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VIA HAND DELIVERY

Mona Seghal, General Counsel
NYC Department of Buildings
280 Broadway, 7th Floor
New York, NY 10007

RE: 246 Spring Street, New York, New York
Trump Soho Condominium Hotel

Dear Ms. Seghal:

I am writing in reference to the approval and permit issuance by your agency for the above-referenced project. The project proposes a 42 story condominium hotel in an M1-6 zoning district. As more fully described in the following, these actions contravene the Department of Buildings' ("DOB") policy (LPPN #1/05), precedent, and may, likely, violate security laws.

Restrictive Declaration

Your agency approved the above-referenced project under New Building Application #104403334. This approval allows for the construction of a transient use/J-1 Residential (Hotel) in a manufacturing zone in which residential occupancy is not allowed. This approval was conditioned upon the filing of a Restrictive Declaration ("Declaration") which states that no owner of a unit may occupy the unit for a continuous period of more than 29 days in any 36 day period, or for a total of no more than 120 days in any calendar year (Paragraph 2.02 (a) of Declaration). Failure to abide by the terms of the Declaration would result in possible DOB audits (Paragraph 2.05), and/or financial penalties of twice the 'Rack Rate' of each day in excess of occupancy limitations, one-half of which is payable to DOB (Paragraph 2.08).

DOB LPPN # 1/05, Section II, Required Language, subsection (7) expressly states that all restrictive declarations shall include the following clause: "failure to comply with the terms of this restrictive declaration or easement agreement may result in the revocation of a building permit or certificate of occupancy." The Declaration at issue does not contain the required clause. In fact, under the Declaration, violators of the Declaration would be subject to: monetary penalties that would be insubstantial given the cost and expense of the units, and, this results in the disincentive for violating the Declaration. The fact that DOB would receive substantial income from monetary penalties is very disturbing. The only loser in this never-before-seen arrangement would be the neighboring community that will suffer the consequences of the unlawful residential use.

The Restrictive Declaration is not only improper in form, but the failure to notify prospective buyers that the certificate of occupancy could be revoked likely violates state disclosure requirements. Further, the absence of any real enforcement mechanism and/or disincentive to unit owners for violation of the Declaration merely aids and abets future violations of the NYC Zoning Resolution and contravenes public policy. Your agency must revoke all existing permits and approvals for this project until a Restrictive Declaration is filed that contains the clauses expressly required by DOB's own written policy and adds significant disincentives to any violation. Making this a potential cash-cow for DOB coffers is, in a word, obscene.

DOB Precedent

In 2001, application # 102514030 was filed for 848 Washington Street, New York, New York (in the vicinity of the Trump Soho project), which proposed a 13 story residential apartment house in an M1-5 zoning district. The application was disapproved. On January 16, 2003, then Deputy Commissioner Ron Livian granted the applicant a reconsideration which allowed for up to 49% of the units of the Use Group 5 transient hotel to be used for long-term occupancy. By letter dated April 19, 2004, Deputy Commissioner Fatma Amer informed the applicant that Mr. Livian's reconsideration approval was erroneous. Ms. Amer's letter correctly stated that the M1-5 zone prohibited residential uses and further stated that Mr. Livian's approval "creates objectionable results by undermining the integrity of the text's prohibition on residential occupancies in the zoning district in which the building is located. . . [T]herefore, in order to develop a transient hotel in a manufacturing district, units <u>may not be subject to lease, sale or other arrangement under which they would not be available for transient occupancy</u>." (emphasis added.)(See letter attached.)

By approving the Trump Soho project, DOB has violated both the Zoning Resolution and its own precedent. As clearly stated by Ms. Amer, the sale of units for residential occupancy is a violation of the applicable zoning regulations. It is unconscionable that DOB would take such disparate positions regarding two similarly situated projects. DOB's approval of the Trump project appears not only to directly violate the Zoning Resolution, but, as stated by Ms. Amer, "undermines its integrity."

SEC Rules and Regulations

The Securities and Exchange Commission ("SEC") has closely observed condominium hotel offerings in recent years. Although there appears to be no specific standard, in fact, the SEC did issue a set of guidelines for developers regarding when a condominium hotel plan is a security. Under these guidelines, a key factor in assessing whether a condominium hotel offering is a security is whether there are significant restrictions on the purchaser's use of the condominium unit. By the express terms of the Restrictive Declaration, the purchaser is substantially and materially restricted regarding the use of the unit. In fact, the owner must make the unit available for rent for a certain number of days. This restriction establishes that the Trump Soho project is a security which falls under both federal and state securities laws. The developers conceded as much in the Declaration itself, paragraph 2.02(b):

> At all times during which a Unit is not occupied by its Unit Owner, it shall be made available on a daily or weekly basis to non-Unit Owners pursuant to a rental program operated either (i) by or on behalf of the Management Company or (ii) through no more that five (5)(or such greater as shall be mandated by applicable determination of the Securities and Exchange Commission) (emphasis added.)

Clearly, there would have been no concession regarding SEC jurisdiction over the project if it were not a security.

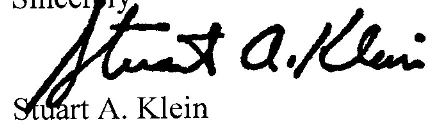
Research has revealed that when developers question regarding a project's status, they submit their offering plans to the SEC for a No Effect letter prior to the construction and sale of the units. This has not been done in the instant case. In fact, a letter from the applicant's counsel dated June 12, 2007, implies that the Trump Soho plan should be exempt from the SEC regulations since the use restrictions are required by DOB and the Zoning Resolution. (See attached.)The logic appears to be that since the developers chose a zoning district that does not allow their desired use, they are somehow exempt from federal and state securities laws. There is no support in either the Zoning Resolution or the Administrative Code for the terms agreed upon in the Restrictive Declaration. Transient hotel is defined in the Zoning Resolution, and much like your agency's rejection of Deputy Commissioner Livian's attempt to redefine it, this current redefinition must be rescinded as well.

Additionally, the SEC guidelines prohibit condominium hotel offerings that advertise potential profit. (SEC Release No. 33-5347, dated January 4, 1973)(See attached.) Despite this prohibition, the Trump Soho website makes reference to the possibility of profit from units rented. (See attached.)

For DOB to allow the construction of a project of such immense scope without taking note of the SEC restriction is outrageous. I believe the only proper cause of action is the revocation of all approvals until the Restrictive Declaration is revised; and, that t

the developer to submit the Declaration and supporting documentation to the SEC for review and comment.

Sincerely,



Stuart A. Klein

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