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January 30, 2019

## **VIA IZIS AND HAND DELIVERY**

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

**Re: Application for a Modification of Consequence to an approved PUD**  
**Z.C. Case No. 08-34**  
**Capitol Crossing Center Block – Square 566, Lot 862**

Dear Members of the Commission:

On behalf of CAPITOL CROSSING III LLC (the “Applicant”)<sup>1</sup>, the owner of property located at Square 566, Lot 862 (part of Record Lot 50) (the “Property”), we hereby submit an application for a Modification of Consequence to the above-referenced planned unit development (“PUD”) approved pursuant to Z.C. Order No. 08-34.

The overall Capitol Crossing project includes Square 564, Lots 858 and 859 (the “North Block”), Square 566, Lots 860-863 and 7000 (the “Center Block”), and Square 658, Lots 862-864 and 7000 (the “South Block”). This modification request involves the Property only (Square 566, Lot 862), which is the portion of the Center Block that was approved to be developed with a residential building with ground floor retail. As described herein, the Applicant proposes to convert the approved use of the building from residential to hotel and to proffer a new off-site affordable housing benefit as part of the approved PUD.

This application is submitted pursuant to Subtitle Z § 703 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”), which allows the Zoning Commission to approve Modifications of Consequence without a public hearing. As further described below, the application is properly reviewed as a Modification of Consequence because it involves a “change to a condition in the final order” and “a change in position on an issue discussed by the Commission that affected its decision,” which are “examples” of Modifications of

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<sup>1</sup> The original applicant in Z.C. Case No. 08-34 was Center Place Holdings LLC, on behalf of the District of Columbia through the Office of the Deputy Mayor for Planning and Economic Development.

Consequence noted in 11-Z DCMR §§ 703.4. Moreover, there are no factual issues in this case that would require a public hearing to resolve.

Attached hereto is Zoning Commission Form 105 (Exhibit A) and a letter from the Applicant authorizing Holland & Knight LLP to file and process the application (Exhibit B). Also included is a check in the amount of \$520.00 for the filing fee.

## **I. Prior Zoning Commission Approvals**

### **A. Approved Project**

Pursuant to Z.C. Order No. 08-34 (Exhibit C), dated May 23, 2011, and effective on July 1, 2011, the Zoning Commission approved (i) a first-stage PUD for land and air rights above the Center Leg Freeway in an area generally bounded by Massachusetts Avenue, NW to the north, 2<sup>nd</sup> Street, NW to the east, E Street, NW to the south, and 3<sup>rd</sup> Street, NW to the west (the “Overall PUD Site”); (ii) a consolidated PUD for a portion of the Overall PUD Site;<sup>2</sup> and (iii) a Zoning Map amendment to the C-4 District for the Overall PUD Site. A portion of the Zoning Map showing the Overall PUD Site is attached hereto as Exhibit D.

The Center Block was approved as part of the first-stage PUD and included (i) a residential building with approximately 150 units and ground floor retail on the Property; (ii) an office building with ground floor retail to the south of the Property; and (iii) facilities for the Holy Rosary Church to the south of the Property. The approved development of the Overall PUD Site is hereinafter referred to as the “Overall Project.”

### **B. Vested Development Rights**

The first-stage PUD for the Property was approved prior to the effective date of the 2016 Zoning Regulations and therefore has vested development rights under the 1958 Zoning Regulations. Pursuant to 11-A DCMR § 102.4, modifications proposed for a vested project are required to conform to the 2016 Regulations only as the 2016 Regulations apply to those modifications. The modification requested herein is to convert the use of the approved building on the Property from residential to hotel. Under the 2016 Zoning Regulations, hotel use is permitted as a matter-of-right at the Property. *See* 11-IDCMR § 302.1 and 11-UDCMR §§ 510.1(o), 512.1(a), 515.1(a). Therefore, the proposed modification conforms with the 2016 Zoning Regulations as they apply to the requested change in use.

