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BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18289
EXHIBIT NO. 44

VIA HAND DELIVERY

Lloyd Jordan, Chairperson
D C Board of Zoning Adjustment
441 4th Street, N W
Second Floor
Washington, D C 20001

Re: Board of Zoning Adjustment Order No. 18289 (the "Order") approving variance and special exception relief for 455 I Street, NW (Square 516, Lot 36[1]), Washington, DC (the "Property") – Request to Extend the Order for a Period of Two Years

Dear Chairman Jordan and Members of the Board

On behalf of EQR-EYE Street LLC ("**Applicant**"), the owner of the Property and the applicant in BZA Case No 18289, we are hereby submitting a request for a two (2) year extension to BZA Order No 18289, granting an extension to approval for variance and special exception relief This request for an extension is made pursuant to 11 DCMR Section 3130 et seq for the good cause shown herein

[1] At the time of the proceeding before the Board, the Property was comprised of Lots 812-825, and 876 Such lots have been combined into one record lot, Lot 36

In BZA Case No 18289, the Applıcant sought varıance and specıal exceptıon relıef ın order to restore the three (3) hıstorıc buıldıngs on the Property (“**Buildings**”) and construct a 110 foot addıtıon to create an approxımately 164,912 square foot resıdentıal and retaıl buıldıng wıth below grade parkıng (the “**Project**”). Other than the combınatıon ınto one record lot, Lot 36, the Property and the plans for the project have not changed sınce the approval under the Order

Enclosed please find the followıng

- Plats depıctıng Property, outlıned ın red (Exhıbıt A)
- Portıon of the Zonıng Map depıctıng Property, outlıned ın red (Exhıbıt B)
- BZA Order No 18289 (Exhıbıt C)
- An Affidavıt from Applıcant Regardıng the Cırcumstances and Good Faıth Efforts Allowıng for the Extension of the Order (Exhıbıt D)
- Map of Nearby Resıdentıal Projects (Exhıbıt E)
- Pıctures of Adjacent Constructıon (Exhıbıt F)
- Authorızatıon Letter Authorızıng thıs Applıcatıon (Exhıbıt G)
- BZA Form 126, Fee Calculator (Exhıbıt H)
- The requısıte filıng fee for thıs request of $1,487 20 (26% of the ınıtıal filıng fee of $5,720 pursuant to Sectıon 3180 1(f)) ın a check made payable to the D C Treasurer

I OVERVIEW OF THE PROJECT

A The Property

The Property has approxımately 144 58 feet of frontage on I Street, NW, as depıcted on the plat attached as Exhıbıt A The total area of the Property ıs approxımately 20,614 square feet The Property ıs located the Mount Vernon Trıangle Hıstorıc Dıstrıct The Project has already been revıewed by the Hıstorıc Preservatıon Revıew Board (“**HPRB**”) and staff at the Hıstorıc Preservation Office (“**HPO**”)

The Property ıs located ın the Downtown Development Dıstrıct (“**DD**”)/Mount Vernon Trıangle (“**MVT**”) Overlay/C-2-C Zone Dıstrıct, as depıcted on the portıon of the Zonıng Map attached as Exhıbıt B Sınce the Property ıs located ın the DD/MVT

Overlay/C-2-C Zone Dıstrıct, a maxımum floor area ratıo ("**FAR**") of 8 0 ıs typıcally permıtted, however, a mınımum of 4 5 FAR of resıdentıal use ıs requıred Thıs requıred resıdentıal use may be accounted for off-sıte ın a Combıned Lot Development ("**CLD**") The maxımum permıtted FAR ın the DD/MVT/C-2-C Zone Dıstrıct may be ıncreased to 8 5 when preferred retaıl uses are provıded on sıte or Transferable Development Rıghts ("**TDRs**") are utılızed The FAR can also be ıncreased above 8 5 FAR ıf addıtıonal resıdentıal densıty ıs constructed or pursuant to the CLD program

Further, the maxımum permıtted buıldıng heıght ın the DD/MVT/C-2-C Zone Dıstrıct ıs based on the Act to Regulate the Heıght of Buıldıngs ın the Dıstrıct of Columbıa ("**Height Act**") Under the Heıght Act, the maxımum allowable buıldıng heıght on the Property ıs 110 feet A maxımum lot occupancy of 80% is allowed ıf a buıldıng provıdes resıdentıal use

