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June 13, 2022

File Number: 41ME-267697

VIA ELECTRONIC MAIL ONLY

Planning and Land Use Management Committee
of the City Council
City of Los Angeles
200 North Spring Street
Los Angeles, CA 90012
E-Mail: clerk.plumcommittee@lacity.org

Re: Response to EIR Appeal from Luna & Glushon

Dear Honorable City Council Members:

We represent Third Fairfax, LLC ("Applicant") regarding its proposed mixed-use residential development project ("Project") located generally at 300-370 S. Fairfax Avenue and 6300-6370 W. 3rd Street ("Property") in the City of Los Angeles ("City"). This letter responds to the appeal filed by Luna & Glushon on behalf of Barbara Gallen ("Appellant") to the Planning and Land Use Management ("PLUM") Committee challenging the City's prior certification of the Environmental Impact Report ("EIR") for the Project ("EIR Appeal").

As we demonstrate below, this is yet another attempt by the Appellant to oppose the Project despite years of the City and the Applicant working with the Appellant to appease its interests. The record here is robust and full of substantial evidence supporting the City's certification of the EIR. We find the Appellant's case baseless – as we summarize below and have demonstrated in several prior letters to the record. Therefore, we respectfully request that PLUM deny the EIR Appeal and uphold the City's prior certification of the EIR.

For background, we submitted three letters to the Central Area Planning Commission ("APC") that rebutted all of the Appellant's prior arguments about the Project and its environmental review. See Exhibit A: Prior Sheppard Mullin Letters for reference if needed. Based on those rebuttals, the strong administrative record, and the recommendations of the Department of City Planning ("Planning Department"), the APC rightfully denied the Appellant's prior appeals and upheld the Project approvals. The EIR Appeal is mostly a repeat of the Appellant's prior appeals, which the City decision makers have already denied.

Procedurally, we note for PLUM that the only issue germane to the EIR Appeal is the City's prior certification of the EIR. Section 11.5.13.C of the Los Angeles Municipal Code ("LAMC") provides that only the certification of the EIR can be appealed to the City Council at this stage in the administrative process. Accordingly, none of the entitlements or prior approvals for the Project are before PLUM on this appeal. Thus, we trust that PLUM will review this

appeal with a narrow focus despite the Appellant's attempt to pull forward the City's prior entitlement and permit approvals. To be clear, those approvals are final and not appealable per code and law.

Finally, as we pointed out in the prior Sheppard Mullin letters, the Applicant has worked in good faith with Ms. Gallen for years trying to appease her desires. The Applicant modified the Project to include several items requested by Ms. Gallen. Most recently, at the APC hearing, the Applicant agreed to self-impose a new condition of approval to implement two crosswalks (at 3rd Street between Ogden Drive and Gilmore Lane; and at Fairfax Avenue between Blackburn Avenue and 4th Street) to further alleviate the Appellant's ongoing concerns regarding pedestrian circulation. Nonetheless, as we predicted in our April 12, 2022 letter to the APC, it appears that the Appellant can never be satisfied and predictably lodged the EIR Appeal. In addition, the Appellant will not engage in good-faith negotiations to resolve any outstanding issues, despite our attempts to do so directly or via the Appellant's land use counsel. These tactics are the hallmark of a NIMBY who will oppose the Project on personal grounds no matter how good the Project is for the community and the City. Thus, we ask PLUM to deny the appeal so the Applicant can implement the Project and redevelop the aging site with new commercial uses and much needed residential housing.

I. THE EIR IDENTIFIED THE PROPER PROJECT SCOPE.

As it did in prior appeals, the Appellant continues to claim that the Draft EIR does not disclose the true scope of the Project. That allegation is patently false. The March 25, 2022 Sheppard Mullin letter (on page 3) legally rebutted this issue with clear law. See Exhibit A attached hereto, as needed, which explains how the City followed CEQA to properly scope the EIR and thereafter performed detailed impact analysis of the stable and finite project description.

Similarly, the Appellant continues its false narrative that the EIR is inadequate because it failed to analyze the potential relocation of the existing Whole Foods Market on the western portion of the Project Site into the commercial space within the Project. Again, this claim is factually wrong. The April 7, 2022 Sheppard Mullin letter (on page 3-4) rebutted this claim with law and fact. See Exhibit A attached hereto, as needed, which explains that the EIR provided a conservative analysis that accounts for a supermarket potentially moving into the commercial space in the Project. Accordingly, the EIR has analytically covered this scenario in any case, and as a conservative method of analysis, even though it is speculation on behalf of the Appellant.

For example, the Draft EIR analyzed a supermarket use as a potential tenant of the Project in the following ways. See Table II-2, Proposed Development Program, on page II- 18 in Section II, Project Description, of the Draft EIR, copied below.

Table II-3
Proposed Development Program

Land Uses	Dwelling Units	Floor Area (Square Feet)
Commercial		
General Commercial/Retail Space	--	13,412 sf
Supermarket	--	63,082 sf
Restaurant	--	7,500 sf
Subtotal Commercial:	--	83,994 sf
Residential		
Studio Units	70	343,000 sf [a]
1-Bedroom Units	162	
2-Bedroom Units	66	
3-Bedroom Units	33	
Subtotal Residential:	331	
TOTAL:	**331 du**	**426,994 sf**

Notes: du = dwelling units; sf = square feet
[a] Includes residential units and support areas such as lobby, leasing office, and amenities.
Source: MVE + Partners, June 1, 2020.

