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June 23, 2020

Via E-mail (cpc@lacity.org)
Chair Millman and Commissioners
City of Los Angeles City Planning Commission
200 N. Spring Street
Los Angeles, California 90012

Re: **1045 Olive Street/CPC-2017-3251-TDR-MCUP-SPR**

Dear Chairwoman Millman and Commissioners:

Holland & Knight LLP represents 1045 Olive, LLC (the "Applicant") in relation to the 1045 Olive project (the "Project"), a state-certified Environmental Leadership Development Project ("ELDP") containing 794 dwelling units and ground floor commercial restaurant and retail space located at 1045 S. Olive Street in the South Park neighborhood within the City of Los Angeles (the "City").[1] The architecturally-forward Project, with individually accessible open space for every dwelling unit, would be a landmark addition to South Park and the City's skyline.

The Applicant has worked extensively for years with the Department of City Planning ("DCP") on this ELDP housing development project. In fact, no less than nine known DCP staffers (Sergio Ibarra, Sarah Molina Pearson, Alejandro Huerta, Jason McCrea, Johnny Le, Luci Ibarra, Debbie Lawrence, Heather Bleemers, and Milena Zasadzien) processed the Project's entitlements and Environmental Impact Report ("EIR"). The last-minute Supplemental Responses Memo dated June 15, 2020 ("Staff Supplemental") raises new issues several years after the Project has been deemed complete. As such, the Applicant respectfully requests modification of proposed conditions of approval and findings in light of necessary corrections.

I. DCP Must Follow the Plain Meaning of the Words in the TFAR Ordinance

The Staff Supplemental and draft conditions of approval do not address the plain meaning of Floor Area Rights or Buildable Area for Transit Area Mixed Use Projects, thereby violating basic statutory interpretation canons to effectively charge the Applicant millions of dollars in unjustified fees. The Public Benefit Payment ("PBP") pursuant to Los Angeles Municipal Code ("LAMC")

[1] Pursuant to the ELDP certification, the Project will have all of these components: 1. Net zero greenhouse gas emissions; 2. Prevailing wages for all Project employment; 3. Extensive landscaping and canopy trees to provide shading and capture carbon dioxide; 4. Provisions for electrical vehicle charging; 5. Project invests over $100 million in California; 6. On-site recycling; and 7. Will qualify for LEED Gold certification upon completion.

Section 14.5.3 requires either the sales price or appraised value of a project site, as applicable, to be "divided by the lot area (prior to any dedication)." The plain meaning of "lot area (prior to any dedication)" means exactly what it says, "lot area (prior to any dedication)." The draft conditions of approval and Staff Supplemental attempt to impose conditions on the "lot area (prior to any dedication)," reading in qualifications and limitations that are not within the plain language of Ordinance 181,574 (the "TFAR Ordinance"), effective March 27, 2011.

A. *Statutory Language of the TFAR Ordinance is Clear and Unambiguous*

The rules of statutory construction apply to the interpretation of local ordinances.[2] If there is no ambiguity in statutory language, one must presume lawmakers meant what they said and the plain meaning of an ordinance governs.[3] Courts give the words of an ordinance their plain, commonsense meaning, unless doing so would lead to absurd results.[4]

Days ago, the United States Supreme Court issued a landmark decision protecting gay, lesbian, and transgender people from work place discrimination under Title VII of the Civil Rights Act of 1964.[5] The United States Supreme Court stated: "**This Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration**."[6]

Here, the definitions of Floor Area Rights and Buildable Area are clear and unambiguous. The Staff Supplemental fails to look at the plain meaning of the words in the TFAR Ordinance and invents interpretations that are contrary to the plain meaning of the ordinance's words. Therefore, it is unnecessary to even look at the legislative purpose or the public policy considerations. But even if there were an examination of the legislative purpose or public policy, incentivizing larger mixed-use projects close to high-quality transit in the Central City clearly demonstrate the justification and bonus intent for Transit Area Mixed Use Projects.

