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September 15, 2005

HAND DELIVERY

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

Re: Minor Modification of Z.C. Order No. 904
4714-27 Wisconsin Avenue, N.W.

Dear Commissioners:

On behalf of P.N. Hoffman, Inc. and the Tenley Hill Condominium Unit Owners Association (Tenley Hill CUOA) (collectively, the "Applicant"), we hereby oppose the request of Timothy Cooper to waive section 3030.8 of the Commission's rules to accept a filing by a non-party in the above-referenced matter.¹ The purpose of this regulation was to ensure that non-parties did not unnecessarily burden the Commission with continuing objections once a Planned Unit Development ("PUD") had been approved, while at the same time acknowledging the ongoing interests of parties who participated in the proceedings. If the Commission were to grant this request, all other PUDs would be vulnerable to challenges from non-parties, creating unnecessary logistical and administrative burdens on the Commission and raising questions on the finality of Commission's orders.

Further, Mr. Cooper has not adequately demonstrated how his interests would likely be more significantly, distinctively, or uniquely affected in character or kind by the proposed zoning action than those of other persons in the general public, as required by section 3022.3(f)(5) of the Commission's regulations. The persons most uniquely affected by the minor modification are the condominium owners, who have requested the modification. Thus, there is no compelling reason for the Commission to waive its rules and accept Mr. Cooper's letter. In the event the Commission elects to waive its rules, the Applicant offers the following response to Mr. Cooper's letter.

¹ The Applicant notes for the record that Mr. Cooper failed to serve a copy of his letter on the Applicant. Similarly, Advisory Neighborhood Commission 3E did not serve the Applicant with a copy of its resolution nor

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ZONING COMMISSION
District of Columbia
CASE NO.98-21A
EXHIBIT NO.8

1. Noise Concerns Are Enforcement Issues for DCRA or Other District Agencies, Not the Zoning Commission.

Mr. Cooper's chief complaint is noise from HVAC condensers and fans both inside and outside the garage of the Tenley Hill PUD. In particular, he complains of the louver exhaust vents and fan that faces his property on Davenport Street. However, the sole issue before the Commission in this minor modification application is the new garage door; it does not encompass the HVAC units or exhaust vents whatsoever. Any adverse noise impacts from the HVAC units are enforcement issues under the District's noise regulations, not the Zoning Regulations. Mr. Cooper apparently acknowledges this fact in his letter by noting that the District's Department of Consumer and Regulatory Affairs ("DCRA") has issued two citations to the Tenley Hill PUD for noise violations. The first noise infraction under the housing regulations was issued May 25, 2004 and cured with a re-inspection by the city on November 19, 2004. The second violation was issued on July 19, 2005. On September 6, the Applicant met with Mr. Cooper and Mr. Lowery, a DCRA housing inspector, to discuss additional measures to remedy the noise issue. It is important to note that both noise violations are for the Davenport Street side of the building, and were not associated with the garage door location on Wisconsin Avenue. The noise issue is clearly being addressed by the appropriate government agency and, thus, Mr. Cooper's noise complaints are not properly before the Commission.

The Applicant is nevertheless sensitive to the issues raised by Mr. Cooper's and, as a result, is undertaking several sound-proofing measures to reduce noise levels from the HVAC units. In fact, the Applicant has met with Mr. Cooper to discuss these measures, which include the installation of sound dampening material, the replacement of the existing fan with a quieter model, relocation of the fan, and a redesign that will reduce air velocity. The work is scheduled to be completed in the next 60 to 90 days. In the meantime, as a result of the cooler weather, the fans will be turned off within the next several days, which will provide immediate relief to the abutting neighbors and those on Davenport Street, in particular.

