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VIA IZIS

Zoning Commission for the  
District of Columbia  
441 4<sup>th</sup> Street, NW Suite 210S  
Washington, DC 20001

**Re: ZC Case No. 07-13D – Post Hearing Submission  
65 Eye Street, SW (Square 643-S, Lot 801)**

Dear Members of the Commission,

On behalf of ANC-6D, I submit the following supplemental information in response to the Applicant's Post Hearing Submission and the Zoning Commission request made during the hearing on this matter held December 2, 2013, and as a consequence of follow-up discussions between Applicant and ANC-6D subsequent to that hearing.

The Commission will recall that in the ANC's report of November 25, 2013, we expressed support for the development and the plans that have been put forward by the Applicant. We noted that this was a project in which our late Commissioner Ron McBee had taken an intense interest and in which he was the lead contact for the ANC during negotiations for Covenant revisions concerning TR SW's plan to purchase the Randall School from the Corcoran Gallery of Art, discussion with DMPED on any subsequent subdivision thereto, support and testimony before the DC Council regarding revisions to that Covenant and in all subsequent discussions following the transfer of ownership. The Commission will recall the ANC had been struggling to catch up on a number of items – Randall School PUD most prominent among them – during the intervening ten weeks since Commissioner McBee's death.

Accordingly, when the ANC held a vote on this PUD on November 18, 2013, a meeting properly noticed and at which a quorum was present, the Commission voted to conditionally support the plan set forth by the Applicant in the above mentioned case pending resolution on the HPRB matter and further negotiations between the Applicant and the ANC on three specific issues noted in our motion.

Those specific issues included:

1. A clear understanding of any changes that may have resulted from the HPRB meeting that was held on November 21, 2013 – subsequent to our ANC vote.
2. Agreement with the Applicant on a formal Construction Management Plan.
3. An agreement on employment and community hiring guidelines.
4. An updated agreement and enumerated list of community benefits.

Since that time, ANC-6D has been in sporadic e-mail communication and held brief telephone conversations but been afforded just one meeting with the Applicant, a meeting that took place very belatedly and only two days ago on January 15, 2014.

**A. On the HPRB decision**

ANC-6D motion had expressed concern that the Board might substantively alter our understanding of the project after our vote. In fact, it did not. So, on this item, the outstanding concerns of the ANC had been addressed.

**B. Agreement on a Construction Management Plan**

ANC-6D proposed a construction management plan to the Applicant and suggested that it be included as part of the Zoning Order. The plan was similar to what had been proposed – and adopted – by other major developments within our ANC over the past several years for major PUDs. That Agreement was redlined by the Applicant and sent back to the ANC last week.

It is attached as our Exhibit A and we request that it be made part of the Zoning Order.

**C. Agreement on Employment and Community Hiring Guidelines**

ANC-6D had expressed our thoughts with the Applicant about the precise manner in which we could work toward the establishment of a pre-apprenticeship training program that would approximate what the Applicant developed for the Community at the Ellen Wilson Dwellings which was also a Telesis project.

While they have agreed to establish such a program, again, Section II A 3 of the asterisked Agreement requires adjustment since the coordination of such a program ought to properly be developed co-jointly between the Applicant and under the auspices *not* of the ANC but of the Community Benefits Coordinating Council (same as it had been written in the Zoning Orders for The Wharf project).

**D. Community Benefits Agreement**

The Applicant included in this PUD submission an asterisked “Executed Copy” of an agreement that they contend must be upheld verbatim. ANC-6D contends that this agreement was never authorized by the ANC to do anything of the sort, and clearly not meant to be in support of this particular PUD, since 078-13D was not even put before the Zoning Commission for three years following its signature. Indeed, ANC-6D envisioned that this agreement was a consequence of the ANC’s support for the transfer of property from the Corcoran to Telesis.

The Agreement states:

***This agreement concerns the introduction of legislation in the Washington, DC Council (“Council”) to revise the Declaration of Covenants (“Covenant”) entered into November 28, 2006, and supplemented August 21, 2008 (“First Supplement”), between the District of Columbia (“the District”) and the Trustees of the Corcoran Gallery of Art (“Corcoran”). That proposed Covenant revision concerns TR SW’s plan to purchase, from the Corcoran, the former Randall Junior High School, 65 I Street, SW in***

**Washington, DC, Lot 801 in Square 643-S (“Randall project,” or “the project”). This property was the subject of District of Columbia Zoning Commission Order 07-13A.**

**I. SUPPORT FOR THE COVENANT REVISIONS.**

**After execution of their agreement, ANC-6D will provide written support to the mayor, through the Office of the Deputy Mayor for Planning and Economic Development; advocacy with the mayor and to Office of Planning; presentations to the Office of the Mayor or any subdivision thereof specified by TR SW; and supporting testimony before any hearings at the DC Council, for the following revisions in the Covenant. TRSW and ANC-6D expect that this agreement will provide the basis for ANC-6D support for the project going forward.**

It is this Community Benefits Agreement is where ANC-6D continues to have significant differences of opinion with the Applicant. They have stated simply, “We have a signed agreement. It is part of our PUD application.”

The Applicant has told ANC-6D at various times that, even though this is a Zoning action to *amend* elements of the PUD, that the Applicant does not seek to reopen this precise section for discussion — even though there are clearly elements of the Agreement that no longer pertain, includes mention of organizations no longer part of the Southwest Community, provide potential ‘benefits’ where time and circumstance — and the soon-to-be-completed Southwest Small Area Plan may eventually be disallowed (with no alternative mechanism in place for redeployment of resources), and are conditioned upon elements of the development no longer under consideration. As well, and most significantly, the Agreement does not acknowledge that there have been other significant changes to the project the contribute a greater impact upon the existing residential neighborhood and for which no community benefit is proffered.

Was this “Agreement” ever meant to be the *sole* determinant of ANC support for Randall School forever? That would be foolish to assume. Were that so, it would have been unnecessary to have undertaken three years of discussion, community outreach meetings, ANC presentations, HPRB hearings, a second PUD extension and December’s Zoning hearing if the conclusion and support of the ANC would have otherwise been completely predetermined.

- Since July, 2010, when that document was signed, the Applicant has moved to increase the number of units from the Corcoran’s original residential plan by 25% from 440 units to 550 units.
- Since July, 2010, when that document was signed, the Applicant has included within their amended PUD control of portions of the Randall Park public space for a vehicular turn around that will vastly enhance the value of their restaurant access — land that was previously in the public domain and was to have been part of the design of a newly developed children’s playground adjacent to Randall Recreation Center.
- Since July, 2010, when that document was signed, the Applicant has reduced the number of parking spaces by approximately 50%, from 390-470 to approximately 200 vehicles — even as the number of residences were increased dramatically — *and* the Applicant has yet to sign an agreement that precludes

RPP in a neighborhood that is already significantly overburdened with on street parking challenges.

As such, ANC-6D requests that the following be included in the Zoning Order:

*The Applicant will take all necessary steps to remove all buildings in the PUD from Residential Permit Parking (RPP) eligibility for so long as such removal is legal. Necessary steps include the following: (1) Applicant will submit letters to DC Department of Motor Vehicles/ DC Department of Transportation requesting removal of addresses of new buildings, with copies of same to the ANC. (2) Include notice of RPP exemption in any Lease / Sales Agreements for new buildings (3) Include RPP exemption as a running covenant on future sales of those buildings or portions thereof.*

**Indeed, ANC-6D believes that there is still opportunity for the Applicant to enter into substantive discussion – which heretofore they have not – to achieve an agreement that speaks to the realities of where we are at this time.**

It has always been the desire of the ANC to revise various parts of the agreement with a greater level of specificity, concretely and in writing. Clarity and precision is what we seek. That's what makes an agreement hold. We are, however, now up against the expiration of the second PUD extension that occurs in March, 2014. We can only speculate that perhaps that is why there has been a reluctance to make some of these critical adjustments in a timely manner.

**We have been operating in good faith. We continue to believe that it will ultimately serve the mutual interests of the SW Community and the Applicant if we are provided a limited amount of additional time to resolve – in writing -- these outstanding items.**

We believe that the Applicant has their heart in the right place. They are good operators and this is going to be a great project that can only be made better with a bit more precision. And, perhaps because this is as much a creative endeavor as a residential one, the following quote from Picasso is particularly apt: *".... In art, intention is insufficient. It is what one does that counts, not what one has the intention of doing."*

We contend that the same holds true for zoning agreements.

Sincerely,



Andy Litsky  
Vice Chairman  
ANC-6D  
Southwest & Near SE

# **EXHIBIT A**

## **DEVELOPMENT AND CONSTRUCTION MANAGEMENT PLAN**

TR SW 2 LLC (the “Applicant”) will implement this Development and Construction Management Plan (“Plan”) to mitigate potential adverse impact on the surrounding neighborhood resulting from construction activity related to the Applicant’s plans to construct a planned unit development (“Project”).

1. **Communication**

a. **Applicant’s Representative.** The Applicant shall designate a representative to be the key contact during the period of construction of the Project for interaction with the owners of property within 200 feet of the Property and Advisory Neighborhood Commission (“ANC”) 6D.

The Applicant’s representative (the “Representative”) will have a local office and will be accessible during all business hours to address construction management issues from the community as described herein. At any time construction activity is occurring on the Property, the Representative or his/her designee shall be available on-site or by telephone to receive communications from the surrounding community. The name and work telephone number of the Representative or his/her appointed designee shall be conspicuously posted on the Property and shall be readily available to members of the community. In addition, a name and telephone number of a person designated by the Applicant to contact in case of emergency during non-business hours regarding construction-related activities shall be readily available to members of the community.

b. **Duties of the Applicant's Representative.** The Representative and his/her designee will be able to answer questions and receive comments about the site activities, address reasonable concerns members of the community might have throughout the construction process, and have authority to remedy promptly violations of this Plan and enforce its provisions. The Representative, designee and emergency contact shall:

- (i) Receive notice of violations of this Plan;
- (ii) Respond as soon as reasonably possible, to the person who has reported the violation, and to the Neighborhood Contact Person (described below); and
- (iii) Act to remedy the violation as necessary, as soon as reasonably possible.

c. **Community Advisory Committee:** The Applicant will establish a Community Advisory Committee (the "Committee") to oversee and coordinate community concerns and issues during the construction of the Project. The intent of the Committee is to provide a forum for discussion and resolution of issues and concerns relating to the construction of the Project. The Applicant proposes that the Committee consists of at least one representative of each of the following: ANC 6D, the Applicant's general contractor, representative of Capitol Park, Steve Tanner (Old Friendship Baptist Church), and the Applicant. The Committee shall meet quarterly or on an as-needed basis, as determined by the Committee. Any member of the Committee may address immediate concerns regarding this project with other committee members at any time. Notice for the meetings will be posted as determined by the Committee.

2. **Construction** The Applicant shall require that all of their personnel and vendors, including supply and service vendors, comply with all applicable District of Columbia Municipal Regulations applicable to hours of work, noise, dirt, trash, and public health and safety. The Applicant, its general contractor and/or all subcontractors shall abide by the following conditions pertaining to construction of the Project.

a. **Permits** The Applicant will secure all construction permits that are required to complete construction of the Project. All plans and permits will be on-site as required under the DC Construction Code.

b. **Site Management**

(i) The Applicant will erect and maintain construction fencing and barricades in order to screen and secure the site during the construction process. The Applicant and its contractors will maintain temporary storm water management systems as required by the Department of Consumer and Regulatory Affairs throughout the Project's construction until such time as the permanent facilities are constructed, approved and functioning, such that there shall be no adverse water impacts on the adjacent neighborhood.

(ii) A minimum amount of lighting, directed away from residential properties, will be provided on the Project at night. These lights will be sufficient to provide necessary security and to comply with federal and municipal safety standards.

(iii) **Construction Parking:** On street parking of construction workers in residential parking zones shall be prohibited. The general contractor shall utilize on-site parking to its fullest extent. All construction workers not accommodated on the site will be required to park legally off-site at public or private parking lots, non-residential on-street parking areas, or will utilize mass transit. A list of available parking lots and mass transit options will be provided to the Applicant's general contractor. The general contractor will coordinate off-site parking, if needed, with its subcontractors to eliminate parking by construction personnel in residential parking zones. The Applicant will include these parking restrictions in its contract with the general contractor.

c. **Cleanliness** The Applicant will remove rubbish and construction debris continuously during the construction period during the normal construction workday. In

addition, the Applicant will monitor and police the construction site daily or more often as required to ensure cleanliness. The Applicant will also undertake a program of pest control to ensure that no increase in pest activity occurs during the construction period. All excavation or back fill trucks will be covered before proceeding from the Property onto city streets. Debris will be removed from the Property on an as needed basis.

**d. Work Hours.**

- (i) The normal construction work week will be Monday through Friday from 7:00 a.m. until 7:00 p.m., and Saturday from 7:00 a.m. until 5:00 p.m. All work hours will comply with DCRA guidelines. No construction activity will occur on Sundays. All trucks for delivery of materials, construction or otherwise, will arrive, depart and operate on the Property only during the foregoing hours. There will be no queuing of construction related vehicles or arrival of workers prior to stated work hours.
- (ii) The Applicant will make good faith efforts to limit work that could disturb the residents of the adjacent neighborhoods to weekdays, except where limitations on work during the week require work on Saturdays to meet the requirements of construction teams for a 40 hour work week.

**e. Contractors and Subcontractors** The Applicant will require that all contractors and subcontractors be contractually required to follow the terms of, and comply with, the policies set forth in this Plan. The Applicant will also require that all contractors and subcontractors use only licensed vehicles and drivers and they comply with all DC traffic laws and regulations.

**f. Traffic, Loading, and Parking.**



Specific truck queuing and routing will be worked out with the DC Department of Transportation and adjacent property owners during the public space permit review process of the Applicant's Traffic Control Plan.

(i) A flagperson will be assigned to expedite movement of construction related traffic, if any consistent traffic backups occur on any of the streets adjacent to the Property.

(ii) No construction related parking will be permitted in residential parking zones on the adjacent neighborhood streets. Refer to Item 2, B, (iii)

3. **Crane Construction & Swing:** The tower crane(s) will be located within the project site. The number and location of cranes are planned to minimize the length of the crane extension and over swing on the block. The cranes may swing over adjacent properties, but at no time will building materials swing over buildings on adjacent properties.

4. **Security:** The Applicant's general contractor will be responsible for providing adequate security for areas within the limits of construction. Upon commencement of construction, the Applicant will require the general contractor to provide sufficient security to patrol the area within its control, as necessary. Any general contractor's security schedule will also be provided to the Capitol Park Management Office. The Applicant's general contractor will notify the D.C. Metropolitan Police Department and the Capitol Park security officers prior to the start of construction and provide a point of contact to ensure proper communication and security coverage.

5. **Pedestrian Circulation:** Applicant shall maintain pedestrian access around the Site as long as it is practicable. In the event perimeter pedestrian access needs to be temporarily modified, Applicant shall provide appropriate redirection signs, temporary crosswalk markings,

etc. as necessary. Applicant shall notify the Metropolitan Police Department of the pedestrian circulation prior to commencement of construction.