The analysis in the Draft EIR takes this supermarket use into consideration, including in Section IV.I, Transportation, of the Draft EIR. See Draft EIR, page IV.I-42, which expressly references supermarket use a potential component of the Project for analytical purposes. Also see Draft EIR, Appendix H.2(A), page 32, which identifies the Supermarket ITE Land Use Code 850 as a modeling assumption for LOS analysis of potential vehicle trips. Also, see Draft EIR, Appendix H.1(B), which explains how the LADOT VMT calculator considers supermarket land uses in mixed-use projects. The City included these supermarket assumptions because that is the most conservative way to analyze potential retail tenants, considering that supermarkets have unique trip characteristics and can be (but are not always) higher trip generators than other retail uses. Stated differently, the Draft EIR used supermarket assumptions to ensure that the impact analysis covered the highest intensity use that could occupy the new commercial space. That envelope of analytical coverage would allow a supermarket, or any other less intense commercial use, to move into the Project under the scope of the EIR. That method also fully informs the decisionmakers about potential impacts and is conservative. Thus, the Appellant is simply wrong by stating that the EIR did not consider a potential supermarket use.

The second element of the Appellant's supermarket argument in the EIR Appeal is that the EIR must analyze the hypothetical reuse of the existing Whole Foods space on the western portion of the shopping center as part of the Project. First of all, as we have repeatedly demonstrated, the western portion of the shopping center is not part of the Project. CEQA allows an EIR to focus its analysis on the area of disturbance and environmental change created by a project. The City has done that in this EIR, and many others in the City, where only a portion of retail center, campus, or other large parcel of property is being redeveloped. Reuse of the existing Whole Foods space is clearly outside the scope of the EIR. The Applicant has no legal rights to that space. Leasing that space with a new retail tenant is not a discretionary act. Any redevelopment of the western portion of the shopping center that does

trigger a discretionary act would be subject to environmental review by the City and would be subject to the zoning and land use designations that apply to the shopping center. To be clear, the only portion of the shopping center that the Applicant has rights to develop is the eastern portion, which the City rightfully considered the Development Site for impact analysis in the EIR. The Appellant's arguments about what may or may not happen on the western portion of the shopping center are a red herring.

As we have pointed out before, the Appellant acts as if any development proposal, on any portion, of any site, necessitates considering all of a site for environmental review. That thinking is too simplistic for complicated land use projects, not consistent with City precedent, and ignores the focus of CEQA, which is to examine the change in the physical environment created by the Project and the City's associated discretionary actions. Here, the Project is limited to the eastern portion of the shopping center and the Draft EIR is abundantly clear about that point in the narrative and site plans. See the April 7, 2022 Sheppard Mullin letter (on page 3-4) if needed for additional discussion of this issue.

II. THE EIR INCLUDED OIL WELL ABANDONMENT ANALYSIS AND FACILITATED INFORMED DECISION MAKING.

The Appellant restates the same misinformed argument from its prior appeals regarding oil well abandonment. Specifically, the Appellant claims that "the EIR provides that any discretionary approvals associated with the oil well re-abandonment and related activities will be subject to CEQA independently from the Proposed Project." That statement is not accurate and conflates the Initial Study with the Draft EIR. As we noted in the prior Sheppard Mullin letters, the project description in the Draft EIR controls the ultimate scope of the Project and its related activities. Here, the Appellant cherry-picked one statement from the Initial Study, which did indicate that abandonment could be subject to CEQA independently, to seed its argument. See pages 19-20 of the Initial Study.

However, the Initial Study also mentioned oil well abandonment as related to the Project in several instances. See page 18 regarding California Department of Conservation, Division of Oil, Gas, and Geothermal Resources ("DOGGR"), now known as the California Geologic Energy Management Division ("CalGEM"), approvals prior to permits for the Project; page 69 regarding soil testing and oil well location studies; and page 79 regarding potential oil well abandonment conducted on the Development Site in consultations with responsible agencies.

More importantly, the project description in the Draft EIR (which controls the legal scope of the Project) describes oil well investigation and abandonment as a potential construction activity that could be associated with the Project, and identifies CalGEM as among the public agencies that may use the EIR. See pages II-45-46 in the Draft EIR. Therefore, the Draft EIR properly included the potential discovery and re-abandonment of an oil well in the scope of the Project. Please note that even with this disclosure, the actual discovery of an oil well on the Development Site is still speculative because the historical records regarding prior abandonment date back to 1930 and are not definitive regarding the location or condition of the capped well head. Regardless, the Draft EIR included potential well discovery and established

a soils management plan to ensure proper treatment of soils and subsurface conditions encountered during grading activities.

