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HAND DELIVERY

District of Columbia Zoning Commission
441 4th Street, NW
Second Floor
Washington, DC 20001

ZONING COMMISSION
District of Columbia

CASE NO. 05-30A
EXHIBIT NO. 5

Re: Response to ANC 4B's Letter Requesting a Special Hearing on the Applicant's Request for Extension of Time, Zoning Commission Order No. 05-30 (Consolidated Planned Unit Development – 6000 New Hampshire Avenue, N.E.)

Dear Members of the Zoning Commission:

On behalf of the Applicant in the above-referenced planned unit development ("PUD"), this letter serves as a response to ANC 4B's letter filed with the Zoning Commission on July 11, 2008 requesting that the Zoning Commission schedule a special hearing on the Applicant's request for a two (2) year extension of Zoning Commission Order No. 05-30. Moreover, ANC 4B did not serve a copy of its July 11th letter on the Applicant or the Applicant's representatives.

Specifically, ANC 4B indicates that a "special hearing" should be scheduled since "ANC 4B needs this time to confer with its constituents regarding the existence of pending litigation and the West Group's inability to obtain sufficient project financing because of changes in economic market conditions." However, as set forth herein, as well as in the Applicant's submission of June 13, 2008, requesting the extension, there is no need for a hearing on the requested extension since there are no material factual issues in question.

Zoning Regulations Governing Requests For Extensions of PUD's

Section 2408.10 of the Zoning Regulations authorizes the Zoning Commission to extend the time periods to file for a building permit and to begin construction, provided the following conditions are met:

- (a) The extension request is served on all parties to the application by the applicant, and all parties are allowed thirty (30) days to respond;

ZONING COMMISSION
District of Columbia
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- (b) There is no substantial change in any of the materials facts upon which the Zoning Commission based its original approval of the planned unit development that would undermine the Commission's justification for approving the original PUD; and
- (c) The applicant demonstrates with substantial evidence that there is good cause for such extension, as provided in §2408.11.

The Zoning Regulations define "good cause shown" in §2408.11, as evidence of one or more of the following: (a) an inability to obtain sufficient project financing for the planned unit development; (b) an inability to secure all required governmental agency approvals for a planned unit development; or (c) the existence of pending litigation or such other condition or factor beyond the applicant's reasonable control.

The Applicant Complies with the Applicable Zoning Regulations Governing Requests For Extensions

ANC 4B does not dispute that the Applicant served the extension request on all parties, nor does ANC 4B dispute that there is no substantial change in any of the materials facts upon which the Zoning Commission based its original approval of the planned unit development. Nonetheless, ANC 4B indicates that a hearing should be scheduled because the ANC needs more time to confer with its constituents to determine whether the project has experienced delay's beyond the Applicant's control. However, the Applicant has already submitted the required evidence of the "good cause" for the requested extension.

First, subsequent to the Commission's approval of the PUD, a lawsuit was initiated against the Applicant regarding the purchase, development and sale of the subject property. The case was filed in D.C. Superior Court on Nov 7, 2006 and assigned case number is 06-008142. The complaint is a matter of public record. Thus, the Applicant was unexpectedly required to suspend all development work pending resolution of the litigation, which was just settled in November, 2007. The Applicant is bound by a confidentiality agreement and a settlement agreement, and thus can only disclose the facts that a lawsuit was filed and subsequently settled. The Applicant therefore has had a substantially reduced amount of time to effectively seek financing for the project.

Second, the current residential market has rendered it difficult for the Applicant to obtain sufficient financing for the project, despite the Applicant's good faith efforts. The recent changes in the economy and residential housing market conditions, combined with predictions that housing values will continue to decline, has resulted in a lack of willingness on the part of lenders to finance the project. Moreover, as set-forth in detail in the Applicant's submission of June 13, 2008, the Applicant's investment partner decided to stop all funding requests for new residential projects until market conditions improved. In addition, the lender on the project refused to grant any further extensions on the land loan, which will now have to be replaced with another source of funds. As the value of the underlying property has decreased over the last 18 months, all banks considering replacing the original lender are willing to provide less debt. The difference must be made up by the owners. That additional equity requirement means that the owner/developer must spend the monies previously allocated for land development to cover

the difference between the new loan and the original loan. As such, the owner is delayed until the market stabilizes before it is able to raise the necessary funding to begin the project.

No Hearing is Necessary

A hearing is not necessary for this request since there are not any material factual conflicts generated concerning any of the criteria set forth in §2408.11. Section 2408.12 of the Zoning Regulations provides:

The Zoning Commission shall hold a public hearing on a request for an extension of the validity of a planned unit development *only if, in the determination of the Commission, there is a material factual conflict that has been generated by the parties to the planned unit development concerning any of the criteria set forth in §2408.11. The hearing shall be limited to the specific and relevant evidentiary issues in dispute.*

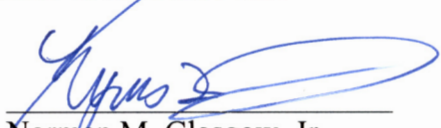
ANC 4B indicates that it "needs this time to confer with its constituents regarding the existence of pending litigation and the West Group's inability to obtain sufficient project financing because of changes in economic market conditions." However, ANC 4B has not, and cannot, dispute the facts that: (1) the subject property has been subject to litigation, (2) the Applicant has been unable to secure financing for the project, or (3) that there are significant impediments in the market place to proceeding with a residential project at this time. Therefore, there is no need for a hearing to address these three points.

In light of this demonstration of good cause and for the reasons stated herein, as well as in the Applicant's submission of June 13, 2008, the Applicant respectfully requests that the Commission approve a two (2) year extension of the approved PUD, without the need for a public hearing, such that an application must be filed for a building permit no later than January 19, 2011 and construction must start no later than January 19, 2012. Moreover, we understand that Citizens Aware Block Organization, also a party to the original case, has submitted a letter to the Zoning Commission indicating the lack of a need for a public hearing on the Applicant's request.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By:


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cc: Advisory Neighborhood Commission 4B (via US Mail)
Citizens Aware Block Organization (via US Mail)
Jennifer Steingasser, DC Office of Planning (via US Mail)