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November 19, 2018

VIA IZIS

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

**Re: Applicant's Revised Proffers and Conditions
Z.C. Case No. 18-03 – Dancing Crab Properties, LLC
Consolidated PUD and Related Map Amendment @ Square 1769**

Dear Members of the Commission:

On behalf of Dancing Crab Properties, LLC (the “Applicant”), we hereby submit the Applicant’s revised list of proffers and corresponding conditions, as reviewed by the Office of the Attorney General, in compliance with the Zoning Commission’s procedures of 11-X DCMR § 308.8 *et seq.* The language in the Applicant’s draft Findings of Fact and Conclusions of Law submitted on November 16, 2016, is consistent with the language in the chart attached hereto.

Thank you for your attention to this matter.

Sincerely,

HOLLAND & KNIGHT LLP



Kyrus L. Freeman
Jessica R. Bloomfield

Attachment

cc: Joel Lawson, D.C. Office of Planning (*see* Certificate of Service)
Crystal Myers, D.C. Office of Planning (w/ attachment via Email)
Aaron Zimmerman, DDOT (w/ attachment via Email)
Advisory Neighborhood Commission 3E (*see* Certificate of Service)
Commissioner Greg Ehrhardt, ANC 3E01 (w/ attachment, via Email)
Commissioner Jonathan Bender, ANC 3E Chair (w/attachment, via Email)
Alan Bergstein, OAG (w/ attachment, via Email)

CERTIFICATE OF SERVICE

I hereby certify that copies of this letter and the Applicant's revised proffers and conditions were sent to the following on November 19, 2018:

Mr. Joel Lawson
D.C. Office of Planning
1100 4th Street, SW – Suite E650
Washington, DC 20024

Via Email

Advisory Neighborhood Commission 3E
c/o Lisner Home
5425 Western Avenue, NW Suite 219
Washington, DC 20015

Via U.S. Mail



Jessica R. Bloomfield
Holland & Knight LLP

PROPOSED PUD BENEFITS AND AMENITIES

Initial Submission – November 5, 2018

Z.C. Case No. 18-03

**Consolidated PUD and Related Map Amendment
4611-4615 41st Street, NW (Square 1769, Lots 1 and 2)
Dancing Crab Properties, LLC**

<u>Proffer</u>	<u>Condition</u>
<p><u>Superior Urban Design, Architecture, and Landscaping (11-X DCMR § 305.5(a) and (b)) and Site Planning and Efficient Economical Land Utilization (11-X DCMR § 305.5(c)).</u> The Project’s architectural character and ground floor streetscape will be a significant improvement over the existing buildings on the PUD Site and the surrounding neighborhood. The Project will use high quality materials throughout and will incorporate detailing at regular floor intervals to enhance the building’s design and articulate its scale. Tall storefront glazing at the ground floor, an elegant steel and glass canopy at the building entrance, and metal-clad bays with large glass openings will all contribute to the building’s dynamic façade. In addition, extensive landscaping in the public space at the front of the building will define the residential entry and outdoor seating area, and exterior lighting elements will be installed to create a safe and inviting streetscape and an enjoyable pedestrian experience.</p> <p>The Project will include a restaurant/bar at the ground level that extends to the roof in the form of penthouse habitable space and an outdoor roof deck that will provide the public with stunning views of the neighborhood and the city. The building’s third-floor courtyard will be landscaped with a bioretention garden and will provide enhanced views. Areas of intensive and extensive green roof will also be provided.</p>	<p>The Project shall be developed substantially in accordance with the architectural and landscape plans prepared by Bonstra Haresign Architects, dated November 16, 2018, and included in the record at Exhibit ____ (the “Architectural Drawings”), as modified by the guidelines, conditions, and standards herein.</p>