## **II. Requested Modification of Consequence**

### **A. Proposed Change in Use**

Pursuant to Z.C. Order No. 08-34, the Property was approved to be developed with a residential building containing approximately 150 residential units and ground floor retail. The

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<sup>2</sup> The consolidated PUD included (i) the entire platform and base infrastructure; (ii) the mix of uses, height, and density of each building, and the site plan for the Overall Project; (iii) the North Block; (iv) the construction of all below-grade parking, concourse, and service levels; and (v) the landscaping and streetscape design for the Overall Project.

Applicant requests approval to modify the first-stage PUD for the Property by converting the approved use of the building from residential to hotel. The overall height, bulk, and density of the building will not change from that approved under the first-stage PUD, and there is no proposed change to the retail use. If the modification request is approved, the Applicant will prepare and submit architectural drawings for the hotel project as part of a second-stage PUD application for the Property. Attached hereto as Exhibit E are development data sheets for the Overall PUD showing the approved and proposed uses, building heights, areas, and zoning data.

This use change is consistent with the goals of the Overall Project to create a mixed use development. The proposed hotel use will activate the area throughout the day and evening and will help to satisfy the demand for overnight lodging in the downtown core. The hotel will complement the mix of uses within the Overall Project and will support the commercial and institutional uses in the surrounding neighborhood.

While residential use was originally encouraged for the Overall PUD Site, residential development in the area immediately surrounding the Overall PUD Site has increased dramatically since the first-stage PUD was approved in 2011. Specifically, since approval of the Overall Project, the residential population living within 0.5 miles of the Mount Vernon Triangle neighborhood increased from 8,428 households to 11,159 households (a 32.4% increase). *See* Washington, DC Economic Partnership Neighborhood Profiles 2012 and 2018 Editions. Thus, the number of residential units in the area immediately surrounding the Overall PUD Site continued to increase, such that providing residential use is not necessary to create a mix of uses in the vicinity of the Overall PUD Site and the hotel use will further the diversity of uses in the area.

Moreover, the hotel will generate a significant number of new and stable jobs with fair wages and benefits for the District's hospitality workers, thus minimizing income inequality and helping to improve the city's affordable housing crisis.

Finally, as fully set forth in Section III(A) below, the change in use is also fully consistent with the Comprehensive Plan's Future Land Use Map, which designates the Overall PUD Site as High-Density Commercial, and with a variety of guiding principles and major elements of the Comprehensive Plan's written component.

**B. Affordable Housing Proffer**

Of the 150 residential units approved for Capitol Crossing, Z.C. Order No. 08-34 required that a minimum of 50 units be dedicated as affordable housing for individuals earning up to 80% of the metropolitan statistical area median income ("AMI") and paying no more than 30% of the family's household income for rent or housing ownership costs. *See* Z.C. Order No. 08-34, Decision No. 22. The affordability period was for 40 years following the issuance of the residential building's certificate of occupancy.

The Applicant proposes to maintain the affordable housing obligation set forth in Z.C. Order No. 08-34, Decision No. 22, such that in the event that the market conditions support residential use on the Overall PUD Site in the future, a minimum of 50 affordable housing units will be provided within that residential use. Because residential use is unlikely in the near term, the Applicant also proposes to financially produce affordable housing in a new residential project located at 1530 First

Street, SW (“1530 Project”) to allow more affordable housing units at deeper levels of affordability with a commitment to varying unit types and that will be delivered sooner.

First, the 1530 Project will include approximately 102,155 square feet of gross floor area comprised of 100 residential units and approximately 7,698 square feet of retail use. This amount of affordable housing results in double the total number of affordable units approved for the Property in almost twice the amount of square footage (50 units approved, 100 units proposed).

Second, the affordable housing at the 1530 Project will be provided at deeper levels of affordability. To that end, 20% of the units (approximately 20 units) will be reserved for households earning up to 30% of the Median Family Income (“MFI”) and 80% of the units (approximately 80 units) will be reserved for households earning up to 50% of the MFI. This commitment significantly increases the affordable housing subsidy level compared to all of the affordable units being at 80% of the AMI, as approved in ZC Order No. 08-34.

Third, the 1530 Project commits to provide a diversity of unit types and larger unit sizes to better support affordable housing goals. *See* unit matrix included as Exhibit No. 38C, p. A50 of Z.C. Case No. 18-13 indicating that the 1530 Project would include one, two, three and four bedroom units.

