1) The Corporation shall, at such salary and upon such terms and conditions of service as it may determine and, with the prior approval of the Governor, appoint a General Manager.

Appointment of General Manager

(2) The General Manager shall be the chief executive officer of the Corporation and shall be present at all meetings of the Corporation unless he has obtained leave of absence from the Chairman or is incapacitated by illness or other cause from attending such meetings.

(3) In the event of the absence of the General Manager, the Corporation may, by instrument in writing and with the prior approval of the Minister, appoint any person to act as General Manager during the period of such absence upon such terms and conditions as it may determine. The person so appointed may exercise all the powers and duties by this Law exercisable or to be performed by the General Manager as many of such powers and duties as may be specified in such instrument.

13. (1) The Corporation may appoint and employ at such remuneration and on such terms and conditions as it thinks fit and, with the prior approval of the Governor, such officers and servants as it deems necessary for the proper carrying out of its functions under this Law.

Appointment of officers and servants

(2) The persons so engaged shall perform such duties as may be assigned to them by the General Manager.

14. The validity of any act done or proceedings taken under this Law shall not be questioned on the ground of-

Protection of Corporation

- (a) the existence of any vacancy in the membership of, or any defect in the constitution of, the Corporation;
- (b) the contravention by a member of section 8; or

- (c) any omission, defect or irregularity not affecting the merits of the case.

Protection of members

15. No personal liability shall attach to any member in respect of any thing done or suffered in good faith under this Law, and any sums of money, damages or costs which may be recovered against any such member in respect of any act or thing done *bona fide* for the purpose of carrying this Law into effect shall be paid out of the funds and resources of the Corporation.

Policy

16. (1) The Governor may, after consultation with the Chairman, give to the Corporation directions of a general character as to the policy to be followed in the performance of its functions in relation to matters appearing to him to concern the public interest.

(2) The Corporation shall furnish the Minister with such returns, accounts and other information as he may require with respect to the property and activities of the Corporation, and shall afford to him facilities for verifying such information in such manner and at such times as he may reasonably require.

PART III-Functions of Corporation

Functions

17. (1) Subject to this Law, the Corporation shall have power to carry out or provide for the acquisition and building of houses in the Islands

(2) Subject to this Law, the Corporation may, for the purpose of performing any of its functions under this Law, do anything and enter into any transaction which, in its opinion is necessary to ensure the proper performance of its functions.

(3) In particular and without prejudice to the generality of subsections (1) and (2), the Corporation may, in connection with the performance of its functions under subsections (1) and (2)-

- (a) acquire, manage and dispose of land;
- (b) directly, or through other persons or the Government, lay out, construct and maintain buildings and carry out such other building and engineering operations as may appear to it to be necessary or desirable in, over or under land;
- (c) provide and maintain roads, water and sewerage systems, car parks, piers, public parks, public gardens and other public amenities;
- (d) carry on any business or undertaking for housing development;

- (e) make arrangements with other persons for the purpose of enabling them to provide housing or finance therefor;
- (f) engage in any other activity designed to promote housing development;
- (g) with the approval of the Governor, make gifts or donations in deserving cases;
- (h) provide, maintain and keep up government houses and other buildings;
- (i) provide and make available for purchase, leasing or renting houses of all kinds;
- (j) make available moneys for the purpose of financing the building and acquisition of houses upon such terms and conditions as the Corporation may decide; and
- (k) carry on any business incidental or conducive to the achievement of any of the functions of the Corporation, including but not limited to the business of builders, contractors, insurers, real estate managers and land agents.

(4) The Corporation shall, in performing any of its functions under this Law, take such action as may be necessary and practicable to ensure the preservation of sites and objects of architectural or historical interest.

(5) The Corporation shall carry out periodic surveys for the information of the Minister into-

- (a) the housing requirements of the Islands;
- (b) sources of funding for mortgage finance in the Islands; and
- (c) improved and less costly methods of house construction.

PART IV-Powers of Corporation

18. (1) The Corporation shall have power to make a transfer scheme for the transfer of the whole or any part of the property, rights or liabilities of the Corporation to -

Powers to make transfer schemes

- (a) any company registered under the Companies Law (1995 Revision); or
- (b) any person (including any body corporate or incorporate) carrying on business in the Islands in connection with the provision of financial services to individuals.

1995 Revision

(2) The powers conferred on the Corporation by subsection (1) shall only be exercisable for the purpose of effecting or facilitating the transfer of such property, rights or liabilities of the Corporation as the Governor may direct.

