



# Advisory Neighborhood Commission 2A

*“Serving the Foggy Bottom and West End communities of Washington, D.C.”*

July 25, 2018

Mr. Anthony Hood  
Chairman  
Zoning Commission  
441 4th Street NW, Suite 200S  
Washington, DC 20001  
[zcsubmissions@dc.gov](mailto:zcsubmissions@dc.gov)

**RE: Application by Washington REIT for a Minor Modification to the PUD  
for 600 New Hampshire Avenue NW (ZC #62-19B)**

Dear Chairman Hood,

At its regular meeting on May 16, 2018, Advisory Neighborhood Commission 2A (“ANC 2A” or “Commission”) considered the above-referenced matter. With seven of seven commissioners present, a quorum at a duly-noticed public meeting, the Commission unanimously voted (7-0-0), after a motion made by Commissioner Kennedy and seconded by Commissioner Guzman, to authorize Commissioner Smith to draft and file the following resolution:

Advisory Neighborhood Commission 2A (the “ANC”) has executed a Settlement Agreement with WASHREIT WATERGATE 600 OP LP (“WASHREIT”) concerning the property located at 600 New Hampshire Avenue NW, Washington, DC 20037 (the “Property”) and WASHREIT’s application for a minor modification to the planned unit development in Zoning Commission Case No. 62-19B (the “Modification Request”).

The ANC and WASHREIT have agreed that WASHREIT shall file a written request with the Zoning Commission that the following terms be incorporated as a condition of approval for the Modification Request:

- a) The Penthouse Space and Roof Deck shall be accessory to the Office Building and shall be used only by an owner or tenant, including the agents, employees, invitees, or guests of an owner or tenant, of the Office Building. The Penthouse Space and Roof Deck shall be used only for activities and events associated with or ancillary to the owner or tenant’s use and in no event shall be used as a nightclub, bar, cocktail lounge, or restaurant, unless otherwise approved in accordance with Subtitle C § 1500.3(c) of the Zoning Regulations.
- b) The Roof Deck may be used and operated from 8:00 a.m. to 10:00 p.m. on Sunday through Thursday and from 8:00 a.m. to 11:00 p.m. on Friday and Saturday as well as on all Federal holidays.



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- c) There shall be no amplified music played on the Roof Deck at any time. There may be amplified music played in the Penthouse Space provided that any windows and/or doors remain closed. Notwithstanding this condition, the Penthouse Space and Roof Deck shall otherwise be operated in full compliance with the noise ordinances of Title 20 of the District of Columbia Municipal Regulations.

Alternatively, if the Zoning Commission does not incorporate these conditions of approval into an order approving the Modification Request, then WASHREIT has agreed to draft and record a covenant in the Land Records of the District of Columbia against the Property, which will outline these conditions.

In return, the ANC has agreed to not oppose the Modification Request and, accordingly, files this formal letter of support for the Modification Request.

Commissioner William Kennedy Smith ([2A04@anc.dc.gov](mailto:2A04@anc.dc.gov)) is the Commission’s representative in this matter.

ON BEHALF OF THE COMMISSION.

Sincerely,

William Kennedy Smith, MD  
Chairperson

CC: Anthony Chang, Vice President of Asset Management, Washington REIT  
Christine Shiker, Counsel for the Applicant  
Meridith Moldenhauer, Counsel for ANC 2A  
Eric DeBear, Counsel for ANC 2A

# **Attachment A**

**Settlement Agreement Between ANC 2A  
and WASHREIT WATERGATE 600 OP LP**

## SETTLEMENT AGREEMENT

**THIS SETTLEMENT AGREEMENT** is made and entered into as of this 6 day of July, 2018 (the “**Execution Date**”) by and between ADVISORY NEIGHBORHOOD COMMISSION 2A (“**ANC**”), having an address at 2020 Pennsylvania Avenue NW, Suite 293, Washington, DC 20006, and WASHREIT WATERGATE 600 OP LP (“**WASHREIT**”), having an address of 600 New Hampshire Avenue NW, Washington, DC 20037. The ANC and WASHREIT may be individually referred to as a “Party” or collectively referred to as the “Parties.”

### Recitals

This Settlement Agreement is made with reference to the following facts:

A. WASHREIT is the owner of property located at 600 New Hampshire Avenue NW, Washington, DC 20037 (Square 0008, Lot 811) (the “Property”), which is improved with a 12-story building featuring both office and residential uses (the “Office Building”). The Property is located within the jurisdiction of the ANC.

B. The Office Building is located in Square 8 and is part of the Watergate Planned Unit Development (the “Watergate PUD”) that was originally approved by the Zoning Commission for the District of Columbia (the “Zoning Commission”) in Case No. 62-19. Further processing and modifications to the Watergate PUD were approved in a number of cases, including Board of Zoning Adjustment (“BZA”) Appeal Nos. 7234, 7903, 8117, 9303, and 9919 as well as Zoning Commission Case Nos. 68-58, 72-23, 75-3, 89-6M, 03-16, and 62-19A.