B. City Must Give Meaning to the Clear and Plain Terms of the TFAR Ordinance

For a Transit Area Mixed Use Project, multiplying the Buildable Area by a floor area ratio ("FAR") of six calculates the maximum amount of Floor Area that can go up to 13:1 FAR with a Transfer Plan. Per the definition of Buildable Area for a Transit Area Mixed Use Project, this includes the area between the exterior lot lines and the centerline of any abutting public right-of-way. Therefore, the Project's maximum allowable Floor Area with a Transfer Plan per the definition of Floor Area Rights in the TFAR Ordinance is 57,829 square feet x 6:1 FAR = 346,974 square feet.

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[2] *Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 305.
[3] *Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036, 1047.
[4] *Id.*; *see also, McPherson v. City of Manhattan Beach* (2000) 78 Cal.App.4th 1252, 1261–1262 (Court refusing to read into [municipal] code section an interpretation in contravention of its plain meaning, particularly when doing so would create a conflict with other code sections.)
[5] *Bostock v. Clayton County, Georgia*, --- U.S. ---- (Jun. 15, 2020) ("*Bostock*")
[6] *Id.*, Slip. Op. at 24 (emphasis added).

The maximum FAR allowed is 13:1, permitting the maximum Floor Area of 57,829 square feet x 13 = 751,777 square feet. Therefore, the amount of the Floor Area Rights to be transferred is 751,777 square feet – 346,974 square feet = 404,803 square feet. The transfer calculation is separate and apart from the PBP; it is a function of the Buildable Area definition for Transit Area Mixed Use Projects effectuated through a Transfer Plan.

1. Supporting TFAR Ordinance Definitions (LAMC Section 14.5.3)

"**Buildable Area** means the same as Lot Area, with the following exception: for the purposes of computing the maximum Floor Area Rights available through the approval of a Transfer Plan for a Transit Area Mixed Use Project, as defined herein, the buildable area shall include the lot area plus the area between the exterior lot lines and the centerline of any abutting public right-of-way."

The LAMC makes two clear points: 1) that for purposes of computing Floor Area Rights that can be transferred for a Transit Area Mixed Use Project, Lot Area and Buildable Area are not the same thing, and 2) Buildable Area includes the Lot Area plus the area between the exterior lot lines and the centerline of any abutting right-of-way.

"**Floor Area Rights** means the ability to construct additional Floor Area within a project, pursuant to an approved Transfer Plan, in excess of the amount of Floor Area that Project would be allowed based on its Lot Area, or, in the case of a Transit Area Mixed Use Project, the Buildable Area."

The LAMC makes clear that in the case of a Transit Area Mixed Use Project, the amount of Floor Area that a project would be allowed before a transfer is based on its Buildable Area, not the Lot Area. For the Project, this means the amount of Floor Area that would be allowed before a transfer is 57,829 square feet x 6 = 346,974 square feet. Therefore, the amount of Floor Area Rights to be transferred is the Floor Area in excess of 346,974 square feet, up to the maximum permitted Floor Area of 751,777 square feet. This value is 404,803 square feet.

"**Transfer Plan** means a plan that identifies and describes the Donor Site(s), Receiver Site(s), the amount of Floor Area Rights to be transferred and the Public Benefit Payment."

Thus, for a Transit Area Mixed Use Project, Floor Area Rights means the ability to construct additional Floor Area based upon the Buildable Area through the approval of a Transfer Plan. Here, **the plain language of the TFAR Ordinance mandates that Floor Area Rights consist of a multiple of the 57,829 square foot Buildable Area for determining the amount of floor area to be transferred**.