<p><u>Housing and Affordable Housing (Subtitle X § 305.5(f) and (g)).</u> The Project results in the creation of new housing and affordable housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Future Land Use Map. The Project will replace an underutilized commercial site with approximately 41 new residential units, three of which will be designated Inclusionary Zoning (“IZ”) units. The affordable housing proffer exceeds the amount of square footage that would have been required through matter-of-right development under existing zoning. Specifically, the Applicant will dedicate a minimum of 12.7% of the residential gross floor area and <u>including</u> penthouse habitable floor area combined to IZ units (approximately 3,882 square feet of gross floor area). Two IZ units will be reserved for households earning up to 60% of the median family income (“MFI”) and one IZ unit will be reserved for households earning up to 50% of the MFI. The units reserved at 60% of the AMMFI will each have approximately 1,445 square feet of gross floor area and two bedrooms. The unit reserved at 50% of the MFI will have approximately 992 square feet of gross floor area and one bedroom.</p>	<p>The Applicant shall provide affordable housing as set forth in this condition:</p> <ol style="list-style-type: none"> 1. <u>For the life of the Project,</u> the Applicant shall provide the following housing and affordable housing set forth in the following chart: <i>*Chart attached as last page of this document.</i> 2. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this condition.
<p><u>Environmental Benefits (Subtitle X § 305.5(k)).</u> The Project has been designed to integrate a host of sustainable features, including providing a minimum of 640 square feet of solar panels on the top of the building’s penthouse to help generate a portion of the building’s energy consumption. In addition, the Applicant will certify the project with the USGBC as LEED Gold v.4.</p>	<p><u>Prior to the issuance of the first certificate of occupancy for the Project,</u> the Applicant shall demonstrate to the Zoning Administrator that it has installed a minimum of 640 square feet of solar panels on the top of the building’s penthouses as shown on Sheet A1.8 of the Architectural Drawings.</p> <p><u>Prior to the issuance of the first certificate of occupancy for the Project,</u> the Applicant shall demonstrate to the Zoning Administrator that it has registered the Project with the USGBC to commence the LEED certification process by furnishing a copy of its LEED certification application to the Zoning Administrator. The application shall indicate that the Project has been designed to include at least the minimum number of points necessary</p>

	to achieve Gold certification under the USGBC’s LEED v.4 standards.
<p><u>Commemorative Works or Public Art (Subtitle X § 305.5(d)).</u> Following the Zoning Commission’s approval effective date of Z.C. Order No. 18-03, the Applicant will engage with ANC 3E to select the subject matter and artist for a mural to be located on the south façade of the Project, with the approximate location and dimensions as shown on Sheet A2.2 of the Architectural Drawings. The Applicant will dedicate up to \$25,000 for the design and installation of the mural prior to receiving the first certificate of occupancy for the Project, but the mural need not be installed prior to issuance of the first certificate of occupancy.</p>	<p><u>Prior to the issuance of the first certificate of occupancy for the Project,</u> the Applicant shall demonstrate to the Zoning Administrator that it has paid up to \$25,000 and entered into a contract with the artist or a third party for the design and installation of a mural on the south façade of the Project, with the approximate location and dimensions as shown on Sheet A2.2 of the Architectural Drawings. The mural does not need to be installed prior to issuance of the first certificate of occupancy for the Project.</p>
<p><u>Uses of Special value to the Neighborhood Subtitle X § 305.5(q).</u></p> <p><u>Landscaping and Public Space Improvements</u></p> <p>As shown on Sheets A1.0, L1.0-L1.2 and L1.4-L1.7 of the Architectural Drawings, the Project will include a variety of significant public space improvements adjacent to the Site and on the west side of 41st Street, NW. The public space improvements will include the following:</p> <ol style="list-style-type: none"> 1. Enhanced streetscape design elements along 41st Street directly adjacent to the Project’s entrance, including: (i) a bioretention planting area; (ii) granite pavers between the building façade and the sidewalk; (iii) bar-height seating facing the sidewalk and movable tables and chairs for the café seating; (iv) planters with stone curbs; (v) building exterior light fixtures and in-ground light fixtures; and (vi) bench seating at the residential entry; 	<p><u>Landscaping and Public Space Improvements</u></p> <p><u>Prior to the issuance of the first certificate of occupancy for the Project,</u> and subject to DDOT approval, the Applicant shall demonstrate to the Zoning Administrator that it has made the following public space improvements, as shown on Sheets A1.0, L1.0-L1.2 and L1.4-L1.7 of the Architectural Drawings:</p> <ol style="list-style-type: none"> 1. Installed the following enhanced streetscape design elements along 41st Street directly adjacent to the Project’s entrance: (i) a bioretention planting area; (ii) granite pavers between the building façade and the sidewalk; (iii) bar-height seating facing the sidewalk and movable tables and chairs for the café seating; (iv) planters with stone curbs; (v) building exterior light fixtures and in-ground light fixtures; and (vi) bench seating at the residential entry;