2. Opposition is Based on Erroneous Assumptions and Factual Misstatements

Mr. Cooper's letter suggests that, in addition to changing the garage door, the Applicant also relocated HVAC and condenser units without approval. This is factually incorrect. The Applicant *did not* discard its original condenser rooftop placement plans and relocate over 25 condenser units to the commercial garage, as Mr. Cooper alleges. The location of the HVAC and condenser units was approved under the building permit issued for the project, which included review for compliance with the PUD order. Currently, there are 22 condensers located at the roof level, exactly as anticipated and shown on the original permit drawings. In addition, the permit drawings clearly show condensers located at both the G1 and G2 garage levels. Further, the PUD order granted the Applicant flexibility to vary the location and design of all interior components, including mechanical rooms. See Z.C. Order No. 904, September 13, 1999, at 11 (Condition 6(a)).

Mr. Cooper's understanding of the mechanical and engineering aspects of the building are also inaccurate. For example, Mr. Cooper does not accept PN Hoffman's claim that, if permitted, the open grille door will serve to maintain acceptable temperature levels in the garage, stating that this claim is premature. Contrary to Mr. Cooper's statement, this conclusion is based on reliable and

factual tests taken both last summer (where average temperatures were cooler than normal) and this summer (where temperatures exceeded local averages for extended periods of time). The condenser unit manufacturer has confirmed that the open grille door adequately addresses the temperature issues.

The solution to the "problem" as Mr. Cooper asserts is to "re-locate the dozens of condensers to the condominium rooftop where they were originally intended to be placed." This is both misleading and plain wrong. Condenser units were *always* intended to be placed on both the roof *and in the garage*, as shown on the approved PUD drawings and the permit set. Even so, it is simply not feasible to relocate the garage equipment to the roof given the practical constraints of the finished space, the fixed configuration of the existing rooftop structures and equipment, and current occupancy of the building by residents and tenants alike.

A second solution offered by Mr. Cooper, to "install a city water cooling system," is equally impossible. The city does not provide such services. Even an independent centralized system (such as a water source heat pump system or a chilled water system) creates insurmountable challenges based on structural limitations and space constraints of the building. Furthermore, neither of these types of systems and their related equipment was depicted on the PUD drawings.

We believe these misconceptions and misunderstandings have led Mr. Cooper to the erroneous conclusion that the aluminum grille door is not necessary. Contrary to his assertions, the metal grille door is, in fact, crucial to resolving the very real heat and ventilation problems that the garage is experiencing.

3. Aluminum Grille Door is an Appropriate Design Alternative.

While Mr. Cooper may disagree, we believe that the open grille door is compatible with the design of the PUD, in light of the operating requirements of the mechanical equipment. The garage door does not diminish in any way the overall aesthetic qualities of the building. Numerous PUDs throughout the city have successfully incorporated such doors in their buildings while not diminishing the building's design. The Applicant concurs with the conclusion of the Director of the Office of Zoning that "the requested modification does not affect the essential elements of the approval given by the Zoning Commission for this project, such as use, height, gross floor area, lot occupancy, setbacks or number of parking spaces. The request is also consistent with the approved elements of the amenity package."

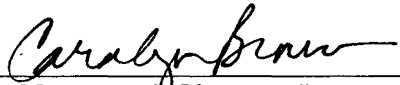
5. Conclusion

The Applicant requests that the Commission adopt the recommendation of the Director of the Office of Zoning to grant the minor modification as consistent with the intent of the Commission in approving its original Order No. 904. The modification does not impair the intent, purpose, or integrity of the zone plan as embodied in the Zoning Regulations and Zoning Map.

Further, the Zoning Commission should deny Mr. Cooper's request for a waiver of the Zoning Commission's rules to accept a filing from a non-party because his is not uniquely affected by the proposed modification. In the event his letter is accepted into the record, the Commission should

reject his arguments as unrelated to the application before the Commission. Alternatively, the Applicant would not oppose a continuance to allow the Applicant additional time to address issues pertaining to the garage door.

Respectfully submitted,

By: 
Norman M. Glasgow, Jr.
Carolyn Brown

cc: Advisory Neighborhood Commission 3E

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