2. Distinctions in the Staff Supplemental are Not Based on the Law

DCP appears to assume that with a Transfer Plan, not all of the area within the Buildable Area is in fact Buildable Area by which there is a legal right to develop without paying a PBP or Transfer Payment. The Staff Supplemental at p. 7 creates a distinction between "base" and "non-base area rights" to determine Floor Area Rights. This is a faulty distinction as the LAMC does not

recognize a distinction between "base" area rights and "non-base area rights." In fact, "base" and "non-base area rights" are imaginary terms not found anywhere within the LAMC, inclusive of the TFAR Ordinance. The Staff Supplemental references no statutory authority in making such a distinction. By creating this imaginary distinction, DCP staff is arbitrarily and capriciously eviscerating the definition of Buildable Area for a Transit Area Mixed Use Project. In DCP's June 25, 2020 Staff Presentation, Slide 25, DCP staff appears to conflate the determination of the transfer of Floor Area with calculation of the amount of PBP when it says pejoratively: "Applicant Requesting Floor Area for Free." On the contrary, the Applicant requests that a transfer of Floor Area Rights be based on the unique Transit Area Mixed Use project definitions in LAMC Sec. 14.5.3. The calculation of Floor Area Rights (i.e., a function of Buildable Area for a Transit Area Mixed Use Project) is separate from the calculation of the PBP which relies on the input of several factors, including the Lot Area and the amount of Floor Area to be transferred.

DCP's arbitrary reading of the TFAR Ordinance runs counter to common sense: it asserts that LAMC Section 14.5.3 allows projects to calculate maximum available Floor Area Rights based on Buildable Area, but then states that there are no Floor Area Rights for a significant portion of the area forming the basis of the maximum available Floor Area Rights. DCP's strained interpretation is not supported by the plain words in the TFAR Ordinance. The LAMC 14.5.3 definition of Floor Area Rights unambiguously declares that the Floor Area Rights of a Transit Area Mixed Use Project include the full Buildable Area.

DCP's argument seems to rely on the invention of a new term "base floor area ratio" (also "base area rights to floor area") that does not exist anywhere in the LAMC. The closest defined term is "Base floor area rights" which exists in LAMC Sections 12.21C.10(b)(3)(i), 12.07C.5, and 12.07.01C.5 only in relation to RA, RE, and RS Zones and Residential Floor Area Bonus program for these zones; these zones and references are wholly inapplicable here.

Since the Buildable Area is 57,829 square feet, the Floor Area Rights of the Project based on the Transit Area Mixed Use Project definition is 346,974 square feet. As such, the number of square feet of Floor Area Rights to be transferred to the Project site is 404,803 square feet, and not DCP staff's 523,195 square foot figure that is based on Lot Area and **which was never requested by the Applicant**. DCP staff confirmed the transfer amount of 404,803 square feet in a conference call in February 2020, and until June 2020, DCP staff was consistent in this approach as it relates to the Project; all prior DCP correspondence until the Staff Supplemental agreed with this approach. The Staff Supplemental does not take into account LAMC's plain and unambiguous Buildable Area and Floor Area Rights definitions for Transit Area Mixed Use Projects.

Further, if one takes DCP's misguided interpretation to its logical conclusion, there would be no TFAR for Transit Area Mixed Use Projects: if Buildable Area means only computing the maximum Floor Area Rights, how is it possible to have Floor Area Rights as defined by LAMC Section 14.5.3 "… in excess of the amount of Floor Area that Project would be allowed based on its … Buildable Area"? There would never be such a situation since there would never be any available excess above the maximum available to transfer. Simply put, the term Floor Area Rights means the ability to construct in excess of the Buildable Area pursuant to an approved Transfer

Plan. If Buildable Area is the maximum, then there would be no excess to transfer and there would be no Transfer Plan.

3. Plain Meaning of Lot Area (Prior to Any Dedication) Means What it Says

Under the plain meaning of LAMC Section 14.5.9C, the PBP is determined, in part, by "the Lot Area (prior to *any* dedications) of the Receiver Site." This means exactly what it says: to measure Lot Area prior to *any* (i.e., "all") dedications. City staff is engaging in exactly the type of speculation and supplementation that would contravene the plain meaning of the LAMC. City staff *cannot* lawfully substitute its own personal interpretations for the plain meaning of statutory text, as it has flagrantly done throughout the Staff Supplemental. For example, staff states that "The portion of the definition referring to 'prior to dedication' *does not refer to the area prior to any dedication* which may have occurred in the past, but *refers to any dedication which may also be required as part of the project or entitlement requests*."[7]

Respectfully, if our City Council had wished for this approach, it could and would have added "any dedication as required as part of the project or its entitlements." But LAMC Section 14.5.9C does not say that, it simply states: "prior to *any* dedication." The deemed complete Project application used the plain meaning of Lot Area prior to *any* dedication, i.e., 41,603 square feet in gross lot area, as shown in the survey and the Project drawings. Staff's interpretation is wrong, and if challenged, a court would view it as an unlawful supplementation of statutory text leading to absurd results for a particular applicant — chiefly, in excess of over $1,000,000 in new fees.

II. The TFAR Form was Not an Official Unmodifiable Publicly Available Form

DCP's alleges that the Applicant's TFAR application form was erroneous. This appears to be based on a City assumption that the Project's TFAR application form was an un-modifiable City-created form. However, when the Project's TFAR application form was filed in August 2017, the City lacked a publicly accessible City-created TFAR official application form.[8]

Pursuant to LAMC Section 14.5.6B.1 "[a]n Applicant seeking a Transfer shall file a request for approval of a Transfer with the Agency on a form prescribed jointly by the Director of Planning and the Administrator."[9] Although the "TFAR Ordinance became effective March 27, 2011, DCP did not create a proper TFAR application form for the Central City area on City letterhead until August 31, 2018 (ref CP-3531). Prior to this date, applicants used a non-standardized form in an editable MS Word format which did not have standardized City letterhead; it did not even address Transit Area Mixed Use Projects which were expressly and newly created as a result of the TFAR

[7] Staff Supplemental at 8 (emphasis added).
[8] The only publicly accessible TFAR application form on the DCP website available for the public at the time of the TFAR application's submission was for the Cornfield Arroyo Specific Plan TFAR which was governed by different LAMC provisions and is not relevant to TFAR applications in the Central City.
[9] This August 31, 2018 application form is devoid of any reference to the Community Redevelopment Agency of the City of Los Angeles or its successor agency ("CRA/LA") despite the explicit requirement to be jointly prescribed by DCP and CRA/LA.

Ordinance; and it did not have any identifying DCP form number.

Prior to the enactment of the TFAR Ordinance, the previous TFAR application form did not even have DCP's name on the cover page and only had CRA/LA's name on it.[10] After the adoption of the TFAR Ordinance in 2012, an applicant for a previous FAR project assisted with the editing of endnotes and other components of the old CRA/LA form to harmonize the old CRA/LA TFAR application form with the then new TFAR Ordinance. Instead of a City form containing a CP reference number/id, most subsequent TFAR projects' applications were stamped with the client matter number and document numbers from the first two new post-TFAR Ordinance projects. This underscores that if the TFAR application form originated with the City, subsequent TFAR projects following those first two post-TFAR Ordinance projects would not have unrelated client matter numbers and document numbers on their wholly unrelated applications.

Apparently, DCP may be unaware of the provenance of the TFAR application form or the developer input to create the updated form that came into use as a result of the 2012 TFAR projects. Since the editable MS Word form was based on modifications to a prior CRA/LA TFAR form, it is not as if it were some immutable form. For example, the 2012 Onyx TFAR form, i.e., the first new TFAR project post-TFAR Ordinance adoption, and the Applicant's TFAR form that was widely in use at the time included this language which is not found in the corresponding TFAR ordinance:

> "Applicant elects that if the direct provision of Public Benefits proposed by this Application is disapproved by any reviewing governmental body, the Applicant's proposed provision of Public Benefits will automatically convert to the payment of cash to the Public Benefit Payment Trust Fund in the amount of the required Public Benefit Payment."

This protection language that was added to the TFAR application form in 2012 to protect against potential arbitrary and capricious actions, and is not based on any actual LAMC requirement.

That 2012 form did not address Transit Area Mixed Use Projects; was in fact silent in all respects regarding Transit Area Mixed Use Projects; and the City failed to create its own TFAR application form until more than a year ***after*** the Applicant filed an application for TFAR. The City's TFAR application form (CP-3531) was introduced in 2018, seven years after the TFAR Ordinance's effective date, and to this date fails to address the different rules the TFAR Ordinance provides for Transit Area Mixed Use Projects. Consequently, modification of the editable MS Word form was necessary to reflect the proposed Transit Area Mixed Use Project.