Furthermore, the 1530 Project is being reviewed by the Zoning Commission under the Design Review provisions of the Zoning Regulations in Z.C. Case No. 18-13.<sup>3</sup> Based on current schedules, the 1530 Project will be entitled and available to move forward by the middle of 2019, with expected delivery in the second quarter of 2020. Accordingly, the affordable units at the 1530 Project will be delivered significantly sooner than those included in future residential development at the Property.

Although the 1530 Project is an affordable housing project, it is being designed consistent with a market-rate project. That site is located within the CG-4 zone district, which is subject to design guidelines that require a high level of design as well as review and approval by the Zoning Commission. In addition, there is unmet demand for affordable housing particularly within the Buzzard Point neighborhood in which the 1530 Project is located. In the primary market area (“PMA”) for Buzzard Point, the total number of renter-occupied units is 9,697, of which 1,715 of affordable units are available (i.e. 17.6% of the units within the PMA are affordable). Furthermore, in this rapidly developing neighborhood, more affordable housing units are needed.

Based on the foregoing, the Applicant’s request to modify the approved use of the Property is necessary to allow for the prompt delivery of 100 new low- and moderate-income affordable housing units at 1530 First Street, SW. If approved, the proposed modification would generate double the amount of affordable housing, delivered at significantly steeper subsidy levels with a larger units types and within a more immediate timeframe, all while still obligating the Applicant to develop affordable units on the Overall PUD Site if residential use is approved for Capitol Crossing in the future.

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<sup>3</sup> The Zoning Commission’s public hearing on Z.C. Case No. 18-13 was held on November 15, 2018, and following the Applicant’s request to defer deliberations, the Zoning Commission determined to schedule the case for deliberations to March 11, 2019.

### C. Modifications to Approved Conditions

In order to implement the proposed use modification and affordable housing proffer, the Applicant proposes modifications to the following conditions approved in Z.C. Order No. 08-34:

Decision No. A(4): The Overall Project shall have an approximate gross floor area of 2,226,625 square feet, or 8.74 FAR based on the Site Area. As shown on the Final First Stage PUD Plans, the Overall Project shall include approximately 1,910,386 square feet of gross floor area devoted to office uses, a minimum of 62,687 square feet of gross floor area devoted to retail uses, approximately 180,384 square feet of gross floor area devoted to residential-hotel uses, and approximately 73,168 square feet of gross floor area devoted to institutional uses related to the Holy Rosary Church and the Jewish Historical Society.

Decision No. B(22): **For a period of 40 years from the date that the first certificate of occupancy is issued for ~~the a residential building~~, if a residential building is subsequently approved for the Overall Project**, the Applicant shall provide a minimum of 50 residential units set aside for affordable housing for individuals earning no more than 80% of the Metropolitan Statistical Area median income and paying no more than 30% of the family's household income for rent or housing ownership costs. The affordable housing units shall be distributed across the housing mix (e.g., if the market-rate units have a mix of 30% studios, 40% one-bedrooms, and 30% two-bedrooms, the affordable units shall have a similar mix). Except as provided ~~as provided~~ in the land disposition agreement, the affordable housing units shall not be concentrated on any one floor or within a floor of the residential building. Nothing in this condition shall be constructed as requiring the affordable housing to be located on the top three levels of the residential building, have prime views or include bay windows or balconies.<sup>4</sup>

The Applicant also proposes to add the following condition as a new Decision No. B(26) of Z.C. Order No. 08-34:

**Prior to the issuance of the first certificate of occupancy for the hotel building located on Lot 862 in Square 566**, the Applicant shall provide evidence to the Zoning Administrator that (i) it has funded the construction of a minimum of 100 new affordable housing units in a new residential project located at 1530 First Street, SW; and (ii) a certificate of occupancy has been issued for the affordable housing units at 1530 First Street, SW.