C. On May 16, 2018, WASHREIT presented to the ANC its proposed addition of approximately 1,700 sq. ft. of penthouse habitable space (the “Penthouse Space”) to the Office Building (the “Project”). At the May 16, 2018 meeting, the ANC voted unanimously to support the Project subject to the Parties executing a written agreement governing the operation and use of the proposed Penthouse Space and appurtenant roof deck (the “Roof Deck”) at the Office Building.

D. On June 13, 2018, WASHREIT filed an application for a minor modification to the Watergate PUD as Zoning Commission Case No. 62-19B (the “Modification Request”), which is attached hereto at Exhibit A, seeking approval from the Zoning Commission to construct the Project. Pursuant to Subtitle C § 1504.3 of the Zoning Regulations of 2016 (the “Zoning Regulations”), the Modification Request may be placed on the Zoning Commission’s consent calendar.

E. The Parties are desirous of entering into this Agreement to memorialize the terms of use discussed during the May 16, 2018 ANC meeting.

In consideration of the foregoing recitals, and the promises, obligations, and representations set forth herein, the sufficiency of which the Parties hereby acknowledge, this Settlement Agreement sets forth below the terms by which the Parties intend to be legally bound.

## Terms of Agreement

1. **Conditions of Approval.** No later than seven (7) business days after the Execution Date, WASHREIT shall file in Zoning Commission Case No. 62-19B a written request that the following terms be incorporated as conditions of approval for the Modification Request.

(A) The Penthouse Space and Roof Deck shall be accessory to the Office Building and shall be used only by an owner or tenant, including the agents, employees, invitees or guests of an owner or tenant, of the Office Building. The Penthouse Space and Roof Deck shall be used only for activities and events associated with or ancillary to the owner or tenant's use and in no event shall be used as a nightclub, bar, cocktail lounge or restaurant, unless otherwise approved in accordance with Subtitle C § 1500.3(c) of the Zoning Regulations.

(B) The Roof Deck may be used and operated from 8:00 a.m. to 10:00 p.m. on Sunday through Thursday and from 8:00 a.m. to 11:00 p.m. on Friday and Saturday as well as on all Federal holidays.

(C) There shall be no amplified music played on the Roof Deck at any time. There may be amplified music played in the Penthouse Space provided that any windows and/or doors remain closed. Notwithstanding this condition, the Penthouse Space and Roof Deck shall otherwise be operated in full compliance with the noise ordinances of Title 20 of the District of Columbia Municipal Regulations.

2. **Covenant.** If the Zoning Commission approves the Modification Request and the order approving the Modification Request does not include the conditions set forth in Section 1 of this Agreement, then WASHREIT shall draft and record a covenant in the Land Records of the District of Columbia setting forth the conditions of approval stated in Section 1 of this Agreement. This covenant shall be recorded within thirty (30) business days of the date on which the Zoning Commission issues a written order approving the Modification Request. WASHREIT shall incur all costs and expenses associated with drafting and recording such covenant.

3. **No Opposition to Project.** The ANC, and the members of ANC in their individual capacities, shall not oppose, directly or indirectly, WASHREIT in hearings or other proceeding before governmental entities or agencies, or in any public forum, or as part of an application for a building permit, demolition permit, raze permit, or any other permitting from the Department of Consumer and Regulatory Affairs, or any other governmental agency, so long as WASHREIT incorporates architectural plans for the Property that are consistent with the architectural plans in the Modification Request. While the ANC cannot restrict residents or community groups from making their own statements, the ANC will make best efforts in assuring the Project moves forward as proposed to the Zoning Commission without opposition.

4. **Alteration or Modification.** The obligations in this Settlement Agreement do not constitute approval or consent to any future alteration or modification to the Project, as depicted in Exhibit A, or to any building in the Watergate PUD or the Project.

5. **Entire Understanding.** This Settlement Agreement constitutes a single, integrated contract expressing the entire understanding between and among the Parties with respect to the subject matter hereof, superseding all negotiations and prior and/or contemporaneous discussions, communications, and contracts of agreement, whether oral or written. The Parties hereby acknowledge that there have been no representations, warranties, covenants or understandings other than those expressly set forth herein. This Settlement Agreement, or any part hereof, may not be amended, modified, changed, waived, or abrogated except in writing executed by all Parties identified herein.

6. **Binding Effect.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their executors, administrators, personal representatives, heirs, successors, assigns, affiliates, subsidiaries, and parent corporations, respectively.

7. **Authority to Bind Party.** Each person signing this Settlement Agreement on behalf of a Party represents and warrants that he or she has the full right and authority to enter into this Settlement Agreement on behalf of such Party to fully bind such Party to the terms and obligations of this Settlement Agreement.

8. **Construction of Agreement.** Each Party acknowledges that it has had the opportunity to negotiate modifications to the language of this Settlement Agreement. Accordingly, each Party agrees that in any dispute regarding the interpretation or construction of this Settlement Agreement, no presumption will operate in favor of or against any party hereto by virtue of its role in drafting or not drafting the terms and conditions set forth herein.