A. The *Applicant Clearly Identified Proposed Transfer Plan and PBP*

Since the time of the TFAR Ordinance adoption, there has been a dearth of Transit Area Mixed Use Projects compared to non-Transit Area Mixed Use Projects, so it is understandable that there

[10] See the Park Fifth TFAR application from 2008 approved by the City Council.

is a lack of general recognition among DCP staff as to how these are different from standard TFAR projects. But even if the Project's submitted TFAR form was a City form, a review of the application and supporting materials by any of the nine DCP planners working on the Project over the years would show the Applicant's proposed Transfer Plan, including the mechanics of the PBP calculation.

First, the DCP Staff Supplemental inexplicably omits from "Background," the Project's June 16, 2017 Project Team Meeting with City. Attendees included DCP (including the Urban Design Studio), Mayor's Office, Department of Building and Safety, and the Applicant's team in person (with the architect on teleconference). At the meeting, the Applicant specifically discussed how it would use the Transit Area Mixed Use Project's special rules for TFAR to calculate the PBP, including going out to the centerline of surrounding streets.

Second, consistent with the Applicant and counsel's presentation at the Project Team Meeting with the City, the TFAR application submitted in August 2017 clearly identified all aspects of the TFAR components of the Project. There was no disinformation or misrepresentation regarding the Applicant's proposal for TFAR: (1) Page 1, Section 1.2 of the application clearly states "Note: Project qualifies a Transit Area Mixed Use Project.[3]"; (2) Note 3 on page 11 of the application provides the definition of a Transit Area Mixed Use Project; (3) Page 1 includes note 4. Page 11, note 4 describes the alternative definition of Buildable Area for Transit Area Mixed Use Projects; (4) Page 1 includes note 5; (5) Page 11, note 5 describes Floor Area Rights. It includes the definition that Floor Area Rights are different for Transit Area Mixed Use Projects; and (6) Page 6, Section 8 modified "Lot Area" and replaced it with "Buildable Area" to reflect the calculation of the PBP to be a multiple of Buildable Area.

The TFAR application clearly disclosed on the first page that this was a Transit Area Mixed Use Project which according to the LAMC has a different definition of Buildable Area pursuant to the LAMC. The blank TFAR form did not address Transit Area Mixed Use Projects, so the "modification" to reflect the Transit Area Mixed Use Projects was explicit and clear. Further, DCP staff was notified of the proposed methodology at the in-person meeting one month **before** the filing of the TFAR application and DCP presumptively reviewed the TFAR application's explicit words and supporting materials before deeming the application complete. At the time the application was prepared and also deemed complete by operation of law, the Applicant firmly believed that due to the alternative definition of Buildable Area for Transit Area Mixed Use Projects, whereby LAMC Section 14.5.3 states that Buildable Area is the same as Lot Area except for Transit Area Mixed Use Projects, that Buildable Area and Lot Area were interchangeable for purposes of the PBP calculation. As staff knows, the Applicant has unequivocally dropped the interpretation that Buildable Area and Lot Area are interchangeable for purposes of the PBP calculation. This change has already resulted in the increase of over $5M in fees.

Third, the Project drawings submitted with the August 15, 2017 entitlement application clearly list the Lot Area, Buildable Area, and proposed transfer. The Project Data Sheet clearly states that the "Transit Area Mixed Use Buildable Area = Gross Lot Area (to Centerline)." This figure is 57,829 square feet. The difference between the pre-dedicated Lot Area and the Buildable Area are clearly

delineated and called out. Similarly, the Project's updated November 16, 2018 drawings which included design updates also used the same terminology regarding Lot Area, Buildable Area, and TFAR request. There is no daylight between the August 15, 2017 drawings and the TFAR application, nor is there any daylight between the November 16, 2018 drawings and the TFAR application.

Fourth, there is no daylight between the submitted Attachment A to the Project's entitlement application and the TFAR application. The Attachment A provides a project description, explanation of the Project, as well as draft findings for the City's consideration. Page 3 of the Attachment A clearly lists the Lot Area and Buildable Area.

Fifth, the certified EIR clearly lists and describes the rationale for the Lot Area and Buildable Area of the Project site that directly affects the TFAR request. Page II-5 of the Draft EIR states:

> "As depicted in the certified ALTA/ACSM Land Title Survey included in the Project's entitlement drawings as Sheets A-003 and A-004, the Project Site constitutes 41,603 square feet in gross lot area. … The size of the Project Site for calculating FAR is based on LAMC Section 14.5.3, which provides regulations that are applicable to Transit Area Mixed Use Projects, such as the Project, which implement Transfer of Floor Area (TFAR) provisions. **Under these provisions of the LAMC, the lot area for calculating the FAR extends to the centerline of Olive Street, 11th Street and the alley, inclusive of dedications or easements that would be provided in the alley and public right of way. Based on this criterion, the lot area for calculating FAR is 57,829 square feet in size**." (Emphasis Added.)

The City spent several years preparing the EIR and reviewing Project materials. The plain language in DCP's certified EIR clearly identify that different rules apply to this Transit Area Mixed Use Project.

Taken together, the TFAR application form cannot be viewed in isolation; the comments in the Staff Supplemental regarding misrepresentations are not supported by the facts. The submitted TFAR application called out the methodology and formula used. At the time of filing of the TFAR application, the Applicant held the sincere belief that Buildable Area and Lot Area were interchangeable for purposes of calculating the PBP; to this end all of the submitted documents were consistent. The TFAR plan was discussed with several different City departments prior to filing the TFAR application in an Project Team Meeting with the City; the TFAR application, which did not originate with the City, but instead was based on an old CRA/LA form that was modified over time, lists the Buildable Area that was used to calculate the PBP; the Project's drawings and entitlement application list the Lot Area and Buildable Area; the City's first Staff Report and Technical Modification letter use the TFAR numbers consistent with the Applicant's request; and the City's own certified EIR clearly lists the Lot Area, Buildable Area, and explanation for calculation of floor area and TFAR for this Transit Area Mixed Use Project. There is no daylight between the submitted TFAR application and all other aspects of the Project that

was under review by the City. Ample information regarding the Applicant's TFAR proposal, the Lot Area, and Buildable Area were in multiple documents under review by the City prior to the time that the TFAR application was deemed complete.

B. City Had Many Opportunities to Review the Proposed Transfer Plan and PBP

Important milestones in the previous three years where DCP had ample opportunity to review the Project's TFAR proposal included:

(1) 6/16/17 TFAR Project Team Meeting with City with the Applicant and City officials, including DCP staff, Department of Building and Safety, and Mayor's office. The Applicant's proposed method for calculation of the PBP was specifically discussed at this meeting; (2) 8/15/17 Filing of Project's TFAR application, using the same methodology discussed in the June 16, 2017 Project Team Meeting with City, and filing of other Project entitlement application. The PBP listed in the TFAR application is $11,060,000, with a Transfer Payment of $2,024,015; (3) 9/14/17 Presumptive deemed complete for all entitlements other than the VTTM that had been determined complete on 1/4/17 (see letter from Sergio Ibarra) and the TFAR application (which was subsequently deemed complete per operation of law, as described below); (4) 12/21/17 TFAR application deemed complete pursuant to LAMC Section 14.5.6B.3 ("For purposes of this subdivision, a request to file an application shall be deemed to be complete when the Agency has received sufficient information with which to assess the environmental impacts of the proposed Project."). The Initial Study was publicly circulated on December 21, 2017. Thereby, pursuant to operation of law the TFAR application was deemed complete on December 21, 2017; (5) 8/15/19 Applicant provided proposed allocations of PBP; (6) 9/26/19 to 11/12/19 Circulation of the Project's EIR; (7) 12/3/19 Meeting with DCP executive team regarding Project. PBP amounts and allocations specifically discussed; (8) 12/4/19 DCP, CD-14, Chief Legislative Analyst, Mayor's Office held TFAR Consultation Meeting; (9) 1/15/20 Joint Advisory Agency/Zoning Administrator's Hearing; (10) 2/7/20 Advisory Agency certification of the Final EIR (ENV-2016-4630-EIR) and approval of VTT-74531; and Zoning Administrator approval of ZA-2017-4745-ZAI. There was no appeal of any of these approvals or of the certification of the EIR; (11) 2/18/20 and 2/21/20 Teleconferences with DCP and the Project team where DCP confirmed the City's position that: (a) transferred floor area is based on Buildable Area; (b) the transfer amount of floor area is 404,083 square feet; and (c) for purposes of the PBP calculation, Lot Area equals Lot Area. This teleconference with the City resulted in the City increasing the PBP from $11,060,000 to $15,373,620.65; (12) 3/3/20 DCP Staff Report publicly available that identifies a transfer of floor area of 404,803 square feet; (13) 3/9/20 Applicant's submission of correspondence that DCP is misinterpreting Lot Area (prior to any dedication); (14) 3/10/20 DCP issues Technical Modification to Staff Report representing Staff's interpretation of Lot Area and Applicant's revised Architectural Plans identifying the calculation of TFAR on Sheet A-001.1; (15) 3/12/20 CPC hearing for the remaining entitlements continued at DCP's request to May 14, 2020; (16) 4/27/20 DCP staff said that it would continue the Project's hearing unless a revised TFAR application form was submitted with DCP's interpretation of Lot Area; (17) 4/30/20 Applicant submits an updated TFAR application form pursuant to DCP staff request. Assuming this was the last open issue from DCP staff, the Applicant conceded to DCP's staff's demand regarding how

to calculate Lot Area (prior to any dedications), which resulted in a PBP increase from $15,373,620.65 to $16,788,428; (18) 5/5/20 DCP call with Applicant's team. DCP stated that it would continue the hearing for review of the PBP; (19) 5/14/20 CPC hearing continued again at DCP request; and (20) 6/8/20 DCP informs the Applicant for the first time that it has a new PBP calculation that would result in a PBP of $21,698,509 and Transfer Payment of $2,615,976. Collectively, DCP's new demands result in an increase in excess of $11,000,000.

Based upon the substantially consistent TFAR and project materials in front of the City starting in 2017, it seems incomprehensible that in June 2020, years after deeming the application complete, DCP would first inform the Applicant that it had new reservations regarding the Project's TFAR Plan that would threaten the feasibility of this housing development project.

III. Conditions of Approval and Draft Findings Require Modification

Giving meaning to the plain and unambiguous words of the TFAR Ordinance, we respectfully request modification of the conditions of approval and findings to reflect a transfer of 404,803 square feet, consistent with the allocations in our March 9, 2020 correspondence: $15,373,620.65 PBP directly provided as follows: $7,000,000 City's Affordable Housing Trust Fund ("AHTF") for projects within three miles of the Project site ; $3,000,000 CD 14 Public Benefits Trust Fund for affordable housing within three miles of the Project site; $200,000 for South Park Business Improvement District ("SPBID") for a dog run and parklets; $5,173,620.65 for the integrated biodiversity system/art component/plaza. The Transfer Payment would be $2,024,015 based on the transfer of 404,803 square feet.

The last minute and serial DCP requests for more money of the Applicant prior to each CPC hearing, several years after the Project's TFAR application was deemed complete, unjustly and unfairly exploits project applicants, in contravention of the plain and unambiguous meaning of City ordinances, as well as state law that protects housing development projects from late and arbitrary reinterpretations of its codes. We urge the CPC to revise the draft conditions of approval and findings so as to adjust the PBP, Transfer Payment, and Transfer Plan and to approve the Project in a manner that reflects the plain and unambiguous words of the TFAR Ordinance.

Best regards,

HOLLAND & KNIGHT LLP

Ryan M. Leaderman

cc: Vince Bertoni, Lisa Webber, Kevin Keller, Luci Ibarra, Shawn Kuk, Elliott Kahn, Adam Tartakovsky, Andrew DeWitt, Alex Irvine, Kevin Ashe