More specifically, the analytical body of the Draft EIR includes potential oil well abandonment in several ways. To start with, Section IV.D, Hazardous Materials/Risk of Upset, of the Draft EIR, identified the regulatory setting associated with well abandonment on page 12. The Draft EIR describes and references Zoning Information No. 1195 ("ZI-1195") to explain well abandonment and CalGem clearances on pages 17-18. The Draft EIR describes existing conditions and how a historical oil well and related methane may be in the soils and discloses that CalGEM records indicate that one plugged and abandoned oil well may be present on the Development Site. The well is identified as Salt Lake 99 (API number 037-15229), Lease Salt Lake Well #99 County Los Angeles [037] District 1 Operator Chevron U.S.A. Inc. ("Well No. 99") on page 22. The Draft EIR proactively applied PDF-HAZ-1 to ensure the Project would be designed and constructed to minimize potential methane impacts, including but not limited to, properly fitting and venting an oil well if discovered beneath a new building on page 44. The Draft EIR stated that construction would also include grading and excavation activities that have the potential to release hazardous materials into the environment if the activities are not properly mitigated or performed pursuant to applicable regulatory requirements, which includes potential oil well discovery and/or re-abandonment during the grading phase of the Project on page 45. The Draft EIR also states that "[i]n addition, out of an abundance of caution, the Proposed Project would include Mitigation Measure MM-HAZ-1 to further minimize potential hazardous materials impacts. This measure would require a Soil Management Plan (SMP) to be prepared to guide contractors regarding appropriate handling, screening, and management of potentially impacted or impacted soils from historical operations on the Development Site that may be encountered during grading and excavation" on page 47. Based on this information, and more, the Draft EIR identified the potential presence of an abandoned oil well, established the regulatory structure that controls abandonment, if needed, assessed the potential impacts of its discovery and treatment of soils that may be contaminated by it during construction, and imposed a mitigation measure – that expressly includes abandoned oil wells – to ensure proper procedures for decontamination and decommissioning of subsurface features of environmental concern encountered during earthmoving activities. Against that backdrop, it is inaccurate and disingenuous for the Appellant to claim the Draft EIR fails to analyze potential oil well abandonment.

The Draft EIR also includes substantial evidence, and disclosures, regarding the potential presence of one abandoned oil well that may underlay the Development Site in the following technical reports: Appendix A-F.3, Phase I Environmental Site Assessment (May 2017); Appendix A-F.4, Phase II Environmental Site Assessment (March 2018); Appendix A-F.5, Methane Report (September 2018); and Appendix K, Phase I Environmental Site Assessment Update (October 2018). The Appellant provides no evidence to support its claim.

In conclusion, based on the foregoing as well as the whole of the record, the Draft EIR adequately informed the decision makers and public regarding potential hazards and hazardous materials, related to the Appellant's oil well claim.

III. THE EIR ADEQUATELY ANALYZED TRANSPORTATION IMPACTS.

The Appellant restates many of the same transportation-related issues that it raised in prior appeals. Namely, the Appellant claims the Project will substantially increase vehicle trips/pedestrian activity and thus increase existing hazards on adjacent roadways and sidewalks, including (1) pedestrians illegally crossing midblock near the Blackburn Avenue/Fairfax Avenue and 3rd Street/Gilmore Lane intersections; (2) existing sidewalk widths on the western-portion of the Project Site; and (3) drivers making illegal left turns to exit the shopping center.

Please note that, as explained above, the Applicant voluntarily agreed to implement the crosswalks that the Appellant requested. See the April 12, 2022 Sheppard Mullin letter (on page 2) which proposed two crosswalks as conditions of approval. The City integrated those crosswalks as conditions in its Letter of Determination for the Project. That leaves us with the Appellant's complaint that the sidewalks are too narrow on the other side of the shopping center; and the Appellant's gripe that people make illegal turns onto Fairfax Avenue, which is also on the other side of the shopping center. Once again, that western portion of the shopping center is not part of the Project or its improvements. After years of working with the Appellant via the working group, and through many personal communications, its motive is apparent – and appears to be for the Applicant to fix all of the issues the Appellant perceives as problems around the shopping center – regardless of whether those issues are related to the Project or under the purview of CEQA review.

Even though we have addressed these issues in prior rebuttals, we restate and summarize our position below for the benefit of PLUM. See also Exhibit A, attached hereto, for deeper analysis of the issues.

1. Crosswalks are Moot at this Point in the Administrative Process.

The Appellant continues to insist that additional pedestrian activity associated with the Project is a bad thing, and would translate into increased hazards on adjacent roadways. That is not true as we demonstrated in the prior Sheppard Mullin letters. Also, for perspective, in most projects, and the minds of the City and the Los Angeles Department of Transportation ("LADOT"), increased pedestrian activity on a site is a good thing because it enlivens the public realm, can enhance public safety by having more eyeballs on the site, and facilitates beneficial community building and connectivity. Yet, the Appellant continues to harp on its myopic claim that more pedestrians equals hazards.

Now, as it relates to the Project, this claim is particularly ironic considering that the Applicant agreed in the APC hearing to provide the crosswalks that the Appellant wants. We recognize that there is illegal pedestrian activity/jaywalking occurring around the shopping center. That existing condition should be alleviated in part by the Applicant's offer to implement the new mid-block crosswalks per the conditions of approval for the Project. Of course, the Appellant's EIR Appeal fails to acknowledge that point, which to us is yet another sign of bad faith by the Appellant. The new crosswalk condition was included as Condition No. 16 in the APC Letter of Determination, and it requires installation of crosswalks, prior to issuance of a

final certificate of occupancy, across (1) 3rd Street between Ogden Drive and Gilmore Lane; and (2) Fairfax Avenue between Blackburn Avenue and 4th Street, if LADOT produces a Traffic Control Report that confirms feasibility and approves one or both of the proposed crosswalks. Accordingly, the Appellant's continued crosswalk complaints, and related hazards claims, are moot because the City already imposed a crosswalk condition – that places the new crosswalks in the locations the Appellant requested – as part of the Project's obligation.

