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October 10, 2014

Dear Waterview Towers Owners:

I am writing this letter to you because I wanted to personally alert you about the direction your board of directors has embarked on which will end up wasting thousands of dollars of your money. They have not accurately reported to you events leading up to and following the approval by the City Commission of our proposal to construct a 108 room, 75 foot tall boutique hotel and parking garage on Unit C-2. I believe it is critical to set the record straight and encourage you to become directly involved in the ongoing process before actions already undertaken by your board end up spinning out of control, costing you thousands of dollars each in legal fees over which you will have no control.

In case you are not aware, the board has engaged a local law firm which has initiated litigation against the City of West Palm Beach to rescind the approvals granted to us to build a 75 foot boutique hotel. Your board seems to believe that you will fund the litigation without seeking your approval despite the fact that the litigation will cost the Association hundreds of thousands of dollars in legal fees before the courts resolve them.

We have reviewed their allegations and are comfortable and confident that, should the litigation go to trial, our approvals will be upheld. We have the resources and patience to be vindicated in our conviction that the approvals will be upheld. However, I believe there is a process which, if you get involved, can resolve our differences without wasting our resources or yours. Please understand that, if a negotiated solution is not achieved, we will not be deterred from developing the approved 75 foot hotel and associated parking facility.

An equitable resolution through negotiation has remained our motivation for the last two years during which our representatives have attended numerous meetings, including the public meeting hosted by Commissioner Mitchell at the City's waterfront pavilion. Those meetings included private meetings with members of the prior board led by Tom Shebell and, more recently, with a revolving door of your board members as they have changed since your most recent election.

As you probably are aware, the City Commission in April of this year agreed with us and on First Reading passed an ordinance allowing us to build a 75 foot hotel and parking facility. During the City Commission discussion, your board and we were asked by the City to restart negotiations in order to find a way for the Waterview Towers to allow us to construct a larger hotel which City officials preferred over the 75 foot hotel. The larger hotel is 92 feet high. The City acknowledged it could play an important part in the negotiation and became a participant in tri-party negotiations which began immediately following the First Reading vote.

Numerous meetings and negotiations then took place over the summer. City staff attended and documented every meeting and, therefore, can validate that everything in this letter took place, contrary to the misinformation that your directors have portrayed to you. Despite the numerous meetings and notwithstanding numerous offers we made, your board was unable or lacked the authority to agree to any of our offers. We do not believe that any of these offers have been conveyed to you as voting members of the Association to consider whether or not they were reasonable or if your board simply dismissed the offers without discussion with you.


Instead of seeking your input, your board filed litigation, purportedly "on your behalf" and, at their most recent meeting, adopted a resolution indemnifying themselves from any and all costs of litigation relating to our approvals (**including suits against them by other unit owners**) – the cost of which will be born entirely by you!

In order to avoid a costly battle which the Association will ultimately lose, you must become involved. We will be available to meet with you should you decide that your board's course of action is not the direction you want to travel. Should you choose to remain on the current course, we believe we will prevail and ultimately construct the approved 75 foot boutique hotel and parking facility. Our view is that working together we can resolve our differences without depleting our or your resources on costly litigation.

Unfortunately, there is no other way to describe directly to you the mischaracterizations and misrepresentations your board has been conveying to you other than by refuting their letters dated September 8, 2014 and September 25, 2014. Again, City staff can validate every point laid out in the attached MYTH v. TRUTH format.

Sincerely,

PALM HARBOR HOTEL, LLC

By:   
Cheryl A. Chase, a manager

# Myth vs. Truth

**MYTH #1:** The construction of a new north garage for the Waterview Towers was a joint idea of the City and PHH.

**TRUTH:** The idea of a new north garage was that of Commissioner Mitchell recognizing that the City had additional parking needs, as well as increased parking needs of the Watermark condominium. Her thought was that, since the City owned the land that the Waterview Towers sits upon, perhaps the City could justify using its resources to help fund the cost of the new garage. The Waterview would contribute a share in exchange for increasing the number of spaces per unit to two for each unit, as well as benefitting from an entirely new pool and amenities deck on top of the garage. By moving the pool to the new garage, any shade issue created by the 92 foot hotel would be eliminated. Like the Residential Representatives, we were willing to entertain the idea and expressed our willingness to contribute to the cost of construction.

**MYTH #2:** In the end, it was somehow up to Waterview Towers residential unit owners to pay \$20 million towards the \$32 million garage and work with the City to develop it with PHH nowhere to be seen.

**TRUTH:** It was never "up to the Waterview Towers to pay \$20 million". Cost estimates were \$12 million for just a new garage; an additional \$6 million for a new pool and amenities deck on top; and \$12 million for 18 new residential condominium units proposed to be added to the Waterview Towers. Total for the "Cadillac" version; \$30 million. New residential units adding to Waterview Tower's income did not have to be built, reducing the overall cost. We offered to contribute \$1 million towards the construction of the new garage and increase our garage maintenance share from 4% to pro rata. One Watermark's share of the cost was never determined. The City was never able to determine its share of the \$18 million, which would have been substantial. Instead, the Residential Representatives declared they couldn't afford it and dismissed the idea as a "trick".

**MYTH #3:** We provided the Residential Board with three options "commonly known as ultimatums", which were never placed on stationary with no signature, and required an August 31, 2014 deadline.

**TRUTH:** After the City Commission's First Reading approval in April, the Residential Representatives requested that we delay Second Reading and Final approval until the "new" Board could fully explore all the options with the City and us. The Residential Representatives also requested all communication between us and the unit owners regarding a resolution go through them alone, to the exclusion of all other unit owners, thereby allowing the Residential Board to consolidate its power. This request to shut you out of the process is documented and can be verified by City staff. We complied with both requests. What normally would have been a two week period between First and Second Reading was voluntarily delayed three different times by our agreeing to delay the Second Reading from what should have been mid-May all the way to September. We also complied with the Residential Representatives' request to refrain from

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speaking directly with individual unit owners and relied solely upon the Residential Board's negotiating team to communicate the various offers and proposals being discussed. This is documented in emails as well.

During more than one meeting and throughout the discussions, the Residential Representatives repeatedly requested that an actual offer be put in writing. Our representatives responded to the Residential Representatives' request by stating that a Term Sheet would be drafted. During the month of July, our representatives expressed our dilemma of needing to reflect progress since First Reading approval in April as it pertained to our hotel brand. Our representatives suggested more than once that, if the City could not come to any hard conclusions in the near future regarding the City's financial participation, a Term Sheet would be drafted to reflect options that the Waterview could exercise immediately or wait for the City's answer. Again, City staff can verify that this was made clear to the Residential Board on numerous occasions. On August 14, 2014, our representatives submitted an offer to the Residential Representatives that included a cash contribution towards building repair of \$1 million dollars; increased our pro rata share of repair and maintenance of the current parking structure from 4% to 40% and removal of C-1 and C-2 directors from the Board, all in exchange for the Waterview contractually allowing us to build a 92 foot hotel. OR, if the Residential Board wanted to continue to pursue the construction of a new north garage and pool deck with the City, then the \$1 million dollar contribution would simply be put into escrow to ultimately go towards the new garage. That offer was expressly available for approximately two weeks and, absent any counter offers or new information, our representatives made it clear that we could no longer delay our hotel franchise negotiations and would need to move forward with Second Reading on September 2<sup>nd</sup> to confirm City approvals for the 75 foot hotel. The Residential Representatives never responded. They did complain they were tricked.

MYTH #4: PHH doesn't care about lawsuits or funding and it has been all game playing and intimidation.

TRUTH: Beyond the Residential Board and its representatives being extraordinarily unprofessional in the way they have handled negotiations, never once offering even the slightest hint of a counter offer, we have not been "trying to bully or intimidate". Following last year's failed negotiations, we were and remain ready to move forward with a 75 foot boutique hotel. It was the West Palm Beach City Commission's desire for a larger hotel that was the impetus behind trying yet one more time to reach an equitable resolution on the larger 92 foot hotel. Further, even though we received approval from the City Commission to move forward on Sept 2<sup>nd</sup>, our representatives told the Residential Representatives we would continue to negotiate. In fact, we tried to meet with the Residential Representatives the night of September 2<sup>nd</sup>, immediately following the Commission meeting to show them an updated site plan reflecting how the 92' foot building could be moved 20' further away from the Waterview. The Residential Board's response was that they were not allowed to meet or talk with us under advice from their counsel and would likely be suing the City and us.

MYTH #5: Based upon the outrageous and damaging behavior exhibited by PHH - your Residential Board has elected to file suit - actually we have no choice as it's your Residential Board's fiduciary responsibility.

TRUTH: Again, every meeting between our representatives and the Residential Board has also been attended by City staff. Each meeting is well documented. There was no outrageous behavior. Commissioner Mitchell, who attended most of the meetings, is equally shocked by this statement by the Residential Board as totally untrue. In fact, the Residential Board has a choice and, acting as your fiduciary, they could elect to allow us to present our proposal directly to you. Then you could decide if you want to receive \$1 million dollars to invest in renovating your building (or the new garage) or pay thousands of dollars individually to fund the legal action initiated by the Residential Board.

MYTH #6: Tracy Sherman as Board President wrote the letter to the unit owners dated September 8, 2014, in which the mischaracterizations and misrepresentations were stated as fact and then used as the reasons to assess unit owners to pay for the law suits.

TRUTH: When our representatives presented the September 8<sup>th</sup> letter to the Residential Representatives and asked why and how Tracy could get so much wrong, Jerry Waldman admitted he wrote the entire letter. This is particularly disturbing since Jerry Waldman is one of the two people our representatives and City staff and Commissioner Mitchell were relying upon to accurately and sincerely portray numerous attempts to accommodate the unit owners. In actuality, Jerry Waldman was undermining the very negotiations he was supposed to be fostering. Numerous requests our representatives made to be allowed to speak directly with the unit owners over the past several months was always answered by Jerry with "not yet". The last request to meet directly with you made during a meeting on September 19<sup>th</sup> was finally answered when Jerry Waldman said, "no, you just want to sell them".

MYTH #7: Waterview Towers was presented with three, 92 foot hotel options, the 75 foot hotel is no longer an option. The offer was on PHH's legal counsel's letterhead but never said who the attorney represented or if the attorney had any authority to sign documents.

TRUTH: We maintain that by right we can build a 75 foot hotel with the parking facility. The City of West Palm Beach agrees with us and has therefore granted us the ability to move forward. This has been ratified and adopted by the vote of the City Commission. Therefore, there is no need to present a 75 foot hotel as an "option". Both we and the City would like a slightly larger structure to be built, a 92 foot hotel. This can only occur if the unit owners of the Waterview Towers allow it to occur. In exchange for allowing it to occur, we offered several options to the Residential Representatives. For some reason, the Residential Representatives insisted the offers were invalid or meant nothing unless they were on stationary. They had previously been delivered to the Residential Representatives and City staff via email as well as hand delivered. So, the offers were placed on the stationary of one of our retained law firms. How could a law firm do that without having the authority to do so?

MYTH #8: At some point, Mr. Pinsky, unhappy with the September 19<sup>th</sup> meeting summarily ended the meeting, disconnected Commissioner Mitchell and left the meeting along with city employees.

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TRUTH: In order to accommodate the travel schedules of John Gildea and Jerry Waldman (to date, we never received any documentation that Mr. Gildea and Mr. Waldman have the authority to negotiate on behalf of the unit owners) a meeting was scheduled for 8:00 am on September 19<sup>th</sup>. Prior to the start of the meeting, everyone was told and understood the meeting could only go to 9:00 am to accommodate City staff having other meetings to attend, Mr. Pinsky having another meeting in City Hall at 9:00 am and Commissioner Mitchell having a conference call at 9:00 am. Except for Mr. Gildea, Mr. Waldman and Ernie Porco on behalf of PHH, it was clear before the meeting began that everyone else had to leave to attend their next workday appointments at 9:00 am. Mr. Pinsky was not "unhappy" and in fact encouraged Mr. Porco, Mr. Waldman and Mr. Gildea to stay and continue to dialogue, which they did.

MYTH #9: "It now seems that the huge garage and the hotel was a ploy...". "We were supposed to 'cave' immediately following the approval...". "Only when we told them that we would be filing a law suit... did Chase and the City seem to take our position seriously".

TRUTH: Building a 75 foot hotel is not a ploy. It is naive and flippant for the Residential Board to believe that we are not prepared to move forward with a 75 foot hotel. The Residential Board is placing every unit owner in harm's way to portray costly litigation as a ploy. We have the right to build a 75 foot hotel. The City of West Palm Beach agrees and granted us the ability to move forward. Both we and the City prefer a slightly larger structure to be built, a 92 foot hotel. Again, this can only happen if the unit owners of the Waterview Towers agree to let it happen. We offered several options to the Residential Board to gain your approval. If those options were not attractive to the unit owners, the Residential Representatives should have counter-offered. They did no such thing. If we cannot reach an agreement with Waterview Towers to build a 92 foot hotel, we will build the 75 foot hotel.

MYTH #10: We believe that a suit is the best tool we have to create the "best atmosphere" and positive outcome for Waterview Towers.

TRUTH: Only the unit owners can determine if spending thousands of dollars per unit for legal fees is the best outcome. Receiving one million dollars and eliminating the impacts of the 75 foot hotel plan such as not needing use of the Waterview south driveway entrance is a better outcome. Using a law suit is not the best tool to get to a positive outcome. Unit owners telling their Residential Board members what they want through the negotiation process is the best tool.

MYTH #11: There is no height restriction on C-1 and C-2.

TRUTH: Under City zoning it is true that there is no height restriction on either Unit C-1 or C-2. But does anyone care about a height restriction over Unit C-1 (the marina)? Obviously not. As for Unit C-2, while City codes do not restrict the height of a building on Unit C-2, your Declaration restricts the height to 75 feet, excluding typical roof mechanicals such as air conditioning units and elevator penthouses. To go above 75 feet requires approval from you, the Waterview Towers unit owners. We have made several generous offers, as has the City, in exchange for the unit owners approval of a 92 foot hotel, but none have been made available to you to evaluate.

MYTH #12: The Residential Board believes substantial sums of money will not have to be spent for residential unit owner legal fee assessments.

TRUTH: We are not building anything yet and have not even sought a building permit. But, the Residential Board, on behalf of each unit owner, is suing the City of West Palm Beach. The City believes they are correct in every aspect of their approval process, including the final vote by the City Commission, for the construction of the 75 foot hotel. The City has unlimited funds to fight development challenges and law suits. Many of these legal challenges to city and county governments go on for years at great expense. If we are sued as well, then the Waterview residential unit owners will bear additional legal expenses. Substantial sums of money will be assessed against each unit owner for protracted and unnecessary legal battles.