9. **Choice of Law.** This Settlement Agreement shall be construed and enforced in accordance with the laws of the District of Columbia and applicable federal law. Any dispute regarding any term of this Settlement Agreement shall be construed under and governed by the laws of the District of Columbia.

10. **Choice of Venue.** Any action at law, suit in equity, or other judicial proceeding to enforce the terms of this Settlement Agreement shall be brought, if at all, in the Superior Court of the District of Columbia. Each party acknowledges the right of the Superior Court of the District of Columbia to assert personal jurisdiction in any such action over the Parties, and each of these Parties waive and release now and forever any defense that might otherwise exist to the assertion of personal jurisdiction by the Superior Court of the District of Columbia.

11. **Settlement.** The Parties acknowledge and agree that this Settlement Agreement is the result of a settlement and compromise. This Settlement Agreement shall not be used in any proceeding for any purpose, except to enforce the provisions of this Settlement Agreement. The negotiations and statements made in connection herewith shall not be deemed to be admissions by any Party of any fact or liability and are not admissible in any proceeding, except to enforce any provision of this Settlement Agreement.

12. **Amendments.** This Settlement Agreement may be amended by a written instrument signed by the ANC and the Owner(s) of the Property in the same manner as this Settlement Agreement.

13. **Default.** The Parties agree that, should circumstances occur in which one Party believes that there has been a violation of any provision of this Settlement Agreement by the other Party, the Party who claims such violation must provide prompt written notice to the other Party and must allow the other Party the opportunity to cure the breach or otherwise respond. Said notice must provide the circumstances of the alleged breach in sufficient detail to allow the Party receiving the notice to investigate the allegations in the notice and must allow five (5) calendar days for that Party to respond concerning whether it will make efforts to cure the breach or otherwise respond. Should the Parties not be able to reach an agreement as to a cure within the five (5) calendar day period, the Party who claims the alleged violation may then pursue legal action. If a breach is determined, the legal costs of any such action would be borne by the party found to be in breach of the contract.

14. **Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be sent to the following:

If to ANC:                      Advisory Neighborhood Commission 2A  
  c/o West End Library  
  2301 L Street NW  
  Washington, DC 20037

If to WASHREIT:              Washington REIT  
  1775 Eye Street NW, Suite 1000  
  Washington, DC 20006

15. **Form of Notice.** Notices under this Settlement Agreement will be deemed sufficient if given by mail, addressed to the individuals specified below, or to such other individuals as the respective Parties may designate by notice from time to time. Notices so given will be effective upon receipt by the Party to which the notice is given.

16. **Headings.** The headings used in this Settlement Agreement shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Settlement Agreement.

17. **Severability.** If any provision or application of a provision of this Settlement Agreement is held to be unconstitutional or otherwise invalid, the declaration of invalidity shall not affect other provisions or applications of the Settlement Agreement which can be given effect without the invalid provision or application, and to this end the provisions of the Settlement Agreement are deemed severable.

18. **Exhibits.** The exhibits attached to this Settlement Agreement are made a part of this Settlement Agreement and are incorporated into this Settlement Agreement by reference.

19. **Execution in Counterparts.** This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Settlement Agreement.

20. **Time is of the Essence.** For all terms and conditions provided here in under this Settlement Agreement, time is of the essence.

*[Signature pages follow]*



**WHEREFORE**, the Parties execute this Settlement Agreement effective as of the date the last Party signs it.

**ADVISORY NEIGHBORHOOD COMMISSION 2A**

By: [Signature] Date: 7/6/18

Name: William K Smith

Title: CHAIR

District of Columbia: ~~SS~~ STATE OF MARYLAND, COUNTY OF TALBOT

On this 6<sup>th</sup> day of JULY, 2018, before me, the undersigned Notary Public appeared WILLIAM K. SMITH, CHAIR for the Advisory Neighborhood Commission 2A, who was personally known to me or proved to me through documentary evidence to be the person named in the foregoing, and executed the same.

Subscribed and sworn to this 6<sup>th</sup> day of JULY, 2018.

[Signature]  
Notary Public



Commission Expires: 4-30-19

**WASHREIT WATERGATE 600 OP LP**

By:  Date: 7/5/18

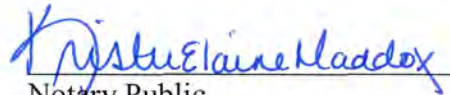
Name: Thomas Q. Bakke

Title: Executive Vice President and Chief Operating Officer

District of Columbia: SS

On this 5 day of July, 2018, before me, the undersigned Notary Public appeared Thomas Q. Bakke, EVP and C.O.O. for WASHREIT Watergate 600 OP LP, who was personally known to me or proved to me through documentary evidence to be the person named in the foregoing, and executed the same.

Subscribed and sworn to this 5<sup>th</sup> day of July, 2018.

  
Notary Public

Commission Expires:

