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Via Hand Delivery

Anthony Hood, Chairperson
District of Columbia Zoning Commission
441 4th Street, NW, Suite 210-S
Washington, DC 20001

Re Zoning Commission Order No 11-13 - Motion for Extension of Time for the
Approved Consolidated Planned Unit Development

Dear Chairperson Hood

Trammell Crow Company (the "**Applicant**") hereby requests a two year extension of the time period of validity for the planned unit development ("**PUD**") and related Zoning Map amendment approved in Zoning Commission Order No 11-13 (the "**Order**") An application form and agent authorization letter are attached as Exhibit A This extension request is made pursuant to Section 2408 10 et seq of the Zoning Regulations

A Background

The consolidated PUD approved in Order No 11-13 (a copy of which is attached as Exhibit B), which became final and effective on July 6, 2012, authorized the construction of a mixed-use residential and church building (the "**Project**") on the property located at 222 M Street SW (Square 546, Lot 301) (the "**Property**") The Order also authorized rezoning of the Property from the R-3 Zone District to the CR Zone District

On August 3, 2012, two party-opponents in the case filed an appeal of the Order with the D C Court of Appeals Another party-opponent filed an appeal on August 6, 2012 The Court of Appeals ultimately dismissed all of the cases and issued a final order, attached as Exhibit C, dismissing the last case on January 15, 2013

Pursuant to Section 2408 13 of the Zoning Regulations, the two-year time period that the Order is valid ran from January 15, 2013 Therefore, the Order is valid until January 14, 2015, by which date the Applicant must file an application for a building permit

ZONING COMMISSION
District of Columbia

CASE NO

11-13A

B. Summary of Requested Relief

With this time extension application, the Applicant requests an additional two years, until January 14, 2017, by which time it will be required to file a building permit application to construct the approved PUD. The Applicant requests this extension because of its inability to secure necessary governmental approvals in a timeframe that allows the Project to proceed as planned.

The Applicant's satisfaction of the requirements of Section 2408.10 of the Zoning Regulations is discussed in detail below.

C. Jurisdiction of the Zoning Commission

The Commission is authorized to extend a PUD time period provided that:

- "The extension request is served on all parties to the application by the applicant and all parties are allowed thirty (30) days to respond,
 - There is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD; and
 - The applicant demonstrates with substantial evidence that there is a good cause for such extension."
- (Sections 2408.10(a) – (c))

In order to demonstrate "good cause shown," the Applicant must demonstrate:

- "An inability to obtain sufficient project financing for the PUD, following an applicant's diligent good faith efforts to obtain such financing, because of changes in economic and market conditions beyond the applicant's reasonable control,
 - An inability to secure all required governmental agency approvals for a PUD by the expiration date of the PUD order because of delays in the governmental agency approval process that are beyond the applicant's reasonable control, or
 - The existence of pending litigation or such other condition, circumstance or factor beyond the applicant's reasonable control that renders the applicant unable to comply with the time limits of the PUD order."
- (Sections 2408.11(a) – (c))

D. Legal Tests for Extension Approval

1 Service on Parties

As shown in the attached Certificate of Service, the following parties in Case No 11-13 are being served with this time extension request

- ANC 6D
- Robert Weller
- Catherine Herridge
- Michael Krause
- Carrollsburg Square Condominium Association

2 No Substantial Change of Material Facts

There has been no substantial change of material facts since the Commission's approval of the PUD and Zoning Map Amendment application in 2012 that affect the Property or the Project.

3 Good Cause Shown

The Applicant satisfies the good cause standard of Section 2408.11(b) since the Applicant has been unable to secure all necessary governmental approvals because of delays in the governmental approval process beyond the Applicant's reasonable control. The confluence of the appeal of the Order and a delay in the completion of the 17th Street levee (flood barrier), which affects the flood zone categorization for the Property, result in the Applicant's inability to proceed with the Project within the valid time period of the Order.

The Property is currently within the Zone A Flood Hazard Area on the Federal Emergency Management Agency ("FEMA") Flood Insurance Rate Map ("FIRM"), as shown in Exhibit D. Owners of properties within the Zone A area must purchase flood insurance, and these properties have higher flood proofing development standards for new buildings, as explained in greater detail for the Project in Exhibit E. FEMA amends the FIRM as conditions change when properties become more or less prone to flooding.

The U S Army Corps of Engineers ("USACE") constructed an improved levee/flood barrier on the National Mall, across 17th Street NW. The purpose of the levee is to protect from flooding many areas of the District of Columbia, including the Property, that were deemed at risk following an assessment of flood risk areas after Hurricane Katrina, as described in the fact sheet attached as Exhibit F. As the fact sheet describes, the levee was originally scheduled for completion in 2011. However, its construction fell significantly behind schedule, partially because the USACE terminated the contractor in April 2013 and construction halted, as

discussed in the article attached as Exhibit G. It is only as of October 31, 2014, that the levee is complete.

With completion of the levee, the Property has a lower risk of flooding, so it will no longer be included in Zone A on the revised FIRM. Attached as Exhibit H is a copy of the Flood Insurance Rate Map (after the completion of the 17th St. Levee), provided by the D C government. However, the USACE must test and certify the levee before it is deemed complete. FEMA must then accredit the levee before it will change the FIRM.