B <u>Project Approval</u>

In order to ımplement the Project, the Applıcant requıred approval for (ı) specıal exceptıon relıef pursuant to 11 DCMR § 3104 1 from 11 DCMR §§ 771 1 and 411 11 relatıng to penthouse unıform heıght requırements, and (ıı) varıance relıef pursuant to 11 DCMR § 3103 2 from 11 DCMR § 772 1 relatıng to lot occupancy requırements, from 11 DCMR § 776 4 relating to closed court area requırements, and from 11 DCMR § 1707 4 relatıng to FAR lımıtatıons on hıstorıc lots

On January 10, 2012, the Board of Zonıng Adjustment ("**BZA**" or "**Board**") voted to approve the proposed project at the Property wıth the above-descrıbed relıef. BZA Order No 18289 was made final on January 20, 2012 A copy of BZA Order No 18289 ıs attached as <u>Exhıbıt C</u>

II JURISDICTION AND STANDARD OF DECISION OF THE BZA

The BZA ıs permıtted to extend ıts Orders under Sectıon 3130 et seq of the Zonıng Regulatıons Sectıon 3130 et seq permıts the BZA to extend ıts Orders for a maxımum perıod of two (2) years Gıven the Applıcant's ongoıng efforts to move thıs Project forward, the clımate for sımılar resıdentıal product types ın the vıcınıty of thıs Property, and other factors, we belıeve that an addıtıonal two (2) year extensıon to the Order ıs appropriate

In order to extend a BZA Order under 11 DCMR Sectıon 3130 6, the BZA must determıne that (a) the extensıon request ıs served on all partıes to the applıcatıon by the applıcant and all partıes are allowed thırty (30) days to respond, (b) there is no substantıal change ın any of the materıal facts upon whıch the Board based ıts orıgınal approval of the Order that would undermıne the BZA's justıficatıon for approvıng the orıgınal Order, and (c) the applıcant demonstrates that there ıs good cause for such extensıon

III. RATIONALE FOR EXTENSION OF BZA ORDER NO 18289

A Extensıon request served on all partıes to the applıcatıon

Thıs extensıon request ıs beıng served sımultaneously on the only party to the applıcatıon for BZA Case No 18289, the relevant Advısory Neighborhood Commıssıon (**"ANC"**) – ANC 6E[2] The ANC ıs allowed thırty (30) days to respond to thıs request The extensıon request ıs also beıng sent to the publıc agencıes that revıewed the orıgınal applıcatıon Further, the approval of the Owner's request will not prejudıce the rıghts of

[2] Note that the Dıstrıct's ANCs were reconfigured ın early 2013 and the Property was swıtched from ANC 6C to ANC 6E

any party and is not otherwise prohibited by law Just as the initial relief of BZA Order No 18289 did not prejudice the rights of any party, the extension of the Order will not prejudice any party There are no residential neighbors or structures that would be adversely affected as the result of the relief under BZA Order No 18289 The project has the potential to greatly improve the aesthetics of a prominent parcel at a location with positive overall impacts on the neighborhood Therefore, the first criterion for an extension to BZA Order No 18289 has been satisfied

B <u>No Substantial Change to Any of the Material Facts</u>

The factors satisfying the variance standards and allowing for the special exception relief remain as they were for the Board's approval of the requested relief. There has been no substantial change in any of the material facts relating to the case

Regarding the variance relief, the exceptional, unique conditions of the Property remain, such as the existence of the historic, atypically-shaped Buildings Retention of those historic buildings, which is desirable from a design, sustainability, and cultural point of view, means that the Applicant is inheriting a set of physical constraints that cannot be altered Similarly, the practical difficulty on the Applicant of the strict application of the Zoning Regulations remains The Buildings still exceed the matter of right lot occupancy of 80% for the Property The Buildings also create the physical constraints and historic review that created non-conforming courts The Applicant would still face a physically challenging and financially infeasible reconstruction and restoration of the Buildings if the Zoning Regulations were strictly enforced. The Zone Plan would still not be harmed through the approval of the requested relief since the Project and related relief would enact policies desired by the Zoning Regulations and Comprehensive

Plan The Project would improve the area and allow a more efficient use of the Property Further, the design has been approved by the HPRB and found to be consistent with the historic elements on the Property, the very factor that creates the exceptional conditions and practical difficulties that warrant the variance relief

Regarding the special exception relief, the penthouse uniform height requirement relief is still in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and does not affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps 11 DCMR § 3104 1 In compliance with standards set forth in § 411 11, the Property is affected by several factors relating to the historic structures contained thereon that make the full compliance with the roof structure requirements impracticable Specifically, it is more aesthetically desirable to have the visual impact of the roof structure lessened when possible, through the varying heights of such structure Further, the approved relief would have no negative impact on the intent and purpose of the Zoning Regulations or the light and air of adjacent buildings There has been no change to the Property's treatment by the D C Comprehensive Plan since the Order was issued