2. The Approved Waiver of Dedication Is Not Appealable to PLUM.

Simply stated, the LAMC does not allow the Appellant to appeal the City's approval of a Waiver of Dedication and Improvement ("WDI") to PLUM. Thus, this issue is not before PLUM for consideration regardless of the fact that the Appellant included the argument in the EIR Appeal. See Section I, on page 2 of the April 7, 2022 Sheppard Mullin letter, if PLUM wishes to read the rationale rebutting the Appellant's WDI claims. Also, please note that the City staff has explained to the Appellant (in its staff report and at public hearing) that the WDI approval was not even appealable to APC, let alone to PLUM. Thus, the WDI is clearly beyond appeal and administrative challenge.

Moreover, so PLUM is informed, the City did require the Applicant to improve sidewalks and provide dedications around the Project to enhance the public right of way in accordance with current City standards. Specifically, see Condition of Approval No. 17 from the APC Letter of Determination, which provides in part that: "[a]ll other dedication and/or improvement requirements along 3rd Street and Ogden Drive fronting the Project Site shall be provided in accordance with LAMC 12.37 and the Mobility Plan 2035 street standards to the satisfaction of the City Engineer, including: (i) remove and reconstruct any damaged or off-grade asphalt concrete pavement along the property frontage; (ii) repair and/or replace any broken curb and gutter; (iii) remove and replace any non-ADA compliant sidewalk adjacent to the property with new sidewalk to achieve ADA compliance; (iv) close any unused driveways." This requirement results in a vastly improved pedestrian realm around a Project compared to existing conditions. The City's WDI approval then (as supported by City precedent) relieves the Applicant of improving the western side of the shopping center that is not associated with Project construction activities.

3. The EIR Adequately Analyzed Traffic and Circulation.

The Appellant claims that the Project's increase in vehicle trips will result in more drivers making illegal left turns at the two existing exits at the Project Site. As an initial matter, it is important to note that the 3rd Street and Fairfax Avenue exits both have signs clearly stating that "No Left Turns" are permitted. Drivers who choose to make a left turn in contravention of those signs are not following traffic laws. In addition, the illegal choices of individuals is not necessarily a CEQA issue per se.

The Appellant also ignores the fact that the EIR includes a circulation plan for the Project that the City and LADOT approved. As stated in the EIR, LADOT "continues to require and review a project's site access, circulation, and operational plan to determine if any access enhancements, transit amenities, intersection improvements, traffic signal upgrades,

neighborhood traffic calming, or other improvements are needed." See page 2 of Appendix H.1(A), to the Draft EIR for LADOT's Transportation Impact Assessment. As part of this analysis, LADOT reviews an LOS screening methodology. For this Project, the screening methodology indicates that the trips generated by the Project "would not result in adverse circulation conditions at any locations." Accordingly, based on substantial evidence, the lead agency and its expert departmental review determined that the traffic and circulation analysis was adequate and the Project would not result in significant circulation impacts. If PLUM desires more information on circulation, please see the March 25, 2022 Sheppard Mullin letter, Section B, pages 5-10 for a detailed traffic and circulation discussion.

IV. THE EIR PROPERLY ANALYZED GREENHOUSE GAS EMISSIONS.

The Appellant makes several unsupported claims about the Greenhouse Gas Emission ("GHG") analysis in the Draft EIR. The Appellant provides no justification or evidence for its claims. As we have stated before, the Draft EIR contains comprehensive GHG analysis supported by in-depth quantitative and qualitative analysis. See Section IV.C, Greenhouse Gas Emissions of the Draft EIR. The City prepared GHG analysis according to adopted rules and pursuant to applicable CEQA requirements. No further rebuttal is warranted here.

V. THE EIR PROPERLY ANALYZED CUMULATIVE IMPACTS.

The Appellant restates the same two claims it did in the APC appeal about cumulative impacts, regarding Whole Foods and Television City Studios. Both claims are inaccurate and not supported by fact or law. We summarize and supplement our prior rebuttal below for easy reference by PLUM.

Regarding Whole Foods, the Appellant claims that the EIR "misled decisionmakers" and "fails in its vital informational function" by not analyzing the impact of the currently existing Whole Foods Market on the western portion of the shopping center potentially relocating into the commercial space in the Project. The Appellant also claims the "EIR feigns no knowledge of this fact." These claims are speculative and wrong. The Draft EIR recognizes that the existing western portion of the Project Site is an existing commercial shopping center with tenants and operators. See page II-4 of Section II, Project Description, of the Draft EIR. The Draft EIR also conservatively assumed (for analytical purposes) that a 63,082 square foot supermarket use could be a commercial tenant in the Project. The City analyzed the impacts of the supermarket use in many sections of the Draft EIR, Appendices, and Final EIR, including, but not limited to, the following:

- **Air Quality.** The supermarket use was assumed as part of the Project in the air quality modeling (in Appendix C, to the Draft EIR), which was used in the analysis contained in Section IV.A, Air Quality, of the Draft EIR. The supermarket use was also assumed in the modeling contained in Appendix FEIR-7, Health Risk Assessment.

