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February 10, 2014

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 Case No. 18289A (the "Order") for 455 I Street, NW (Square 516, Lot 36[1]), Washington, DC (the "Property") – Request to Extend BZA Order No. 18289 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. 18289A, we are hereby submitting a supplemental letter into the record to address the Office of Planning's ("**OP**") request for additional information in its February 4, 2014 report ("**OP Report**") and Advisory Neighborhood Commission ("**ANC**") 6E's vote of support

[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

The Applıcant has requested a two (2) year extensıon to BZA Order No 18289 (the "**Order**"), whıch granted approval for varıance and specıal exceptıon relıef Thıs request for an extensıon is made pursuant to 11 DCMR Sectıon 3130 et seq for good cause shown.

I. OP Report

In the OP Report, OP requested that the Applıcant file more ınformation to demonstrate additional evıdence of good faıth Specıfically, OP asked the Applicant to submit "a lıst of attempts to secure financing for the project and documentatıon of lending being denıed by financıal ınstıtutıons" and "a demonstratıon that the applıcant ıs prepared to proceed with the approved project regardless of the outcome of the disposition of the Dıstrıct property at 5th and I Streets, NW" The Applıcant's addıtıonal ınformatıon is descrıbed below

A Request for a List of Attempts to Secure Fınancıng and Denıals of Such Requests

As descrıbed ın the Applıcant's January 8, 2014 Order extensıon applıcatıon submission ("**Application**"), the Applıcant ıs a subsidiary of Equıty Residential ("**Equity**") Equıty Resıdentıal ıs a publıcly traded Real Estate Investment Trust ("**REIT**") and therefore Equıty self-funds its projects As a result, there ıs no abılıty to produce a lıst of attempts and denıals of fundıng from outsıde sources All communıcatıons relatıng to financıng for the project has been ınternal to Equity. Thıs financıng dıalogue has been ongoıng and the project has been considered for funding no less than monthly sınce approved by the BZA

Equıty has a fiduciary responsibilıty as a public company relatıng to financing the project Sımılar to a bank or other type of lender, Equıty's ınvestment commıttee ıs charged wıth allocating capıtal as ıt wıll be best utılızed and has decıded, because of the residentıal multi-famıly oversupply and other condıtıons descrıbed hereın, that allocatıon to DC at thıs tıme is not supported

B Request for a Demonstratıon of Applıcant's Proceedıng with Project Regardless of the 5th and I Street RFP Outcome

The Applıcant ıs prepared to proceed wıth the approved project regardless of the outcome of the RFP at the adjacent 5th and I Streets, NW sıte

As evıdence of such ıntent and preparatıon to proceed with the approved project, the Applıcant has applıed for ıts building permıt for the approved project and has pushed it well ınto the Dıstrıct of Columbıa Department of Consumer and Regulatory Affairs ("**DCRA**") revıew process Such efforts ıncluded the commıssıonıng of constructıon drawıngs and other sıgnıficant desıgn documentatıon necessary to reach this poınt of the DCRA buildıng permıt revıew process In addıtıon, the Applıcant has obtaıned the necessary publıc space permıts for the approved project and has applıed for its raze permit

As noted in the Applıcant's Applıcation, the Applıcant has spent sıgnıficant sums of time and money since the ıssuance of the Order to brıng the approved project to realıty In total, the Applicant has spent $2 5 mıllıon on thıs project The Applıcant has spent more tıme and money than the typical BZA-approved-project requestıng a 2 year extensıon

Further, the Applıcant priced the current plans wıth a general contractor as late as Fall 2013. Durıng such tıme, the 5th and I Street, NW RFP process was ongoing. As a result, the 5th and I process has not altered the intended design

The Applicant included the delays of the 5th and I Street RFP as a secondary factor in its Application in order to descrıbe the uncertaınty relatıng to the Property. Such uncertainty contributes to the environment where a delay to construction commencement has been warranted. Without the existence of the significant supply of multi-family residential, Equity Residential's merger with Archstone, and the physical constraints of construction currently, as described below, this factor alone would not have delayed the project