Therefore, the second factor for an extension to BZA Order No 18289 has been satisfied

C <u>Good Cause for Delay and Actions Subsequent to Issuance of BZA Order No 18289</u>

Under the third prong of Section 3130 6, in order to determine whether a BZA Order should be extended, the Board must determine whether there is "good cause shown" for the requested extension Under Section 3130 6, good cause for the extension must be demonstrated with substantial evidence of one or more of the following criteria

(1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant's reasonable control, (2) An inability to secure all required governmental agency approvals by the expiration date of the Board's order because of delays that are beyond the applicant's reasonable control, or (3) The existence of pending litigation or such other condition, circumstance, or factor beyond the applicant's reasonable control

A variety of factors contribute to the good cause for an extension to the validity of the Order These factors are detailed below An affidavit from the Applicant certifying to the elements described below is attached hereto as <u>Exhibit D</u>

1 <u>Current Oversupply of the Residential Market (Rental)</u>

The District is currently undergoing a construction boom, particularly for residential, multi-family projects Specifically, the immediate vicinity of the Property is experiencing a large multi-family construction surge, particularly in the Mount Vernon Triangle and NoMA areas Property owners must be strategic about phasing their developments Just a few years ago, this was not a foreseeable situation, but there are simply "too many cranes " For example, across the alley and to the northeast of the Property there is a total of approximately 467 residential units currently under construction and coming to market within the next year In addition to the immediate multi-family construction mentioned above, an additional 783 units on L Street were either recently completed or are currently under construction In total, approximately 1,250 multi-family units were either already delivered or will be delivered in the next 20 months A map of the projects newly completed, currently under construction and planned in the vicinity of the Property is attached as <u>Exhibit E</u> As you can see on

Exhıbıt E, the Property ıs surrounded by a large supply of resıdentıal unıts delıvered and beıng delıvered wıthın a small wındow of tıme In addıtıon, there are several other newly-constructed or under-constructıon rental resıdentıal projects ın the near vıcınıty of the Property, whıch wıll add to the supply, such as CıtyCenter DC's approxımately 458 rental unıts

The result of such excess market supply ıs that resıdentıal rents are flat or declınıng According to Equıty Resıdentıal's[3] most recent earnıngs call

> New supply ın Washıngton, D C ıs begınnıng to ımpact our numbers 2014 same-store revenue comıng from the Washıngton, D C market, whıch we expect to produce slıghtly negatıve revenue growth next year

Per Equıty's 3rd quarter earnıngs, occupancy ın the Washıngton DC submarket decreased by 0 5% from 2012 to 2013 As a result, the Project would not be able to be constructed and operated as underwrıtten

Equıty ıs a hıgh qualıty buılder that ıs also a long term holder of ıts propertıes Therefore, the Applıcant ıs focused on buıldıng a long term successful project at the Property rather than brıngıng more supply to the market ın the short term Whıle stıll commıtted to the Property and the Project, the Applıcant belıeves that the better strategy for the Mount Vernon Triangle area ıs to allow for, at a mınımum, partıal absorptıon of the unıts already ın the pıpelıne before brıngıng thıs project onlıne

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[3] The Applıcant ıs a subsıdıary of Equıty Resıdentıal ("**Equıty**"), one of the world's largest real estate ınvestment trusts

2 Fınancıng

Although the Applıcant ıs "self-funded" from ıts larger organizatıon, the parent company's ınvestment commıttee acts as a de facto lender Each project must be separately approved on ıts own merıts by Equıty's ınvestment commıttee Thıs process ıs analogous to applyıng to a bank or other lender for funds for constructıon The above-descrıbed market pressures and supply dıctates against an approval of constructıon fundıng from Equıty's ınvestment commıttee at the current poınt ın tıme

In grantıng past extensıons, the Board has determıned that adverse market condıtıons and/or an applıcant's efforts to finance a project approved by a BZA Order, constıtute good cause under the first type of good cause crıterıa descrıbed ın Sectıon 3130 6 We belıeve such standard can be met when a project ıs to be financed by a parent company and therefore subject to an ınternal financıng revıew and such project financıng ıs wıthheld Pursuant to the affidavıt attached hereto as Exhıbıt D, thıs was the financıng sıtuatıon confronted by the Applıcant