- **Energy.** The supermarket use was assumed as part of the Project in the Energy Demand and Air Quality modeling (see Appendix C and Appendix D, to the Draft EIR) used in the analysis contained in Section IV.B, Energy, of the Draft EIR.

- **Greenhouse Gas Emissions.** The supermarket use was assumed as part of the Project in the modeling (see Appendix E, to the Draft EIR) used in the analysis contained in Section IV.C, Greenhouse Gas Emissions, of the Draft EIR.

- **Hazardous Materials/Risk of Upset.** The supermarket use was assumed as part of the impact analysis of the Project. See page IV.D-56 of Section IV.D, Hazardous Materials/Risk of Upset.

- **Land Use and Planning.** The supermarket use was assumed as part of the consistency analysis of the Project with applicable plans, policies, and zoning. See Appendix M, to the Draft EIR. It is critically important to note that the Project, including the supermarket use, is permitted in the existing zone and consistent with the underlying zoning standards. See page IV.E-10 of Section IV.E Land Use and Planning, of the Draft EIR.

- **Noise.** The supermarket use was assumed as part of impact analysis of the Project, including operational noise impacts related to loading dock and parking garage noise. See pages IV.F-38 to 42 of Section IV.F, Noise, of the Draft EIR and Appendix F to the Draft EIR.

- **Population and Housing.** The supermarket use was assumed as part of the Project, including the estimated employee generation rates in Table IV.G-5 on page VI.G-19 in Section IV.G, Population and Housing, of the Draft EIR.

- **Public Services.** The supermarket use was assumed as part of the Project, including the Fire Protection, Police Protection, Schools, Parks and Recreation, and Libraries sections of Section IV.H, Public Services, of the Draft EIR and Appendix G, Public Service Letters, to the Draft EIR.

- **Transportation.** The supermarket use was assumed as part of the impact analysis of the Project. See Table IV.I-3 in Section IV.I Transportation, of the Draft EIR, which clearly includes a supermarket use as part of the Project. See also page IV.I-42, which expressly references supermarket use a potential component of the Project for analytical purposes. Also see Draft EIR, Appendix H.2(A), page 32, which identifies the Supermarket ITE Land Use Code 850 as a modeling assumption for LOS analysis of potential vehicle trips.

- **Public Utilities.** The supermarket use was assumed as part of the impact analysis of the Project in Section IV. Utilities and Service Systems.

These supermarket assumptions were used throughout the Draft EIR because that is the most conservative way to analyze potential retail tenants, considering that supermarkets have unique characteristics and can be (but are not always) higher vehicle trip generators than other retail uses. This method also fully informs the decisionmakers about potential impacts and is conservative. The Appellant is simply wrong by stating that the EIR did not consider a potential supermarket use as potential retail tenant in the Project.

Moreover, it is a faulty logic jump for the Appellant to then claim that the Draft EIR must analyze the vacancy created on the western portion of the shopping center if in fact the Whole Foods did move into the Project. The Draft EIR noted repeatedly that the western portion of the shopping center is a functional commercial center and the operator and tenants will have ongoing activities, including but not limited to, tenant improvements and actions that require ministerial building permits and approvals from the City. As with any functioning commercial center, tenants come and go periodically and those type of tenant movements do not trigger discretionary actions when the center is zoned for fluctuating commercial tenancies by-right. Therefore, the Appellant's attempt to characterize potential tenant movements or improvements as a cumulative impact does not square with the law.

Regarding Television City Studios, the Appellant restates its prior claims that the City erred by not including the Television City Studios redevelopment ("TVC 2050 Project") in the list of related projects, or as part of the cumulative impact analysis for the Project. The Appellant's position is legally wrong. We summarize and restate our rebuttal from the April 7, 2022 Sheppard Mullin letter. The basic standard for compiling the list is to include past, present, and probable future projects when it is reasonable, feasible, and practical to do so. A probable future project is typically one that is undergoing environmental review or has at least progressed to the stage where an application is filed publicly. The lead agency has discretion to select a reasonable cutoff date for the future projects for cumulative impacts analysis.

The City can use the date of the Notice of Preparation ("NOP") as the cutoff date for purposes of the list of related projects. Here, the City published the NOP on February 20, 2019, which is more than two years before the TVC 2050 Project filed an entitlement application on May 13, 2021. Here, as is standard practice, LADOT created the list of related projects and the Department of City Planning vetted and approved that list, at the latest, in February 2020 during preparation of the Draft EIR. Even at that time, the TVC 2050 Project still had not filed an entitlement application. Thus, it was not a reasonably probable future project, and the City properly excluded it from the list of related projects. Going further out, if the City selected the date that LADOT approved the Transportation Impact Assessment for the Project on March 26, 2020 as the reasonable cutoff date, the TVC 2050 Project was still not filed until a year after that. Moreover, there was no application on file for TVC 2050 Project until after the City published the Draft EIR on March 29, 2021. Therefore, there is no rational basis or legally relevant timeline the Appellant can support with a straight face to claim that the City should have included the TVC 2050 Project in the related projects list. As such, it was not reasonable, feasible, or practical to do in the chronology and legal procedure of the Project.

In addition, the Draft EIR clarifies in the cumulative impact analysis that the related projects within the City would be subject to the City’s standard development review process and would be required to comply with the Transportation Assessment Guidelines ("TAG") to ensure consistency with applicable traffic, transit and pedestrian safety-related policies. The Draft EIR also states that if any of the related projects result in a significant VMT impact, the project would be required to mitigate such impacts through a Transportation Demand Management program to reduce vehicle trips. The TVC 2050 Project (like the related projects analyzed in the Draft EIR) would be required to go through this same standard development review process to ensure consistency with the TAG as well as any applicable traffic and transit policies.

Additionally, as if that was not enough, the Draft EIR protected against unknown related projects. For example, the Transportation Impact Assessment used a conservative ambient growth factor to account for unknown future related projects. The ambient growth factor is based on general traffic growth factors provided in the 2010 Congestion Management Program for Los Angeles County ("CMP Manual") and determined in consultation with LADOT. Based on the CMP Manual, for the West/Central Los Angeles area, existing traffic volumes are expected to increase at an annual rate of less than 0.20% per year between the years 2015 and 2023. The Draft EIR applied an aggressive annual growth factor of 1.0% to provide a conservative, worst-case forecast, of future traffic volumes in the area. That growth rate assumption substantially exceeds the annual traffic growth rate published in the CMP Manual and sufficiently captures unknown projects. The Draft EIR used a blended methodology whereby it applied both the related projects list and cumulative growth factors. That is a belt and suspenders approach to ensure adequate analysis and high legal defensibility. Therefore, in any case, the City properly analyzed cumulative impacts pursuant to CEQA and used conservative analytical methods to do so.

VI. CONCLUSION

Altogether, the City and the Applicant completed exhaustive environmental review and community outreach that ensured a robust administrative process. The Appellant was an active and vocal member of the community working groups. The Applicant listened to the Appellant and the community and modified the Project along the way. The City selected the most defensible and comprehensive environmental document available under CEQA. The resulting analysis and evidence is deep and proved the Project has no significant impacts. The Project is squarely within the rights of the zoning code and applicable land use documents. This was a clear cut case for City approvals. The issue before PLUM is narrow and is only EIR certification. The record demonstrates that the City properly exercised its discretion based on substantial evidence to certify the EIR. Therefore, we respectfully request that PLUM deny the EIR Appeal and uphold the City's prior EIR certification.

Sincerely,

James E. Pugh
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4884-5028-6628.2

CC:

William Lamborn, Department of City Planning
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EXHIBIT A

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VIA ELECTRONIC MAIL ONLY

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Re: Response to Appeal from Barbara Gallen

Dear President Gold and Commission Members:

We represent Third Fairfax, LLC ("Applicant") regarding its proposed mixed-use residential development located generally at 300-370 S. Fairfax Avenue and 6300-6370 W. 3rd Street ("Property") in the City of Los Angeles ("City"). This letter responds to the appeal filed by Barbara Gallen ("Appellant") on behalf of the Park La Brea Impacted Residents Group.

For over three years, the Applicant has worked in good faith with Ms. Gallen to ensure that her voice was heard. The Applicant listened patiently to Ms. Gallen's numerous requests to change the project, and incorporated several of her desires into the plans. Ms. Gallen filed the Appeal despite the Applicant's long and ongoing efforts to work with her. To us, it feels like the Appeal is fueled by Ms. Gallen's independent desires instead of germane environmental concerns under the California Environmental Quality Act ("CEQA"). This is an unfortunate circumstance because the project substantially improves existing conditions on the Property and enhances the community for surrounding residents and stakeholders.

As we demonstrate below, the appeal is not supported by evidence and its claims are not rooted in true facts and law. It is also important for the Central Area Planning Commission ("Commission") to understand that the Project has no significant impacts. The City went above and beyond the requirements of CEQA and prepared an Environmental Impact Report ("EIR") for the Project even though that was not required by law. The Appellant has not raised issues that require the City to revise or recirculate the EIR. The Appellant has also failed to meet its burden of proof. Accordingly, we request that the Commission deny the appeal and uphold the City's prior approvals.

The project includes 331 residential apartments and approximately 83,994 square feet of commercial space ("Project") that would replace a closed K-Mart building located on a portion of an existing Town & Country Shopping Center ("Project Site"). The development would be

limited to the eastern portion of the Project Site, which is defined as the "Development Site" in the EIR and this letter. The Project is consistent with zoning and the general plan land use designation for the Property. The primary entitlement for the Project is Site Plan Review ("SPR") for the development of more than 50 dwelling units per the Los Angeles Municipal Code ("LAMC"). The Project creates much-needed housing, and reinvigorates commercial uses, on a site that already permits residential units and contains commercial uses in the existing condition. Importantly, the Project creates housing during a time when the City is under intense pressure from the State of California to produce more housing to meet the City's regional housing needs assessment.

Altogether, the Project implements the type of development prescribed for the Property by the City's land use laws and regulations. Therefore, the Commission has solid ground legally, factually, and procedurally to uphold the City's approval of the Project and certification of the EIR. We respectfully request that the Commission deny the appeal.

The following responses are for your consideration and the administrative record. We organized the responses to generally track the format of the appeal, which thereby provides the Commission with an organized rebuttal of the issues raised by the Appellant. Also, for ease of reference, we attached the appeal hereto as Exhibit A: Gallen Appeal.

I. THE ENVIRONMENTAL IMPACT REPORT COMPLIES WITH CEQA.

The first claim in the appeal generically states the purpose of an EIR pursuant to Cal. Pub. Res Code, Section 21002.1(a). That section of the code states that "[t]he purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided." It is unclear why the Appellant set forth this premise in the appeal when the City did in fact prepare an EIR that identified the potential impacts of the Project. Moreover, as a fundamental matter, the legal purpose of an EIR is statutorily geared to projects that have significant effects on the environment. In other words, if a project does not have significant effects on the environment, then CEQA does not require an EIR. We urge the Commission to remember this important premise as it considers the appeal and our request to deny it.

Legally, and particularly relevant in this case, the City prepared an EIR even though the impact analysis and evidence demonstrates that the Project has no significant impacts. Truly, this is a rare occasion when the City and the Applicant far exceeded the legal requirements of CEQA to ensure the highest levels of disclosure, deepest levels of analysis, and most onerous procedural requirements available under the law for a Project with no significant impacts. The Appellant's attempt to now cast the EIR in ill light looks past the fundamental premise that CEQA did not require an EIR in the first place. This is akin to the adage that no good deed goes unpunished. Here, the Appellant is attempting to punish the City with additional process and opposition even though the City went beyond its legal obligation to inform the public about the scope and potential impacts of the Project. We believe that, even as a matter of principle, let alone the law, the Commission should not condone these types of CEQA attacks because it emboldens misuse of the legal process.

The second point in the appeal infers that the EIR did not establish the "true scope" (in the Appellant's words) of the Project. The Appellant provides no evidence or context for this statement. However, to inform the Commission, we set forth the crux of the law for defining the scope of a project. In the CEQA Guidelines, the term "scoping" refers only to optional, early consultation with the public and interested organizations under 14 Cal Code Regs §15083. The City held a scoping meeting in this case. In practice, lead agencies may use an initial study to simplify preparation of the EIR by narrowing the scope of the issues to be evaluated. 14 Cal Code Regs §15006(d). The City also prepared an initial study in this case. Both of these optional scoping steps occurred to identify the likely scope of the EIR. But, neither of these steps ultimately define the scope of project analysis for the EIR. That important task is the duty of the project description in the Draft EIR.

Here, the Draft EIR project description set forth the whole of the action that may result in either a direct physical environmental change or a reasonably foreseeable indirect change, as required by 14 Cal Code Regs §15378. In addition, the term project refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies; the term project does not mean each separate governmental approval. Section II: Project Description in the Draft EIR contains a stable and finite project description that identifies the activity which is being approved as the construction and operation of a new mixed-use development that includes 331 multi-family dwelling units and 83,994 square feet of new commercial space. The project description includes, but is not limited to, the environmental and regulatory setting, objectives, a detailed description of the project characteristics and construction activities, and a list of discretionary actions and permits associated with the Project. Then, the Draft EIR analyzes the Project as established in the project description pursuant applicable CEQA requirements. Thus, the Draft EIR project description adequately established the true scope of the Project and the resulting analysis adequately apprised all interested parties of the potential environmental impacts.

A. The Draft EIR Included Oil Well Abandonment in the Project Description and Included Sufficient Disclosures and Measures to Facilitate Informed Decision Making.

The foundation of the Appellant's claim regarding oil well abandonment is misinformed. The Appellant claims that "the EIR provides that any discretionary approvals associated with the oil well re-abandonment and related activities will be subject to CEQA independently from the Proposed Project." That statement is not accurate and conflates the Initial Study with the Draft EIR. As we noted above, the project description in the Draft EIR controls the ultimate scope of the Project and its related activities. Here, the Appellant cherry-picked one statement from the Initial Study, which did indicate that abandonment could be subject to CEQA independently, to seed its argument. See pages 19-20 of the Initial Study.

However, the Initial Study also mentioned oil well abandonment as related to the Project in several instances. See page 18 regarding California Department of Conservation, Division of Oil, Gas, and Geothermal Resources ("DOGGR"), now known as the California Geologic Energy Management Division ("CalGEM"), approvals prior to permits for the Project; page 69

regarding soil testing and oil well location studies; and page 79 regarding potential oil well abandonment conducted on the Development Site in consultations with responsible agencies.

More importantly, the project description in the Draft EIR (which controls the legal scope of the Project) describes oil well investigation and abandonment as a potential construction activity that could be associated with the Project, and identifies DOGGR as among the public agencies that may use the EIR. See pages II-45-46 in the Draft EIR. Therefore, the Draft EIR properly included the potential discovery and re-abandonment of an oil well in the scope of the Project. Please note that even with this disclosure, the actual discovery of an oil well on the Development Site is still speculative because the historical records regarding prior abandonment date back to 1930 and are not definitive regarding the location or condition of the capped well head. Regardless, the Draft EIR included potential well discovery and established a soils management plan to ensure proper treatment of soils and subsurface conditions encountered during grading activities.