2. An eight foot wide concrete public sidewalk that replaces the existing six foot wide public sidewalk adjacent to the Site;
3. A speed table in the location and with the materials as shown on Sheets L1.0 and 1.1 of the Architectural Drawings to slow traffic;
4. A new curb extension/bulb-out on the east side of 41st Street to shorten the pedestrian travel distance across 41st Street and slow vehicular traffic. As shown on Sheets L1.0 and 1.1 of the Architectural Drawings, the bulb-out will include new stone pavers, short-term bicycle parking for eight bicycles, a public art feature, streetscape plantings, and signage for the new crosswalk; and
5. On the west side of 41st Street, a “traffic-calming curb extension” in the location and with the landscaping materials as shown on Sheets L1.0 and L1.1 of the Architectural Drawings.

The Applicant will maintain the public space improvements listed in FF No. ___ for the life of the Project.

The Applicant will spend up to \$5,000 for the installation of landscaping on the northern portion of Reservation 503, which is located between 41st Street to the east and Wisconsin Avenue to the west (“Reservation 503 North”), and will maintain the landscaping in Reservation 503 North for the life of the Project.

If or when the owner of property located at 4600 Wisconsin Avenue, NW (Square 1732, Lot 53) (“4600 Wisconsin Owner”) stops maintaining the landscaped area approved to be developed in Z.C. Order No. 10-23, Decision No. 10 (view “A” in Ex. 19B) on the southern portion of Reservation 503 (“Reservation 503 South”), the Applicant shall

2. Widened from six feet to eight feet the existing public sidewalk adjacent to the Site and installed new concrete pavers;
3. Installed a speed table in the location and with the materials as shown on Sheets L1.0 and 1.1 of the Architectural Drawings to slow traffic;
4. Installed a new curb extension/bulb-out on the east side of 41st Street to shorten the pedestrian travel distance across 41st Street and slow vehicular traffic. As shown on Sheets L1.0 and 1.1 of the Architectural Drawings, the bulb-out shall include new stone pavers, short-term bicycle parking for eight bicycles, a public art feature, streetscape plantings, and signage for the new crosswalk; and
5. On the west side of 41st Street, installed a “traffic-calming curb extension” in the location and with the landscaping materials as shown on Sheets L1.0 and L1.1 of the Architectural Drawings.

The Applicant shall maintain the public space improvements listed in Decision No. ___ **for the life of the Project.**

Prior to the issuance of the first certificate of occupancy for the Project, the Applicant shall demonstrate to the Zoning Administrator that it has spent up to \$5,000 and installed landscaping in Reservation 503 North. The Applicant shall maintain landscaping in Reservation 503 North **for the life of the Project.**

If or when the 4600 Wisconsin Owner stops maintaining the landscaped area on Reservation 503 South, the Applicant shall maintain the Reservation 503 South landscaping **for the life of the Project.**

maintain Reservation 503 South for the life of the Project.

Donation to Friendship Place.

The Applicant will contribute \$35,000 to Friendship Place to make improvements needed as a result of leaking and flooding in their basement, including but not limited to installing new pipes, waterproofing the basement's foundation, installing additional landscaping that would keep water away from the building and its foundation, and replacing the building's front and side doors.

Donation to Friendship Place

Prior to the issuance of the first certificate of occupancy for the Project, the Applicant shall demonstrate to the Zoning Administrator that it has contributed \$35,000 to Friendship Place to make improvements needed as a result of leaking and flooding in their basement, including but not limited to, installing new pipes, waterproofing the basement's foundation, installing additional landscaping that would keep water away from the building and its foundation, and replacing the building's front and side doors, and provide a letter from Friendship Place indicating that the work has been or is being performed.

Transportation Features (Subtitle X § 305.5(o))

The Applicant commits to the following TDM measures:

1. Develop and maintain a property management website that will include information on and links to current transportation programs and services such as (i) Capital Bikeshare, carsharing services, and ride-hailing services; (ii) information about transportation apps, such as Citymapper, Spotcycle, and Transit and other transportation resources, such as DDOT's DC Bicycle Map and goDCgo.com; (iii) links to the Commuter Connections Rideshare Program, which provides complimentary information on a variety of commuter programs to assist in determining which commuting options work best for commuters; (iv) information about the Commuter Connections Guaranteed Ride Home Program, which provides commuters who regularly carpool, vanpool, bike, walk or take transit to work with a free and reliable ride home in an emergency; and (v) information about the Commuter Connections Pools Program, which incentivizes commuters who currently drive alone to carpool;
2. Provide an electronic display in a common, shared space in the building that provides real-time public transit information such as nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the number of bicycles available at each location;