(3) The Governor may, after consultation with the Corporation, direct the Corporation to exercise any power conferred by subsection (1), and, if he does so, the Governor may also give the Corporation directions with respect to -

- (a) the manner in which, and period within which, the power is to be exercised;
- (b) the property, rights or liabilities to be transferred; and
- (c) the company or person (including any body corporate or unincorporate) to whom the transfer is to be made.

(4) The Corporation shall not exercise the power conferred by subsection (1) except pursuant to a direction given by the Governor under subsection (3).

(5) If the Governor gives a direction under subsection (3), the Corporation shall be required to make a scheme for the transfer of the whole of the property, rights or liabilities of the Corporation specified in the direction.

(6) Subject to sections 19 to 24, on the day on which a scheme under subsection (1) comes into force, any transfer of property, rights and liabilities under the scheme shall, subject to section 19, have effect by virtue of this Law.

Transfer schemes

19. (1) A transfer scheme shall define the property, rights and liabilities to be transferred to the transferee.

(2) A transfer scheme may -

- (a) provide that any rights or liabilities specified or described in the scheme shall be enforceable by the Corporation against the transferee;
- (b) impose on the Corporation or transferee an obligation to enter into such written agreements with, or execute such other instruments in favour of, the Corporation or transferee or such other person as may be specified in the scheme; and
- (c) make such supplemental, incidental, consequential or transitional provisions as the Corporation considers appropriate.

(3) An obligation imposed on the transferee by a provision included in a transfer scheme by virtue of paragraph (b) of subsection (2) shall be enforceable by civil proceedings by the Corporation for an injunction or for any other appropriate relief or remedy.

(4) A transfer scheme made by the Corporation shall not come into force unless it, and any transfer proposed under it, has been approved by the Governor.

(5) It shall be the duty of the Corporation to provide the Governor with all such information and other assistance as he may require for the purposes of or in

connection with the exercise, in relation to a transfer scheme, of an approval of the scheme and of a transfer under the scheme.

20. (1) This section applies where any registered charge is transferred under section 18.

Transfers and
registration of charges

(2) A deed executed by the Corporation purporting to transfer its charge or the benefit thereof shall, unless a contrary intention is therein expressed, and subject to any provisions therein contained, operate to transfer to the transferee -

- (a) the right to demand, sue for, recover, and give receipts for, the money or money's worth secured by the charge, and the interest then due, if any, and thenceforth to become due thereon;
- (b) the benefit of all securities for the same, the benefit of and the right to sue on all covenants with the mortgagee and the right to exercise all powers of the mortgagee; and
- (c) all the estate and interest in the property subject to the charge then vested in the Corporation subject to redemption, but as to such estate and interest subject to the right of redemption then subsisting.

(3) The transferee shall be entitled to be registered as proprietor in place of the Corporation on an application in that behalf made to the Registrar of Lands.

(4) On an application made under subsection (3), the transferee shall supply to the Registrar of Lands such information and produce to him such documents as he may require for the purpose of enabling him to deal with the application.

(5) Any person registered in the place of the Corporation as proprietor of a charge shall hold the charge in respect of which he is registered subject to any liabilities, rights or interests which are unregistered (but nevertheless enforceable) and subject to which the Corporation held the charge; but, for the purpose of any dealing, that person shall be in the same position as if he had taken the charge under a transfer for valuable consideration which did not have effect under section 18.

(6) No application under subsection (3) (in respect of a transfer under section 18) shall give rise to any liability to pay fees to the Registrar of Lands and no such fees shall be charged.

21. (1) Any provision which imposes a prohibition (whether absolute or qualified) on the transfer of any property or rights of the Corporation, shall be treated as not applying in the case of -

Restrictions on ceasing
to carry on business

- (a) a transfer under section 18; or
 - (b) any preparations for such a transfer, including -
 - (i) the enactment of this Part; or
 - (ii) any preparations for the enactment of this Part.
- (2) In this section -
- (a) any provision which has the effect of penalising the effecting of any description of transfer shall be treated as prohibiting it; and
 - (b) any provision which relates to the ceasing of the Corporation's business, or the Corporation threatening to do so, shall be treated as prohibiting any transfer necessary to effect such a cessation of business or relating to a threat to do so.
- Preparatory work and the overriding nature of functions under this Part
22. (1) The functions of the Corporation shall be deemed always to have included the functions of preparing for the enactment of this Part.
- (2) Nothing done in pursuance of this Part by the Corporation, or by any member or officer of the Corporation, shall be taken to constitute a breach of any duty owed to persons -
- (a) who are holders of debentures given by the Corporation; or
 - (b) who have charged any property to the Corporation.
- Stamp duty
23. (1) No transfer effected under section 18 shall give rise to any liability to stamp duty.
- (2) Stamp duty shall not be chargeable -
- (a) on a transfer scheme approved by the Governor under section 19; or
 - or
 - (b) on an instrument which is certified by the Governor to be made in pursuance of such a scheme.
- Power to prepare for transfer of functions
24. (1) The Corporation shall have power to prepare for any enactment by or under which the functions of the Corporation are transferred to another statutory corporation.
- (2) The Corporation may do whatever is necessary for, or conducive to, the carrying out of the preparations referred to in subsection (1).