### III. Consistency with the PUD Evaluation Standards

In deciding a PUD application the Zoning Commission shall “judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” 11-X DCMR § 304.3. The Zoning Commission shall find that the proposed

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<sup>4</sup> The proposed change to insert the word “income” and remove the duplicative words “as provided” are offered as suggestions, as they appear to have been typos in the original order.

development: (i) is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site; (ii) that the project does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and (iii) that the project includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site. *See* 11-X DCMR § 304.4.

A. Consistency with the Comprehensive Plan

The proposed change in use of the Property from residential to hotel is fully consistent with the Comprehensive Plan. In Z.C. Order No. 08-34, the Commission found that the Overall Project advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use and Generalized Policy Maps, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan. *See* Z.C. Order No. 08-34, Finding of Fact (“FF”) No. 87. As described below, the modified project continues to fulfil these and other guiding principles and elements of the Comprehensive Plan.

1. Consistency with the Future Land Use and Generalized Policy Maps

In reviewing the Overall Project, the Commission found that the Applicant's proposal to construct a mixed-use development that includes office, retail, residential, and institutional uses on the Overall PUD Site is consistent with the Future Land Use and Generalized Policy Maps. *See* Z.C. Order No. 08-34 FF No. 87(a).

The Future Land Use Map designates the Overall PUD Site for High-Density Commercial land uses. The High-Density Commercial land use designation defines the central employment district of the city and other major office employment centers on the downtown perimeter. It is characterized by office and mixed office/retail buildings greater than eight stories in height, although many lower scale buildings (including historic buildings) are interspersed. Modifying the approved use of the Property from residential to hotel will continue to be consistent with the High-Density Commercial designation because it will bring additional commercial uses to the area, will continue to provide significant new ground floor retail, and will be constructed to a height and density that is consistent with the original approval in Z.C. Order No. 08-34. Moreover, the proposed hotel use will help to serve the office, retail, and institutional uses in the surrounding area by providing overnight accommodations at the Property that would not have previously existed.

The Generalized Policy Map designates the Overall PUD Site within Central Washington and in the Central Employment Area. The Commission previously found that the Overall Project is consistent with these designations. The Central Employment Area is the business and retail heart of the District and has the widest variety of commercial uses, including retail, hotels, and other hospitality uses. *See* 10A DCMR § 223.21. The Comprehensive Plan does not specifically reference housing as an important feature in the Central Employment Area. Thus, developing a hotel use with ground floor retail at the Property will advance the goals for the Central Employment

Area of providing commercial and retail uses, accommodating hotel guests, and creating new employment opportunities in the hospitality industry at the Property.

## 2. Consistency with Guiding Principles of the Comprehensive Plan

The Commission also found that the Overall Project was consistent with many guiding principles in the Comprehensive Plan. As described below, the proposed change in use is consistent with the Commission's prior findings.

- Managing Growth and Change. In Z.C. Order No. 08-34, the Commission found that the Overall Project was consistent with the guiding principle of Managing Growth and Change because the mix of uses, including office, retail, residential and institutional uses, was consistent with the Comprehensive Plan's acknowledgement that the growth of both residential and non-residential uses is critical. The Commission also found that by including a mix of housing types for households of different sizes, ages, and incomes, the Overall Project would help sustain and enhance the surrounding area. *See* FF No. 87(b)(1).

The proposed change in use for the Property will continue to support these goals by further diversifying the mix of uses in the area by adding a hotel component to the Overall Project, in addition to the office, retail, and institutional uses already approved. Expanding the mix of uses supports the Comprehensive Plan's recognition that the growth of both residential and non-residential uses is critical. As discussed above, the number of residential units in the area immediately surrounding the Overall PUD Site has increased since the Overall Project was approved. Thus, converting the use of the Property from residential to hotel use will not negatively impact the diverse mix of uses in the surrounding area.

Moreover, although the Applicant will convert the Property to a hotel use, it will simultaneously fund the development of 100 new affordable housing units reserved for a range of low- and moderate-income levels. The modified affordable housing proposal involves increasing the total number of affordable units from 50 to 100, and increasing the affordable housing subsidy for each unit. Thus, the Overall Project will continue to support a mix of housing types for households of different sizes, ages, and incomes, and in doing so will help sustain and enhance District neighborhoods, thus fostering the goal of managing growth and change in the District.

