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January 19, 2023

VIA IZIS

Zoning Commission for the
District of Columbia
441 4th Street, N.W., Suite 210S
Washington, D.C. 20001

**Re: Applicant's Response to ANC Letter dated January 12, 2023 (Exhibit 95)
Z.C. Case No. 22-11
Consolidated PUD and Related Zoning Map Amendment from the MU-12 Zone to the
MU-10 Zone at 807 Maine Avenue, SW (Square 439-S, Lot 15)**

Dear Members of the Zoning Commission:

On behalf of MCRT Investments LLC (the "Applicant"), we submit this letter in response to the letter filed by Advisory Neighborhood Commission ("ANC") 6D, dated January 12, 2023 (Ex. 95) (the "ANC Letter") which set forth the ANC's understanding of the Applicant's responses to the six conditions outlined in the ANC resolution dated November 10, 2022 (Ex. 82) and reconfirmed in the ANC letter dated December 5, 2022 (Ex. 89).

The ANC Letter re-stated the six conditions and indicated that for four of the conditions, the ANC sought further clarification in the Applicant's response letter. The Applicant provided such clarifications in its response letter dated January 12, 2023 (Ex. 96). However, on January 19, 2023, the ANC filed a second response letter (the "Second ANC Letter") which stated that the Applicant had still not satisfied the ANC's six stated conditions. The Applicant herein provides further explanations as to its position on each condition.

1. Affordable Housing Proffer

The ANC continues to request 21% affordable housing per the recommendation of the Office of the Attorney General ("OAG").

As previously submitted to the case record, OAG's recommendation to provide 21% affordable housing relies on incorrect calculations and is inconsistent with the Zoning Regulations' clear rule that IZ Plus "shall not apply to a map amendment that is related to a PUD application." *See* Subtitle X § 502.2(a). The 21% requirement suggested by OAG and the ANC is based on IZ Plus, which should not apply in this case because the proposed map amendment is related to a

PUD. Moreover, the IZ Plus calculations provided by OAG to achieve the 21% number are also incorrect. *See* full explanation at Ex. 88.

The Applicant provided the correct IZ analysis at Ex. 88, pp. 2-3, which demonstrated that the proffered IZ is well above the amount of IZ that would have been required through matter of right development under existing zoning, consistent with the applicable requirement of Subtitle X § 305.5(g).

Moreover, the Applicant’s affordable housing proffer is only one of many public benefits and amenities associated with the PUD. As the Commission knows, the standard of review for a PUD requires the balancing of all the benefits and amenities with the degree of development incentives and potential adverse impacts, in compliance with Subtitle X § 304.3. As has previously been documented in the case record and as discussed at the public hearing, the PUD’s overall benefits and amenities package, including the IZ proffer, far outweighs the degree of development incentives and zoning flexibility requested. *See, e.g.*, Applicant’s analyses provided at Ex. 85 and 88, and OP’s conclusions at Ex. 35 and at the public hearing where OP stated that: “[OP] continues its recommendation that this application be approved as the flexibility requested and the potential impacts could be adequately mitigated and outweighed when balanced against the potential benefits of the project overall” (Nov. 14, 2022 public hearing transcript (“Tr.”) at p. 95). *See also* Commissioner May’s discussion at the public hearing stating that “there are many, many other factors that go into a PUD and other benefits that may accrue to the community that go beyond affordable housing. There are probably certain minimum amounts that we’d want to achieve, but even those minimum amounts can be quite variable depending on the economics of a particular project, where it is, what it’s doing for the neighborhood as a whole, what other factors it might be mitigating...” (Nov. 14, 2022 Tr. at pp. 121-122). Accordingly, the Applicant is not proposing to change its previously-proffered affordable housing benefit.

2. Reduction in FAR and Lot Occupancy

The ANC continues to ask the Applicant to pare back the FAR so the project falls squarely within existing required limits.

As previously submitted to the case record, the project’s density is well below the maximum permitted density for a PUD in the MU-10 zone (8.21 FAR proposed; 8.64 FAR permitted). As it relates to lot occupancy, the 2% flexibility being requested is a nominal degree of relief, supported by OP, and will not result in any adverse impacts. Every single floor of the building, when viewed individually, meets the 80% lot occupancy requirement. Only when the overlapping floors are calculated according to the strict method of calculating lot occupancy under the Zoning Regulations does the total lot occupancy exceed the maximum permitted (82% proposed; 80% permitted). The Applicant does not propose to reduce the lot occupancy any more than currently depicted on the plans.

3. Commitment to the Southwest Neighborhood Small Area Plan (“SW Plan”)

The ANC reiterated its previous assertion that its conditional support for the PUD should not be seen as altering the ANC’s commitment that the SW Plan should be the foundation document for future development in the southwest.