Although the levee is now complete and testing has just begun (see article in Exhibit I), it is unclear when testing will conclude so that the levee can be certified. According to the Applicant's recent contact with FEMA, it will take approximately one year for the certification and accreditation process to be completed. Thereafter, FEMA will initiate changes to the FIRM that will affect the Property, but changing the FIRM will take several more months. Based on this timeline, it is highly unlikely that the FIRM will change any time before Spring 2016.

At the time the Applicant submitted the PUD application in mid-2011, with an expectation of a change to the FIRM removing the Property from Zone A by the time it would apply for a building permit, the Applicant did not account for the heightened flood proofing requirements for projects in Zone A. Also, when the Commission approved the Project in July 2012, the Applicant had an equally reasonable expectation that the levee would be completed and accredited by the time it would apply for a building permit a year or more thereafter. Therefore, the Applicant did not budget for the costs of heightened design requirements based on its reasonable expectation that the flood zone for the Property would change well before it planned to submit a building permit application.

The appeals of the Order froze the Applicant's ability to proceed with any work on the Project immediately after it was approved. Therefore, no work on any aspect of the Project began until after the Court of Appeals dismissed the appeals in January 2013. This six month delay also gave the Applicant greater confidence that the levee would be completed and certified by the time it would apply for a building permit more than a year thereafter.

In addition to the flood plain issue, the Applicant encountered financing challenges. As its first step to start bona fide work on the Project, the Applicant began its search for equity partners in early 2013, following the dismissal of the appeals. But the financing environment proved to be challenging during that time.

The Applicant began its search for equity partners in 2013, following the dismissal of the appeals. However, due to a challenging finance environment, the Applicant sought predevelopment funding in late 2013/early 2014 so that it could commence with predevelopment activities, including completing construction drawings, with the understanding that the levee would be completed and the Applicant could submit for a building permit before the Order expired. Since April 2014, the Applicant has significantly progressed with design development,

and it continues to work on the drawings so that they will be complete enough for a building permit application.

However, as soon as the Applicant began design development in April 2014, it became aware that the 17th Street levee still had not been completed and that the Property was still in Zone A on the FIRM. Confident that the levee was nearing completion, design drawings were not modified to include any flood proofing measures since the Property would soon no longer be in Zone A. Modifying the drawings included having to incorporate new design elements for flood proofing as long as the FIRM remained unchanged to comply with the flood proofing requirements. The Applicant would have to reengineer and redesign much of the building foundation to thicken the foundation walls, add more tie-backs, and include other ground and garage flood proofing measures. The architect, civil engineer, and structural engineer estimated that the additional costs for these changes would be a staggering \$4,000,000 (engineers' cost estimate is attached as Exhibit J)

The Applicant wants to proceed in spite of this redesign challenge, but because the Applicant reasonably anticipated that the levee would be complete by now, it never budgeted for these significant additional costs. These costs are too high for the Project to remain viable, so the Project can be built only if the FIRM is amended to remove the Property from Zone A.

In anticipation of the levee being completed, certified, and accredited, the Applicant immediately began exploring options to initiate an amendment to the FIRM, known as a Letter of Map Amendment ("LOMA"), for only the Property. However, conversations with FEMA representatives in October 2014 revealed that it is very unlikely that FEMA would amend the FIRM for just the Property and issue a LOMA. Currently, FEMA plans to amend the entire FIRM for the District of Columbia once the levee is certified and accredited. Because the changes to the FIRM are more than a year away (approximately Spring 2016), the only way that the Applicant can submit an application for a building permit before the Order expires is to redesign it to include the costly flood proofing requirements. However, the Applicant would like to avoid the expense of redesigning a building that will never be built with that design. Thus, the Applicant will not have the necessary government approval (a change to the FIRM for the Property) to apply for a building permit for a viable project before the Order expires since FEMA will not amend the FIRM for more than a year and will not issue a LOMA. To account for this delay beyond its control, the Applicant requests a two year extension of the validity of the Order.

Because of the uncertain timeline for levee certification, accreditation, and changes to the FIRM, a two year time extension is essential to give the Applicant assurance that the necessary government approvals will occur in time for the Applicant to file for a building permit. Based on the stalled timeline of the levee thus far, the Applicant is concerned about the certification, accreditation, and FIRM amendments occurring in less than two years. Anything less than a two year extension likely could result in the Applicant encountering the same difficulty as now.

Josh Dix of Trammell Crow Company has attested to the above information. His affidavit is attached as Exhibit K. This attestation supports the Applicant's request for two years

of time extension in order for FEMA to complete the FIRM and for the Applicant to complete predevelopment activities, secure financing, and file an application for a building permit.

E. Conclusion

The information provided in this application satisfies the “good cause” requirements of Section 2408 10 regarding the Applicant’s inability to secure all necessary government approvals prior to the Order expiring. Therefore, the Applicant requests a two year extension of the Order so that the Applicant will have until January 14, 2017 to file an application for a building permit. The Applicant is available to provide additional information regarding this application at the request of the Zoning Commission

Please feel free to contact the undersigned if you have any questions or comments regarding this application.

Respectfully Submitted,
GOULSTON & STORRS, PC

A handwritten signature in black ink, appearing to read "Allison C. Prince/CK".

Allison C. Prince

A handwritten signature in black ink, appearing to read "Cary R. Kadlec".

Cary R. Kadlec

Certificate of Service

I hereby certify that I sent the foregoing document to the addresses below on November 20, 2014 by first class mail.


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