3 Corporate Realıgnment

Sınce the ıssuance of the Order, Equıty, the parent company of Applıcant, purchased 60% of Archstone, Inc (wıth AvalonBay, Inc purchasıng the other 40% of such entıty) Thıs transactıon closed ın the first quarter of 2013 As a result, Equıty now owns a sıgnıficantly larger number of resıdentıal multı-famıly unıts ın the Washıngton, DC area The purchase of Archstone swelled Equıty's number of Washıngton-area unıts from roughly 12,000 to roughly 19,000

As a result, Equıty ıs stıll filterıng through the propertıes ıt has obtaıned and reconfigurıng its holdıngs ın the Washıngton, DC area Equıty has a fiducıary duty to ıts investors to implement its projects and reconfigure its properties with an eye towards considering the current state of the local market In light of this, the Applicant is unable to proceed with the Project in the short term

4 Physical Constraints on the Site

In addition to the above serious obstacles, the property to the immediate north of the Property, 450 K Street, NW, is currently under construction The developer of such property has a crane, large amounts of construction equipment, vehicles, personnel and materials in a small area, including the alley behind the Property In fact, the developer of such property has a license agreement with the Applicant to rent and utilize the Property for staging and storage of construction equipment and materials due to such tight configuration Pictures depicting the current alley configuration behind the Property and the proximity of the Property to the adjacent construction are attached as Exhibit F

It would be very difficult to introduce another construction project into such areas simultaneous to the current construction activities for 450 K Street, NW The constant conflict of equipment, including the construction cranes necessary for construction, would provide for significant coordination challenges and delay each projects construction schedules considerably Furthermore, it would generate extreme traffic difficulties for the construction of both projects to proceed simultaneously Clearly, this is another reason to phase the Project

5 5th and I Street NW Request for Proposals

The District is currently soliciting offers of redevelopment for the publicly-owned parcel immediately to the west of the Property, Lot 59 in Square 516 (aka the "5th and I" parcel or 463 I Street, NW) The District has not yet selected the Developer and the

Applicant does not yet know what the proposed project might be The Applicant would like to explore potential synergies and further understand potential redevelopment options of the 5th and I parcel prior to proceeding under its building permits on the Property. The Applicant expects the details regarding the developer and development plan for the "5th and I" parcel to be selected during the extended term of the Order requested by the instant application

6 Good Faith Efforts

Even in the face of the circumstances and conditions described above, the Applicant has acted diligently, prudently, and in good faith to proceed towards the implementation of BZA Order No 18289 The Applicant has spent considerable funds on plans and construction drawings necessary to apply for a building permit from the District of Columbia Department of Consumer and Regulatory Affairs ("**DCRA**") for the Project **A list of third party work solicited and funded by the Applicant along with other costs paid by the Applicant to proceed with the Project since the issuance of the Order totaling approximately $2.5 million is described on Exhibit D**

Applicant has applied for its raze permit for the relevant structure on the Property and two (2) public space permits The Applicant notes that it must also perform archeological work within the Property prior to obtaining a building permit for the Project Such work introduces an element of indefinite delay that does not commonly impact projects in the District of Columbia.

In addition, Applicant obtained the public space permits necessary for the project – from the DDOT Public Space Committee – in May 2013, incurring the associated application and consultant fees that were required during such process

Despite the above, Applicant continues to price the construction costs of the Project with general contractors

7 Summary of Good Faith

Given the above, developing the Project to date has not been viable However, the Applicant believes that once the factors described above improve or are addressed, the Project will have the potential to proceed Therefore, the third standard for an extension to a BZA Order has been satisfied in the instant case

Any further information regarding the Applicant's satisfaction of this third prong of the BZA Order extension test can be provided by Applicant upon request

IV CONFORMANCE TO THE COMPREHENSIVE PLAN AND THE ZONING REGULATIONS

This request for an extension of time within which to complete the Project is consistent with the intent and purposes of the Zoning Regulations, the requirements of Chapter 31 of the Zoning Regulations, and the District of Columbia Comprehensive Plan ("**Plan**") for the National Capital The Land Use Map of the Plan designates the site for High Density Commercial and High Density Residential use The Plan's land use designation of the Property has not changed since the Order was approved Further, the Plan's policies and goals still support the Project, and would support an extension of time for BZA Order No 18289

V CONCLUSION

For all of the above reasons constituting good cause, the Applicant requests a two (2) year extension for BZA Order No 18289

Thank you for your attentıon to thıs applıcatıon

Respectfully submitted,

John T Eptıng

Jeffrey C Utz

cc Ben Stoll

Certificate of Service

I certify that on January 8, 2014, I delivered a copy of the foregoing document via hand delivery or first class mail to the addresses listed below

Jeffrey C Utz

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MP

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