The Applicant appreciates the ANC's commitment to the SW Plan, and reasserts that the application has been thoroughly evaluated and found to be not inconsistent with the SW Plan and the Comprehensive Plan. *See* Applicant's Statement in Support and Comprehensive Plan analysis (Ex. 3, 3H), Applicant's Supplemental Prehearing Statement and SW Plan analysis (Ex. 28, 28D), the Applicant's amended and updated SW Plan analysis (Ex. 69D), and the testimony at the public hearing of the Applicant's expert in land use and planning (Ex. 81A1).

The Office of Planning also found the application to be not inconsistent with the SW Plan, explaining in its Setdown Report, Hearing Report, and Supplemental Report (Ex. 14, 35 and 74, respectively) that the project would not be inconsistent with the SW Plan and would instead help to advance many of the SW Plan's priorities and design guidelines. OP also testified at the public hearing that the project would "satisfy[] the southwest small area plan's design and affordability guidelines." *See* Nov. 14, 2022 Tr. at p. 99; *see also* Tr. at pp. 95 and 98-99. Accordingly, the Applicant submits that the project is fully consistent with the SW Plan and therefore consistent with the goals of the ANC.

4. Reallocation of Monetary Contributions

The ANC continues to assert that the Applicant should reallocate its \$100,000 commitment from Habitat for Humanity ("Habitat") to Amidon-Bowen Elementary School ("Amidon") and the Richard Wright Public Charter School ("Richard Wright").

The Applicant maintains its previous commitment to contribute the funds to Habitat. As previously submitted to the case record, Habitat will apply the funds "towards the production of 2-3 new for-sale affordable housing units reserved for households earning between 50% and 60% of the MFI in Ward 6." *See* Habitat Support Letter at Ex. 69B. This is a concrete commitment to Habitat that will directly benefit households in Ward 6, and not a "generally unclear case for future investment" as alleged by the ANC. The Applicant will also contribute funds to Jefferson, which is the school located directly adjacent to the PUD Site and with whom the Applicant has engaged extensively. Amidon and Richard Wright have not been involved in the PUD process at all and have not identified a need for a contribution. Accordingly, the Applicant maintains its commitment to contribute \$100,000 to Habitat, which is fully consistent with the requirements of Subtitle X § 305.3, which permit monetary contributions so long as no Certificate of Occupancy is issued for the project until the Applicant provides proof that the items or services funded have been or are being provided.

5. Management of Contribution for Public Art

The ANC condition would have prohibited the Applicant from extracting additional fees associated with paying a management company to coordinate the proffered contribution to MYLY for public art.

As stated in the Applicant's initial ANC response letter (Ex. 96), the Applicant will make the contribution directly to MYLY without using a management company. Accordingly, the ANC's Second Letter (Ex. 97) acknowledged that this condition was satisfied.

6. Construction Management Plan (“CMP”)


The ANC continues to state that the Applicant should enter into a CMP with Jefferson, Town Square Towers, The Wharf, and the Banks.

The Applicant provided a lengthy discussion at Ex. 96 explaining that it would abide by the CMP already submitted to the case record (Ex. 28E) and would continue to work with ANC 6D to resolve any outstanding concerns not addressed by the CMP. The Applicant also explained that it was finalizing a separate and specific agreement with Jefferson, the closest neighbor to the PUD Site, and that the developer for The Wharf and the Banks has already submitted its support for the project (Ex. 68) and has not requested a CMP. Moreover, neither the Zoning Regulations in general, nor the PUD regulations specifically, address the construction of buildings. Indeed, issues pertaining to construction impacts are not relevant to the Commission’s review. Construction issues are governed by the Construction Codes, and the Applicant will comply with all applicable regulations within the Construction Code and with all other laws and regulations regarding building construction. Accordingly, the impact of construction of the PUD is not a relevant criterion for the Commission to consider. *See* Z.C. Order No. 15-29, FF. No. 106(e) and 109. Accordingly, the Applicant maintains its position as previously stated regarding establishment of a CMP.

The Applicant appreciates the ability to provide the foregoing responses and the Zoning Commission’s continued review of this application.

Sincerely,

HOLLAND & KNIGHT LLP

By: 
Kyrus L. Freeman
Jessica R. Bloomfield

cc: Certificate of Service
Joel Lawson, Office of Planning (via Email)
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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2023, a copy of this letter was served on the following via email:

1. Ms. Jennifer Steingasser
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2. Advisory Neighborhood Commission 6D
c/o Commissioner Rikki Kramer, Chair (2023)
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3. Commissioner Bob Link
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