For the life of the Project, the Applicant shall implement the following TDM measures:

1. Develop and maintain a property management website that will include information on and links to current transportation programs and services such as (i) Capital Bikeshare, carsharing services, and ride-hailing services; (ii) information about transportation apps, such as Citymapper, Spotcycle, and Transit and other transportation resources, such as DDOT's DC Bicycle Map and goDCgo.com; (iii) links to the Commuter Connections Rideshare Program, which provides complimentary information on a variety of commuter programs to assist in determining which commuting options work best for commuters; (iv) information about the Commuter Connections Guaranteed Ride Home Program, which provides commuters who regularly carpool, vanpool, bike, walk or take transit to work with a free and reliable ride home in an emergency; and (v) information about the Commuter Connections Pools Program, which incentivizes commuters who currently drive alone to carpool;
2. Provide an electronic display in a common, shared space in the building that provides real-time public transit information such as nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the number of bicycles available at each location;

<ol style="list-style-type: none"> 3. Provide two Electric Vehicle (“EV”) charging stations internal to the building’s garage; 4. Offer two of the on-site vehicle parking spaces to a car-share provider(s), subject to demand. If an agreement with a car-share provider cannot be reached prior to the issuance of the first certificate of occupancy for the Project, then the Applicant will (i) host a transportation event for residents and employees of the Project within the first year following the issuance of the first certificate of occupancy; and (ii) provide one \$10 pre-loaded SmarTrip card per dwelling unit and employee upon initial lease-up of the building; 5. Unbundle the cost of parking spaces from the cost of residential leases; and 6. Restrict residents of the Project from obtaining a Residential Parking Permit (“RPP”) by (i) placing a clause in emphasized type in all residential leases that prohibits residents from applying for or obtaining RPPs, or using an RPP guest pass within one mile of the Site, upon penalty of mandatory lease termination to the full extent permitted by law; and (ii) obtaining written authorization from each tenant through a required lease provision that allows the Department of Motor Vehicles (“DMV”) to release to the Applicant every 12 months any and all records of that tenant requesting or receiving an RPP for the Site. The Applicant will take all reasonable steps to obtain and review such records for noncompliance with such lease provisions. The Applicant will also (i) oppose any effort by Project residents or others to add the Site to the list of properties eligible for RPPs; and (ii) if the Applicant sells any unit(s) at the 	<ol style="list-style-type: none"> 3. Provide two EV charging stations internal to the building’s garage; 4. Offer two of the on-site vehicle parking spaces to a car-share provider(s), subject to demand. If an agreement with a car-share provider cannot be reached <u>prior to the issuance of the first certificate of occupancy for the Project</u>, then the Applicant shall (i) host a transportation event for residents and employees of the Project within the first year following the issuance of the first certificate of occupancy; and (ii) provide one \$10 pre-loaded SmarTrip card per dwelling unit and employee at initial occupancy of the Project; 5. Unbundle the cost of parking spaces from the cost of residential leases; and 6. Restrict residents of the Project from obtaining an RPP by (i) placing a clause in emphasized type in all residential leases that prohibits residents from applying for or obtaining RPPs, or using an RPP guest pass within one mile of the Site, upon penalty of mandatory lease termination to the full extent permitted by law; and (ii) obtaining written authorization from each tenant through a required lease provision that allows the DMV to release to the Applicant every 12 months any and all records of that tenant requesting or receiving an RPP for the Site. The Applicant shall take all reasonable steps to obtain and review such records for noncompliance with such lease provisions. The Applicant shall also (i) oppose any effort by Project residents or others to add the Site to the list of properties eligible for RPPs; and (ii) if the Applicant sells any unit(s) at the Project, the Applicant shall add a covenant that runs with the land to the
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<p>Project, the Applicant will add a covenant that runs with the land to the deed for the unit(s) prohibiting residents from applying for or obtaining RPPs.</p>	<p>deed for the unit(s) prohibiting residents from applying for or obtaining RPPs.</p>