C <u>Request for a Demonstration of Applicant's Proceeding with Project Regardless of the 5^{th} and I Street RFP Outcome</u>

The OP Report states that the Applicant is requesting the extension based upon good cause relating to an inability to obtain financing While the lack of internal financing approval for the project does constitute a portion of the good cause for the requested extension, there are several other relevant factors not related to financing that constitute good cause as "other conditions, circumstances, or factors beyond the applicant's reasonable control" under Section 3130 6(c)(3) The OP Report does not discuss these criteria for a time extension In fact, there are more factors that fall under the umbrella of "other conditions" than there are adverse financing conditions in this case One of the "other condition" factors is the uncertainty created by the 5^{th} and I Street RFP described above.

In addition, the Section 3130 6(c)(3) "other conditions" good cause elements are summarized as follows.

- <u>Oversupply of the Residential Rental Market</u> – As explained in the Application, the District is currently experiencing a boom in multi-family residential projects, particularly in the immediate vicinity of the property – the Mount Vernon Triangle and NoMA areas In total, approximately 1,250 multi-family units were either already delivered or will be delivered in the next 20 months in the immediate vicinity of the project The Applicant believes that increasing the window for delivery of the project is necessary to allow for the absorption of some of that large recent and coming supply.

- <u>“Merger” of Equity Residential and 60% of Archstone</u> – Since the issuance of the Order, Equity, the parent company of Applicant, purchased 60% of Archstone, Inc (with AvalonBay, Inc purchasing the other 40% of such entity) Equity now owns a significantly larger number of residential multi-family units in the Washington, DC area as the number of units jumped from roughly 12,000 to roughly 19,000. This created a need for reconfiguration of the company’s assets and delayed the ability to embark on the project The company was forced to reassess its projects and the timing of actions taken with such properties
- <u>Physical Constraints Due to Adjacent Construction</u> – The property to the north, 450 K Street, NW, is currently under construction and utilizes the entirety of the alley to the north of the project 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 It would be difficult for both projects to proceed with construction simultaneously and likely result in a greater use of public space than necessary

D <u>Good Cause Shown</u>

Given the totality of the conditions and circumstances described above and in the Application, the Applicant believes that the “good cause” required under the third prong of Section 3130 6 has been set forth Specifically, the Applicant has shown that both Sections 3130 6(c)(1) and 3130 6(c)(3) have been satisfied in that the project has not been able to obtain sufficient project financing, and other conditions beyond the applicant’s reasonable control, respectively

Despite such challenges, 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 DCRA for the Project As mentioned, the Applicant has paid approximately $2 5 million since the issuance of the Order The Applicant continues to price the construction costs of the Project with general contractors

II **ANC Report**

The Applicant met with ANC 6E's Planning and Zoning Committee and ANC 6E on January 29, 2014 and February 4, 2014, respectively ANC 6E voted to support the Applicant's request for an extension to the BZA Order However, the ANC voted to support a one year extension to the Order rather than a two year extension The Applicant reiterates its request for a two year extension of the Order

The pending request is the Applicant's first request for an extension of the Order Section 3130 1 sets forth a two year extension term rather than a one year term Although the Applicant hopes that its building permit is issued and it will be able to begin construction activities in the near term, the factors that have delayed construction to date are out of Applicant's control It would be more efficient to allow for a two year term within which such factors can be resolved instead of requiring another application for an extension in one year

The Applicant shares the ANC's interest in seeing this project be completed as soon as possible The Applicant has a significant investment in this property and the soft costs to create an approvable plan, currently pending at DCRA.

In addition, the Applicant and the ANC discussed that the Applicant would increase its maintenance efforts at the Property The Applicant has been meeting with Historic Preservation Office staff to obtain review and approval of the elements of its maintenance and repair plan and has started the process to perform such work

III 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 attention to this application

Respectfully submitted,

John T Epting

Jeffrey C Utz

cc: Richard Boales
Ben Stoll

Certificate of Service

I certify that on February 10, 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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