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July 16, 2018

VIA IZIS

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

**Re: Applicant's Proposed Findings of Fact and Conclusions of Law
Z.C. Case No. 02-38I
Second Stage PUD & Modification of Significance to First-Stage PUD @ Square 542**

Dear Members of the Commission:

On behalf of Waterfront 375 M Street, LLC and Waterfront 425 M Street, LLC (together the "Applicant"), we hereby submit the Applicant's proposed findings of fact and conclusions of law ("Proposed Order") for the above-referenced case, as requested by the Commission at the May 10, 2018 public hearing.

In addition, Advisory Neighborhood Commission ("ANC") 6D submitted a memorandum dated July 9, 2018 (Ex. 134) ("ANC Memo") in response to the Applicant's post-hearing submission dated July 2, 2018 (Ex. 131). The ANC Memo raised several issues. Because the Applicant does not have an opportunity to submit a response to the ANC Memo, the Draft Order addresses the issues raised in the ANC Memo. The Applicant has worked closely and in good faith with the ANC before the public hearings on this application and in the approximately five meetings and discussions it has had with the ANC since the hearing. While several of the issues raised in the ANC Memo have been already discussed in the previous responsive filings, the Applicant also offers the following points of clarification:

1. Payment for Bus Shelter

The ANC Memo requested that the Applicant pay for a new bus shelter on M Street, SW adjacent to the 425 M Street, SW ("West M Building"). Prior ANC filings requested that the Applicant confirm that the public space adjacent to the West M Building could accommodate a free standing, ADA-compliant bus shelter, which the Applicant previously confirmed (*see* Ex. 131, p. 3). Thus, the Draft Order acknowledges the Applicant's prior responses but does not include a new condition for payment of a bus shelter. Approval and installation of bus shelters are within DDOT's purview, are subject to separate agreements and requirements, and are required to be evaluated through DDOT's public space permitting process. However, the Applicant is fully committed to working with the ANC and DDOT to ensure that a temporary bus shelter is provided

adjacent to the West M Building during construction of the PUD and the permanent bus shelter will be provided as determined through the public space permitting process.

2. Community Center - Payment of Electricity Fees

The ANC Memo requested that the Applicant remove the proposed contribution limit for payment of the community center's electricity fees. *See* proposed Findings of Fact ("FF") Nos. 53(h), 86(a)(ii), and 88(b), and Decision No. B(16) of the Draft Order. The contribution limit was discussed with the ANC in meetings following the public hearing and first proffered in writing to the ANC in the Applicant's June 15, 2018 memorandum (Ex. 131A). The ANC Memo is the first time that the ANC objected in writing to the proposal.

The purpose of the contribution limit is to make the operator of the community center accountable for its energy use. The Applicant's intent is to encourage environmental consciousness and promote energy conservation. The proposed cap is fully consistent with industry standards and includes a growth rate to account for future increasing fees. In fact, the Applicant believes that the contribution amount (\$2.00 per square foot per year, with an annual escalation of 3%) will fully cover all electric costs of the community center.

However, should the Commission disagree with the Applicant's proposal, we hereby submit the following modification to the language of Decision No. B(16) of the draft order:

16. **For the first 30 years following the issuance of the certificate of occupancy for the community center within the East M Building**, the Applicant shall not charge the community center operator for any (i) rental fees; (ii) property taxes; (iii) building maintenance fees; (iv) operating expenses; or (v) utilities. ~~The Applicant may charge the community center operator for energy utility costs that exceed an amount equal to \$2.00 per square foot per year, with an annual escalation of 3%.~~

References to the Applicant's decision to maintain the contribution limit elsewhere in the draft order would also have to be removed should the Commission decide to make the change noted above.

3. Lodging Use

The ANC Memo alleged that the Applicant intended to use some of the proposed residential units in the M Street buildings for "short-term, hotel-like rentals." This was a new allegation not previously discussed in filings or at the public hearing.

In response to the ANC's concern, the Applicant included a finding in the Draft Order stating that the M Street buildings are approved to include residential, retail, office, and community center uses only, and do not include any type of lodging use(s). The residential units in the M Street Buildings will be required to be leased for residential use only, in accordance with the definition of "Residential" in the Zoning Regulations, which is "[a] use offering habitation on a continuous basis of at least thirty (30) days. The continuous basis is established by tenancy with a minimum term of one (1) month or property ownership." The definition indicates that residential use "does not include uses which more typically would fall within the lodging... use categor[y]."

See 11-B DCMR § 200.2(bb). Thus, the Applicant confirms its commitment to maintaining residential, and not lodging use, in the M Street buildings.

Should the Commission have any questions on the information above please do not hesitate to have staff contact us. Thank you for your attention to these matters.

Sincerely,

HOLLAND & KNIGHT LLP

By: Christine Shiker
Christy M. Shiker

By: Jessica Bloomfield
Jessica R. Bloomfield

Attachment

cc:	Joel Lawson, Office of Planning	(See Certificate of Service)
	Matt Jesick, Office of Planning	(Via Email; w/attachment)
	Aaron Zimmerman, DDOT	(Via Email; w/attachment)
	Joseph Lapan, DMPED	(Via Email; w/attachment)
	Caleb Sheldon, DMPED	(Via Email; w/attachment)
	Advisory Neighborhood Commission 6D	(See Certificate of Service)
	Commissioner Moffatt, ANC 6D05	(Via Email; w/ attachment)
	Commissioner Fast, ANC 6D01	(Via Email; w/ attachment)
	Commissioner Litsky, ANC 6D04	(Via Email; w/ attachment)
	Commissioner Fascett, ANC 6D Chair	(Via Email; w/ attachment)
	Alan Bergstein, OAG	(Via Email; w/ attachment)
	Hillary Lovick, OAG	(Via Email; w/attachment)

CERTIFICATE OF SERVICE

I hereby certify that copies of this letter and the Applicant's Draft Order were sent to the following on July 16, 2018:

Joel Lawson
D.C. Office of Planning
1100 4th Street, SW
Washington, DC 20024

Via Email w/ attachment

Advisory Neighborhood Commission 6D
Office@anc6D.org

Via Email w/ attachment

Tiber Island Cooperative Homes, Inc.
429 N Street, SW
Washington, DC 20024
Attention: Paul Greenberg and Paula Van Lare

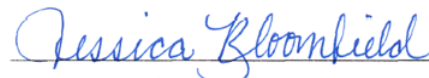
Via US Mail w/ attachment – 2 copies

Carrollsborg Square Condominium Association
1804 T Street, NW
Suite One
Washington, DC 20009
Attention: Henry Baker

Via US Mail w/ attachment

Waterfront Tower Condominium Board
c/o Hara Ann Bouganim
Vice President
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Via Email w/ attachment


Jessica R. Bloomfield
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