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TESTIMONY OF NORMAN M. GLASGOW, JR. ON BEHALF OF HOLLAND & KNIGHT ZONING COMMISSION CASE No. 14-13 ROOFTOP PENTHOUSE REGULATIONS

Good evening, Members of the Commission. For the record, my name is Norman M. Glasgow, Jr. of the law firm of Holland & Knight, and am pleased to provide testimony concerning the proposed rooftop penthouse regulations. We are appreciative that the Commission has promptly scheduled a hearing on this matter. There are many projects in the District impacted by the proposed changes which will allow the use of existing penthouse space, and the ability to have more use of the penthouse and rooftop areas will serve to benefit the District as a whole.

We are basically supportive of the recommendations of the Office of Planning and want to highlight several of those recommendations and recommendations where we have positions.

With respect to the developer roundtable, I think if you look at the date of their letter it was October 13th. It was before the OP report was issued. I think that a number of the issues that they were most concerned about were dealt with with the OP recommendations, such as the issue of the impact of IZ.

With respect to the setback requirements for exterior walls in Section 2 of the OP Report, we support the position set forth in the written submission of DCBIA and concur with the issues set forth in paragraph #2 in that letter. We also support the penthouse height of 20' for structures that are used for other than one family dwellings or flats.

With respect to uses within a penthouse in Section 6 of the OP Report, we do not have an objection to the limitation for penthouses on buildings within the

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R-1 to R-4 zone districts as proposed by OP. We also support the setback proposal which limits uses within a penthouse to any use permitted within that zone.

Concerning limitations on use referenced in the Notice of Hearing as well as on page 10 of the OP Report, we believe that special exception relief for a permitted use should only be required for certain types of use if the building is located adjacent to a residential zone. We do not believe such relief should be required if there is a residential use within the building because the use of the rooftop space, in a condominium regime, would be set forth and regulated by the condominium documents. For an apartment building, the use of the rooftop space would likely be something that is advertised as an amenity of the building. Any commercial use, such as a rooftop restaurant, would need to be located only within a commercial district under the Regulations. We are suggesting a more fine-grained approach to the issue as to when a special exception would be necessary or warranted and do not recommend that it be required only based on use.

So in other words, you're not going to either rent or buy a unit in a building and not know what was intended to be up on the roof. And if it's a commercial building, we don't see why there should be any need for a special exception. If it's next to a residential zone, we understand that some further review may be necessary. If it's in the middle of downtown, then we think that should be handled differently and permitted to proceed.

With respect to enclosing walls in Section 7 of the OP Report, we support the OP recommendation for multiple heights because it will provide flexibility and better options for the design and placement of roof structures.

In regards to FAR in Paragraph 9 of the OP Report, we support DCBIA's comments and proposed revisions to the Regulations.

With respect to Section 10 of the OP Report, we support the proposed text in the Notice of Public Hearing. We are concerned that the alternative text and its specificity in defining "operating difficulties" does not necessarily cover the myriad of issues that we have seen over the years as to why roof structures might need relief in various situations. We recommend that a finding of whether "operating difficulties" has been established continue to be determination made by the Board of Zoning Adjustment.

I've tried a lot of roof structure cases over the years and it seems that in many of them, there are unique situations for different buildings and different areas of the buildings, different lot sizes, and I think that it would be a mistake to make that too limiting as to what operating difficulties are.

For amending an approved PUD or Design Review project set forth in Section 11 of the OP Report, we support the DCBIA proposals.

With respect to Sections 12 and 13 of the OP Report, we support the OP recommendations. We are cognizant of the Bolan Smart report which evaluates the economic impacts of the proposed and alternative text, and we have had conversations with numerous clients discussing that is desirable to accommodate multiple uses on the penthouse level. However, given the additional costs of incorporating those multiple uses on the roof, the regulations need to be proposed in such a way that it is economically viable to incorporate these uses and that there is some modest incentive for developers to accept the additional costs; otherwise, the District will have lost the opportunity to see the benefit of these added uses. We believe that the Office of Planning's recommendation in the proposed text strikes an appropriate balance to create incentives for the developer while also generating additional affordable housing through both construction and production.

Also, with respect to Sections 12 and 13 of the OP report, I think I heard Commissioner Miller say that for both commercial and residential, that consideration be given to looking at a 50 percent assessed value per FAR number as is done with the alley closings along with a production option. That is a formula we worked on years ago that was put into the D.C. Code and could be a solution here. I believe that's something that the development community may be able to find workable across the board in both commercial and residential development.

What we were most concerned about is some of the alternatives, where I had a number of clients just say if we go in that direction, call it Draconian for lack of a better word, that they just weren't going to be able to make the numbers work. And I think there are some reports and economic analysis to support that conclusion.

I also wish to clarify that I think with respect to rooftop amenity space, and this was something that Commissioner May had brought up during the set down, that it not be subject to the IZ calculation if it's just something that is amenity space that's up on the roof on that building. And I would hope that, to any further degree necessary, that would be clarified in the regulations.

I appreciate the opportunity to deliver these comments to the Commission on this issue and, if desired, am available to answer any questions.