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<p><u>Additional Commitments to ANC 3E</u></p> <p>The Applicant also agreed to the following items as part of its MOU with ANC 3E. These items are not considered public benefits and project amenities as required under 11-X DCMR Chapter 3. However, the Applicant has committed to the following:</p> <ol style="list-style-type: none"> 1. The Applicant will reserve a minimum of 4,971 square feet of gross floor area in the Project solely for use as full-service restaurant (“Restaurant Space”) where food is (i) delivered to the tables by a server; (ii) paid for after consumption; and (iii) served on non-disposable plates with non-disposable cutlery. Notwithstanding the definition of “Restaurant” in 11-B DCMR § 100.2, the tenant of the Restaurant Space may be permitted to serve alcoholic beverages, provide entertainment including televisions and live and/or amplified music, and allow dancing, but such uses will be subject to any otherwise-applicable licensing restrictions, and the ANC will be permitted to render any such advice it deems appropriate on any future applications for new licenses or renewals. 2. The Applicant will install all kitchen exhaust systems associated with the eating and drinking establishment use 	<p><u>Additional Commitments to ANC 3E</u></p> <ol style="list-style-type: none"> 1. <u>Prior to the issuance of the first certificate of occupancy for the Project, and for the life of the Project,</u> the Applicant shall demonstrate to the Zoning Administrator that it has reserved a minimum of 4,971 square feet in the Project solely for use as a full-service Restaurant Space where food is (i) delivered to the tables by a server; (ii) paid for after consumption; and (iii) served on non-disposable plates with non-disposable cutlery. Notwithstanding the definition of “Restaurant” in 11-B DCMR § 100.2, the tenant of the Restaurant Space may be permitted to serve alcoholic beverages, provide entertainment including televisions and live and/or amplified music, and allow dancing, but such uses shall be subject to any otherwise-applicable licensing restrictions, and the ANC shall be free to render any such advice it deems appropriate on any future applications for new licenses or renewals. 2. <u>Prior to the issuance of the first certificate of occupancy for the Project,</u> the Applicant shall
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<p>so that they vent to the roof of the Project.</p> <p>3. The Applicant will prohibit the following uses at the Property: sexually-oriented business establishment; a check-cashing establishment; a pawnbroker; a bank; a nightclub as defined by the D.C. Alcoholic Beverage Regulation Administration (“ABRA”); a mattress store; a convenience store such as 7-Eleven; a professional office; a drug store such as CVS; and any “chain” retail, service, or food service establishment (a “chain” being defined as a business with either at least 10 stores within the District of Columbia or at least 50 stores nationwide). Notwithstanding the foregoing, the ANC may approve a use otherwise prohibited in this paragraph that the ANC believes would provide substantial value for the community. Such approval shall be granted by the ANC only by a formal resolution.</p> <p>4. The Applicant will prepare a loading management plan, to be implemented for the life of the Project.</p>	<p>demonstrate to the Zoning Administrator that it has installed all kitchen exhaust systems associated with the eating and drinking establishment use so that they vent to the roof of the Project.</p> <p>3. <u>For the life of the Project</u>, the Applicant shall prohibit the following uses at the Property: sexually-oriented business establishment; a check-cashing establishment; a pawnbroker; a bank; a nightclub as defined by ABRA; a mattress store; a convenience store such as 7-Eleven; a professional office; a drug store such as CVS; and any “chain” retail, service, or food service establishment (a “chain” being defined as a business with either at least 10 stores within the District of Columbia or at least 50 stores nationwide). Notwithstanding the foregoing, the ANC may approve a use otherwise prohibited in this paragraph that the ANC believes would provide substantial value for the community. Such approval shall be granted by the ANC only by a formal resolution.</p> <p>4. <u>Prior to the issuance of the first certificate of occupancy for the Project</u>, the Applicant shall demonstrate to the Zoning Administrator that it has prepared a loading management plan for the Project, which the Applicant shall implement <u>for the life of the Project</u>.</p>
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Residential Unit Type	Square Feet & Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type
Total	28,762 sf GFA resid. + 1,754 sf penthouse habitable space = 30,516 sf total (100%)	41	N/A	N/A	N/A
Market Rate	26,634 sf GFA (87.3%)	38	Market Rate	N/A	Rental
IZ at 60% MFI	2,890 sf GFA (9.5%)	2	Up to 60% MFI	Life of the Project	Rental
IZ at 50% MFI	992 sf GFA (3.2%)	1	Up to 50% MFI	Life of the Project	Rental
Total IZ	3,882 sf GFA (12.7%)	3	50% and 60% MFI	Life of the Project	Rental