PART V-Financial

- Funds of Corporation
25. (1) The funds and resources of the Corporation shall consist of-

- (a) such sums as may, from time to time, be placed at its disposal by the Legislative Assembly;
- (b) funds arising from the sale, lease or other disposition of property vested in the Corporation;
- (c) funds arising from any source consequential upon the execution of mortgage finance arrangements;
- (d) sums borrowed by the Corporation for the purpose of meeting any of its obligations or discharging its functions; and
- (e) all other sums or property that may become payable to or vested in the Corporation in respect of any matter incidental to its powers and duties.

(2) The Governor may, by Notice published in the Gazette, vest in the Corporation any lands for the time being vested in him under the Governor (Vesting of Lands) Law (1997 Revision) upon such tenure and terms, and subject to such conditions, as may be specified in such Notice. 1997 Revision

26. (1) Subject to this Law, the Corporation may borrow, secure or raise money by the issue of debentures or debenture stock or other security for- Borrowing powers

- (a) the financing of the purchasing of land;
- (b) the laying out and development of any such area;
- (c) the provision of working capital;
- (d) the fulfilling of the functions of the Corporation under this Law;
- (e) redemption of any debentures, debenture stock or other security that the Corporation is entitled or required to redeem; and
- (f) any other expenditure properly chargeable to capital account.

(2) The power of the Corporation to borrow shall be exercisable only with the approval of the Governor as to the amount, the sources of borrowing and the terms on which the borrowing may be effected; and an approval given in any respect for the purpose of this subsection may be either general or limited to a particular borrowing or otherwise and may be either unconditional or subject to conditions.

27. (1) The Government, with the approval of the Legislative Assembly, may guarantee, in such manner and on such conditions as may be specified, the payments of the principal and interest of any authorised borrowing of the Corporation. Guarantee of borrowing of Corporation

(2) Where the Financial Secretary is satisfied that there has been default in the payment of any principal monies or interest guaranteed under this section he shall direct the repayment out of the general revenues of the amount in respect of which there has been such default.

(3) The Corporation shall make to the revenues of the Islands at such times and in such manner as the Financial Secretary may direct, payments of such amounts as may be so directed in or towards repayment of any sums issued in fulfilment of any guarantee given under this section, and payment of interest on what is outstanding for the time being in respect of any sums so issued at such rate as the Financial Secretary may direct, and different rates of interest may be directed as regards different sums and as regards interest for different periods.

Reserve Fund

28. The Corporation shall establish a Reserve Fund which shall be dealt with and applied in accordance with any direction which may, from time to time, be given to the Corporation by the Minister.

Application of funds

29. The funds and resources of the Corporation shall be applied in -

- (a) financing-
 - (i) the purchase of any land intended for housing;
 - (ii) the costs of developing such land and any other property vested in the Corporation from time to time and providing services;
 - (iii) costs of and incidental to the building of houses by persons generally; and
 - (iv) the costs of and incidental to erecting, maintaining, keeping up and managing houses and other buildings (including Government houses and other buildings) for the time being vested in the Corporation or under its responsibility; and
- (b) defraying -
 - (i) the remuneration and allowances of members and of any committee of the Corporation;
 - (ii) salaries, remuneration, other allowances and payments of contributions towards pensions, if any, for the officers and servants of the Corporation;
 - (iii) the payment of interest on any debenture, debenture stock or other security issued and on any loan raised by the Corporation;
 - (iv) sums required to be transferred to a sinking fund or otherwise set aside for the purpose of meeting provision for the redemption of debenture, debenture stock or other security for the payment of other borrowed money;
 - (v) the payment of rates, taxes, insurance premiums and other outgoings and of the expense of maintenance or disposal in connection with lands and buildings vested in the Corporation or over which it has power of disposition by virtue of this Law;

- (vi) sums to be appropriated to the Reserve Fund; and
- (vii) the payment of all other expenses authorised by or incidental to the operation of this Law and of any other expenditure authorised by the Corporation.

30. (1) The Corporation shall keep accounts of its transactions to the satisfaction of the Financial Secretary, and such accounts shall be audited annually by qualified accountants appointed by the Corporation. Accounts and audit

(2) The members, officers and servants of the Corporation shall grant to the accountants appointed to audit the accounts under subsection (1) access to all books, documents, cash and securities of the Corporation and shall give to them on request all such information as may be within their knowledge in relation to the operation of the Corporation.