- Creating Successful Neighborhoods. The Commission previously found that the Overall Project furthers the guiding principle for Creating Successful Neighborhoods by improving the residential character of neighborhoods and encouraging commercial uses that contribute to the neighborhood's character and make communities more livable. *See* FF No. 87(b)(2). Converting the Property's use from residential to hotel will improve the neighborhood by providing accommodations for a variety of business and leisure travelers, encouraging individuals and families to stay in the District overnight to take advantage of the area's diverse mix of uses and the goods and services available in the downtown core.

In addition, the hotel use will create a significant number of new jobs in the hospitality industry for District residents with a variety of skill sets and levels of education. Providing well-paying jobs with benefits is essential in narrowing the income gap and creating

successful, diverse neighborhoods. Moreover, the ground floor retail use will not change, such that the mix of uses at the Property is consistent with the Comprehensive Plan's goal of encouraging commercial uses that contribute to the neighborhood's character and make communities more livable. Thus, although the use at the Property will not itself be residential, it will serve the residential character of the neighborhood that has come online since this PUD was originally approved.

The guiding principal for Creating Successful Neighborhoods also addresses the crisis of affordability and states that the production of new affordable housing is essential to avoiding a deepening racial and economic divide. *See* 10A DCMR § 218.3. The proposed affordable housing units in the 1530 Project will double the number of affordable housing units being provided and significantly increase the subsidy level provided for each unit. Thus, the change in use at the Property will continue to aid in the production of new affordable housing to minimize the racial and economic divides in the District. To the extent that residential use is developed in the future in the Overall Project, the Applicant maintains the commitment to provide 50 affordable housing units as originally approved.

Finally, a diverse range of uses is required in order to truly create a successful neighborhood that makes a community more livable. Currently, the area immediately surrounding the Overall PUD Site (within 0.5 miles of the boundaries of the Mount Vernon Triangle) has approximately 11,159 households, but only a handful of hotels, with additional hotels located to the southeast of the Overall PUD Site. *See* Washington, DC Economic Partnership Neighborhood Profiles, 2018 Edition. Thus, the addition of the hotel use to the Overall Project will serve visitors to the District and successfully contribute to the neighborhood's overall mix of uses and help to establish the neighborhood's overall success.

Increasing Access to Education and Employment. In Z.C. Order No. 08-34, the Commission found that the Overall Project was fully consistent with the goals set forth for Increasing Access to Education and Employment because it would increase economic activity and access to jobs, encourage a variety of private and public growth, support land development policies that create job opportunities for District residents with varied job skills, and increase the amount of shopping and services for many District neighborhood. The Commission found this to be true as a result of the office and retail uses in the Overall Project that would attract new jobs to the surrounding area. *See* FF No. 87(b)(3).

The proposed hotel use at the Property will further increase the area's economic activity by creating new jobs in the hospitality industry. This additional new use within the Overall Project will increase the type and variety of job opportunities for District residents, particularly compared to the residential use that was otherwise approved for the Property. By creating new employment opportunities, the proposed hotel use will also further increase the city's tax base and help to reinvigorate the existing neighborhood fabric.

### 3. Consistency with Major Elements of the Comprehensive Plan

- Land Use Element. In Z.C. Order No. 08-34, the Commission found that the Overall Project is consistent with the policy of concentrating redevelopment efforts near Metrorail station



areas which offer the greatest opportunities for infill development and growth. FF No. 87(c). The Overall PUD Site is located two blocks from the Judiciary Square Metrorail Station and four blocks from Union Station. As such, the Overall Project has been designed to encourage transit use, and the conversion from residential to hotel use at the Property is no different. The hotel's centrally-located and transit-accessible location, particularly its proximity to Union Station where many visitors will be arriving, will encourage visitors and hotel employees to utilize public transportation options. Moreover, the Commission's previous findings regarding the reopening of F and G Streets and the redevelopment of streetscapes will continue to remedy the gap in the urban fabric that has detracted from the character of the surrounding area.