(3) As soon as the audited accounts have been supplied to the Corporation, the General Manager shall forward to the Minister a copy thereof together with a copy of any report thereon by the auditor.

31. (1) The Corporation shall, not later than four months after the expiration of the financial year, submit to the Minister a report containing- Report

- (a) an account of the activities of the Corporation during the preceding financial year in such form as the Minister may direct; and
- (b) a statement of the accounts of the Corporation audited in accordance with section 30.

(2) The Minister shall cause a copy of the report together with a copy of the audited statement of the accounts and the report of the auditor thereon to be laid on the table of the Legislative Assembly with all due despatch.

32. (1) The Governor may acquire by private treaty or compulsorily under the Land Acquisition Law (1995 Revision) any lands required for housing, and may exercise all powers under the Land Acquisition Law (1995 Revision) in relation to any acquisition or intended acquisition of such lands. Acquisition of land
1995 Revision

(2) The Governor may, upon such terms and conditions as he may determine, vest in the Corporation any lands so acquired by ordering that such lands shall vest in the Corporation as from the date thereof. Any such order shall be published in the Gazette and shall operate to vest the lands absolutely in the Corporation as from the date thereof, free from all encumbrances of any nature whatsoever.

- Power to deal with land and buildings
33. (1) Without prejudice to any of its other powers under this Law the Corporation may-
- (a) let or lease for any term of years, or upon any conditions, any land vested in it under or by virtue of this Law and accept surrenders of any such leases as it may think fit:
Provided that the Corporation shall not exercise the powers conferred by this paragraph without the prior sanction of the Minister if he so directs; and
 - (b) with the consent of the Minister, sell or exchange such land, whether or not it pays or receives any money for equality of exchange.
- (2) The sale or lease of any land vested in the Corporation may be subject to such obligations and conditions as the Corporation, with the approval of the Minister, may impose in regard to the laying out and use of the land in regard to the use and maintenance of any building thereon and upon any such sale the Corporation may, with the approval of the Minister, accept payment of part of the price and secure the remainder by a mortgage or privilege of vendor of the premises.

PART VI-Miscellaneous

- Transfer of officers
34. (1) The Public Service Commission may approve the transfer and appointment of an officer from the public service to the service of the Corporation or from the service of the Corporation to the public service.
- (2) Where a transfer and appointment has been approved under subsection (1), arrangements shall be made by the Government or the Corporation to pay to the Government or the Corporation, as the case may be, such contribution as may be provided for in rules made by the Governor in respect of pensions and gratuities, and any such rules may make provision in different classes of cases.
- Exemption from stamp duty and other charges, etc.
35. (1) Notwithstanding any law providing for the registration of documents or the payment of stamp duties, no certificate, receipt, instrument or other document issued by the Corporation shall be subject to stamp duty, registration fee or any charge of a similar nature; nor shall the Corporation be liable for the payment of any search or inspection fee in any registration office:
- Provided that any purchaser or lessee from, or mortgagor of, the Corporation shall be liable to pay the whole of the stamp duty on any instrument relating to any transaction with the Corporation which would but for this subsection otherwise be payable.

(2) Goods imported by the Corporation in connection with the lawful performance by it directly of any of its functions under this Law shall be exempt from customs duty.

(3) The Trade and Business Licensing Law (1996 Revision) shall not apply to the Corporation or anything lawfully done by it. 1996 Revision

36. Whoever-

Offences and penalties in respect of loans

- (a) obtains a loan from the Corporation by means of any false representation;
- (b) wilfully applies any loan made to him by the Corporation for any purpose other than the purpose for which the loan was made; or
- (c) having obtained a loan from the Corporation wilfully destroys any security given in relation to any such loan,

is guilty of an offence and liable on summary conviction to a fine of two thousand dollars and to imprisonment for twelve months.

37. The Governor may make regulations generally for the proper carrying out of the provisions and purposes of this Law and in particular but without prejudice to the generality of the foregoing may make regulations - Regulations

- (a) for securing the proper laying out and development of any lands transferred to the Corporation;
- (b) prescribing the form of any notice or other document authorised or required by this Law to be served or issued; and
- (c) prescribing any other matter or any thing which may be, or is required by this Law to be prescribed.

38. Proceedings for offences arising out of this Law, or in connection with any loan made hereunder shall not be instituted except by or with the consent in writing of the Attorney-General.

Attorney-General's fiat

Publication in consolidated and revised form authorised by the Governor in Council this 29th day of April, 1997.

Carmena H. Parsons
Clerk of Executive Council