- Transportation Element. As noted above, the Commission previously found that the Overall Project is an example of transit-oriented development by providing a mix of uses in a location that is in close proximity to two Metrorail stations. The hotel use at the property will continue to encourage public transportation use by visitors to the District and hotel employees, relieving congestion downtown and creating a more vibrant streetscape. The change in use will not impact the Overall Project's commitment to reconnect the Overall PUD Site to the urban fabric of the District with the creation of three new city blocks and the reopening of F and G Streets.
- Housing Element. As noted above, the Applicant's commitment to fund the development of 100 affordable housing units in the 1530 Project will significantly add to the affordable housing supply in the District. Moreover, the Applicant's commitment to subsidizing the affordable units has increased, as the off-site units will be dedicated to households earning between 30% and 50% of the AMI, instead of at 80% of the AMI as originally approved. Thus, given that the Applicant will also develop affordable housing at the Overall PUD Site if a residential building is approved for Capitol Crossing in the future, the proposed affordability commitment is a substantial increase, such that the PUD is still fully consistent with the Housing Element of the Comprehensive Plan.
- Environmental Protection Element. In Z.C. Order No. 08-34, the Commission found that the Overall Project incorporates cutting-edge sustainable design elements that will set a new standard for urban infill and air rights development projects. The proposed change in use does not impact the sustainable design elements approved as part of the project, and the Applicant will continue to employ environmentally conscious elements into the design of the hotel building. Details on the specific sustainable design elements will be provided as part of the second-stage PUD application for the Property.
- Economic Development Element. The Commission found that the Overall Project would provide almost two million square feet of commercial office space, which would accommodate growth in a diverse array of office industries, as well as over 60,000 square feet of retail use, which would increase access to basic goods and services. Neither of these uses will be modified by the proposed change in use at the Property, and they will continue to reinforce the existing and encourage new commercial development in the area. Adding the hotel component to the Overall Project is fully consistent with this finding, since the hotel will simultaneously create new jobs for District residents, further enhance the mix of uses in the area, and encourage more visitors to stay overnight in the city, thus further

supporting the local economy. As noted above, the hotel use will generate a significant number of new and stable jobs with fair wages and benefits for the District's hospitality workers.

- Parks, Recreation and Open Space Element and Urban Design Element. In Z.C. Order No. 08-34, the Commission found that the Overall Project would support these elements by developing open spaces and parks over below-grade freeways, restoring closed streets, and enhancing the urban form and associated views. The change in use at the Property will continue to advance these priorities, thus reducing the negative effects of the freeway and improving pedestrian and bicycle access through new functional and aesthetically-pleasing streetscapes.
- Historic Preservation Element. The modified project will continue to advance the Historic Preservation Element by reopening F and G Streets to preserve the defining features of the L'Enfant and McMillan plans and relocating and highlighting the historic JHS Synagogue.
- Central Washington Area Element. The Commission previously found that the Overall Project's development of office, retail, residential, and institutional uses would attract a broad variety of activities and help to sustain Central Washington as the hub of the metropolitan area. It found that the approved office use would advance the goal of retaining Central Washington as the premier office location in the region, and that the retail, residential, and institutional uses would lend vibrancy to the area.

The proposed change in use for the Property will continue to support these findings and the goals for Central Washington. The hotel use will bring new users to the area, attract tourists and business travelers to the neighborhood, provide jobs for District employees, and continue to encourage development of a variety of activities to sustain Central Washington as the hub of the surrounding area. The approved uses within the PUD will benefit significantly by having a hotel use on the Overall PUD Site, which will encourage more visitors to stay in the District overnight and support the surrounding office, retail, and institutional uses and overall economic activity.

#### B. No Adverse Project Impacts

The proposed modification will not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities. As set forth in the transportation assessment memorandum dated January 23, 2019, and prepared by Wells + Associates (Exhibit E), the proposed conversion from residential to hotel use will not have an adverse transportation impact. The anticipated trip generation for the hotel use would be slightly higher than for the residential use during the morning peak hour (17 more vehicular trips), and slightly lower than for the residential use during the afternoon peak hour (five fewer vehicular trips). The increase in morning trips is below DDOT's threshold for a traffic impact analysis, and therefore is not considered significant. *See Exhibit F*, p. 3, concluding that based on the foregoing, "no adverse traffic impacts are anticipated as a result of the proposed modification."

In addition, the approved parking and loading facilities will adequately accommodate the anticipated demand generated by the proposed hotel use. According to both national and local studies, parking demand for hotel use is approximately 25% lower than for residential use. *See Exhibit F*, p. 5. For loading, the single, shared loading facility for the multiple uses located on the Overall PUD Site will reduce the total number of daily deliveries by accommodating multiple deliveries for multiple buildings in a single location.

Moreover, according to the Zoning Regulations, the proposed hotel use generates lower parking and loading requirements than the approved residential use. *See Exhibit F*, p. 4, indicating that the hotel use generates a requirement of 20 fewer parking spaces than the residential use and the same number of (but smaller) loading facilities. Thus, the approved garage facilities will adequately accommodate parking and loading for the proposed hotel use, since the hotel use generates a lower demand and fewer requirements for parking and loading than the approved residential use.

### C. Public Benefits and Project Amenities

In Z.C. Order No. 08-34, the Commission concluded that the number and quality of the project benefits and amenities offered are a more than sufficient trade-off for the flexibility and development incentives requested. *See Conclusion of Law 7*. The most significant benefit established by the PUD was the construction of the platform over the Center Leg Freeway and the re-opening of F and G Streets, NW to create three new city blocks. This major infrastructure project has had the effect of linking District neighborhoods that have historically been separated, creating a more efficient use of underutilized land, and revitalizing the neighborhood. The infrastructure required to construct the platform represents an investment of over \$200 million. The platform and the related benefits are currently being delivered. The modification to the public benefits and project amenities with the addition of funding the production of the affordable housing in the 1530 Project does not impact the Commission's original conclusion of law relating to the balancing of benefits and amenities to the development flexibility granted.

## IV. Application Properly Filed as a Modification of Consequence

Pursuant to 11-Z DCMR §§ 703.3 and 703.4, the term “modification of consequence” shall mean a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance. Examples of a modification of consequence include, but are not limited to, a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission. The proposed change in use involves changes to conditions in the final order and modifies a position on an issue discussed by the Commission that affected its original decision, and is therefore properly filed as a modification of consequence.

Moreover, there are no factual issues that require a public hearing to resolve. The Commission has previously found a change of use to be a modification of consequence when it determined that there were no factual issues that would require a public hearing to resolve. *See Z.C. Case No. 06-46D*, where the Commission concluded that although the request would appear to be a modification of significance, for which a hearing is required, it “considers these standards to be

flexible, with the principal distinction between modifications of significance and consequence being whether the Commission believes it would be helpful to have a hearing” (quoting Z.C. Case No. 04-13A where the Commission found that a request to change an approved public benefit from a church room to a residential use was not a modification of significance because the relief was “straightforward”).

In this case, the proposed modification is similarly straightforward and presents no factual issues that require a public hearing to resolve. The Applicant proposes to modify the use of the building from residential to hotel, and in doing so will provide an additional affordable housing proffer that will deliver more affordable housing at a steeper subsidy level and on an accelerated schedule. The existing affordable housing proffer included in the approved PUD will continue to exist and will be required should housing be proposed for Capitol Crossing. Moreover, as described above, the proposed modifications are fully consistent with the Future Land Use and Generalized Policy Maps and with the guiding principles and major elements of the Comprehensive Plan.

Given the timing of the Zoning Commission’s schedule for final consideration of the 1530 Project in March, 2019, it is imperative that the Applicant provide funding as soon as possible to develop the affordable units at that site. If this application is required to be reviewed as a modification of significance, it will adversely impact the timeframe for construction and delivery of the affordable housing units at the 1530 Project.

Moreover, the Applicant’s commitment to fund the affordable units in the 1530 Project reduces that project’s burden on the District’s Affordable Housing Production Trust Fund (“Trust Fund”), from which it would have to draw funds to subsidize the affordable units without the Applicant’s commitment. By receiving private funding from the Applicant, the funds otherwise used from the Trust Fund can be allocated to other affordable housing projects in the District. Therefore, it is in the best interests of the District and the public in general to accept and approve this application as a modification of consequence, which is inextricably tied to the creation of 100 new low- and moderate-income affordable housing units in the Southwest quadrant of the city.

The additional affordable housing proffer also does not amount to a significant modification to the overall public benefits and amenities package that was approved in Z.C. Order No. 08-34, as described above. The most significant benefit – construction of the platform over the Center Leg Freeway and the re-opening of F and G Streets, NW – is well underway to create three new city blocks. Furthermore, the PUD’s approved ground floor retail will line the newly created streetscapes, and public space improvements will draw residents, visitors, and employees to this portion of the District in an unprecedented manner. The affordable housing proffer originally approved for the PUD was a relatively minor component of the overall public benefits package, and in any event, it is not changing.

Thus, given that (i) there are no factual issues that would require a public hearing to resolve; (ii) the proposed change in use is “straightforward” (*see* Z.C. Order No. 04-13); (iii) the modification will have a marginal impact on the overall benefits and amenities package approved for the overall PUD; and (iv) the proposal will result in a significantly greater net increase in affordable units to the District, and at a significantly steeper subsidy; the Commission may approve the request as a modification of consequence.

**V. Status of Community Engagement**

The Applicant presented the proposed modifications to the affected Advisory Neighborhood Commissions (“ANCs”) 2C and 6C prior to filing this application. The Applicant presented to ANC 2C at its public meetings in November, 2018, and in January, 2019. At its January 22, 2019, public meeting, ANC 2C voted unanimously to support the modification of consequence application subject to (i) the Applicant providing the off-site affordable housing units at 1530 First Street, SW according to the conditions described herein, and (ii) issuance of a certificate of occupancy for the hotel use being contingent on the development of the affordable housing at 1530 First Street, NW, as described herein.

The Applicant also presented to ANC 6C in November, 2018, and is scheduled to present to ANC 6C again in March, 2019. The Applicant will continue to work with ANC 6C and other neighborhood constituents as this modification application moves forward.

The Applicant also notes that ANC 6D, the ANC in which 1530 First Street, SW is located, voted unanimously (7-0-0) to support the 1530 First Street application. *See* Z.C. Case No. 18-13, Exhibit 30.

**VI. Service on Affected ANCs**

Pursuant to 11-Z DCMR § 703.13, the Applicant is required to formally serve a copy of the subject application on all parties to the original proceeding at the same time that the request is filed with the Office of Zoning. Other than ANC 6C, there were no other parties to the original proceeding. According to the 2016 Zoning Regulations, ANCs 6C and 2C are both “affected” ANCs. As noted in the Certificate of Service attached hereto, the subject application was served on ANCs 6C and 2C in compliance with 11-Z DCMR § 703.13.

**VII. Conclusion**

The Applicant respectfully requests approval of this Modification of Consequence to convert the approved use at the Property from residential to hotel. The request is consistent with the intent of the Zoning Commission in approving the original application; accordingly, approval of the Modification of Consequence is appropriate.

Respectfully submitted,

HOLLAND & KNIGHT LLP



Christine M. Shiker



Jessica R. Bloomfield

Enclosures

cc: Jennifer Steingasser, D.C. Office of Planning (*see* Certificate of Service)  
Joel Lawson, D.C. Office of Planning (w/enclosures, via Email)  
Jonathan Rogers, DDOT (w/enclosures, via Email)

**CERTIFICATE OF SERVICE**

I hereby certify that on January 30, 2019, electronic copies of the foregoing application for a Modification of Consequence was served on the following, with hard copies sent on January 31, 2019:

Jennifer Steingasser  
D.C. Office of Planning  
1100 4<sup>th</sup> Street, SW – Suite 650 East  
Washington, DC 20024

VIA EMAIL & HAND DELIVERY

Advisory Neighborhood Commission 2C  
P.O. Box 51181  
Techworld Station  
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VIA U.S. MAIL

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VIA U.S. MAIL



Jessica R. Bloomfield  
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