More specifically, the analytical body of the Draft EIR includes potential oil well abandonment in several ways. To start with, Section IV.D: Hazardous Materials/Risk of Upset identified the regulatory setting associated with well abandonment on page 12. The Draft EIR describes and references Zoning Information No. 1195 ("ZI-1195") to explain well abandonment and CalGem clearances on pages 17-18.[1] The Draft EIR describes existing conditions and how a historical oil well and related methane may be in the soils and discloses that CalGEM records indicate that one plugged and abandoned oil well may be present on the Development Site. The well is identified as Salt Lake 99 (API number 037-15229), Lease Salt Lake Well #99 County Los Angeles [037] District 1 Operator Chevron U.S.A. Inc. ("Well No. 99") on page 22. The Draft EIR proactively applied PDF-HAZ-1 to ensure the Project would be designed and constructed to minimize potential methane impacts, including but not limited to, properly fitting and venting an oil well if discovered beneath a new building on page 44. The Draft EIR stated that construction would also include grading and excavation activities that have the potential to release hazardous materials into the environment if the activities are not properly mitigated or performed pursuant to applicable regulatory requirements, which includes potential oil well discovery and/or re-abandonment during the grading phase of the Project on page 45. The Draft EIR also states that "[i]n addition, out of an abundance of caution, the Proposed Project would include Mitigation Measure MM-HAZ-1 to further minimize potential hazardous materials impacts. This measure would require a Soil Management Plan (SMP) to be prepared to guide contractors regarding appropriate handling, screening, and management of potentially impacted or impacted soils from historical operations on the Development Site that may be encountered during grading and excavation" on page 47. Based on this information, and more, the Draft EIR identified the potential presence of an abandoned oil well, established the regulatory structure that controls abandonment, if needed, assessed the potential impacts of its discovery and treatment of soils that may be contaminated by it during construction, and imposed a mitigation measure – that expressly includes abandoned oil wells – to ensure proper procedures for decontamination and decommissioning of subsurface features of environmental concern encountered during earthmoving activities. Against that backdrop, it is inaccurate and

[1] When all or part of another document is incorporated by reference, the incorporated portion is treated as if it were set forth in full in the EIR. 14 Cal Code Regs §15150(a).

disingenuous for the Appellant to claim the Draft EIR fails to analyze potential oil well abandonment.

The Draft EIR also includes substantial evidence, and disclosures, regarding the potential presence of one abandoned oil well that may underlay the Development Site in the following technical reports: Appendix A-F.3, Phase I Environmental Site Assessment (May 2017); Appendix A-F.4, Phase II Environmental Site Assessment (March 2018); Appendix A-F.5, Methane Report (September 2018); and Appendix K, Phase I Environmental Site Assessment Update (October 2018). The Appellant provides no evidence to support its claim.

In conclusion, based on the foregoing as well as the whole of the record, the Draft EIR adequately informed the decision makers and public regarding potential hazards and hazardous materials, related to the Appellant's oil well claim.

B. The Draft EIR Adequately Analyzed Transportation Impacts Using Correct Data, Applicable Thresholds, and Defined Project Characteristics.

The Appellant rambles through several issues in this section of the appeal. We will respond to each in turn. But first, to clarify for the Commission conceptually, the core of all the complaints come from the Appellant's concern that the Project: (a) increases vehicle trips; and (b) increases pedestrian activity. The Appellant claims that both of those facts are bad and create unacceptable impacts. The Appellant presents no evidence for its position. The reality (based on substantial evidence) is that the Project has no significant transportation impacts and increased pedestrian activity is a beneficial effect. Below, we address the several issues raised.

1. Vehicle Trip Assumptions are Accurate and Pedestrian Activity is Analyzed.

We must first correct a misstatement by the Appellant. The appeal states that the Project would result "in an increase of at least 9,634 daily trips – see Table IV.I.3." That number is wrong and dramatically inflated. Table IV.I.3 on page 43 of the Draft EIR shows that the Project would add 1,875 (not 9,634) daily vehicle trips. We also note that this trip estimate is within the context of the Vehicle Miles Travelled ("VMT") calculations. As the Commission likely knows, VMT is now the accepted method of analysis for transportation impacts. We refer the Commission to pages IV.I-16-21 of the Draft EIR for a detailed explanation of the methodologies adopted by the City, used by the Los Angeles Department of Transportation ("LADOT"), and applied in the Draft EIR. In the most basic sense, it is important for the Appellant to recognize that vehicle trips alone are an outdated method (associated with the old Level of Service method) for determining transportation impacts. In this case, the Draft EIR applied the VMT method of analysis as required by LADOT and determined that the Project had no significant traffic impacts.

Next, the Appellant claims that the increased pedestrian activity caused by the Project will substantially increase hazards on adjacent roadways. The Appellant attempts to analogize a "geometric design feature" per CEQA to a crosswalk (which to us appears as tortured logic) as we elaborate on below, and casts increased pedestrians as increased hazards. This claim is

nonsense and does not align with the type of analysis that is supposed to be in this EIR pursuant to the applicable thresholds of significance. The thresholds in the CEQA Guidelines mostly treat pedestrian facilities and geometric design features separately. See Draft EIR page IV.I-16, Threshold (a) for pedestrian facilities and Threshold (c) for hazards due to a geometric design feature.

For pedestrians, Threshold (a) queries whether the Project would conflict with a program, plan or ordinance addressing pedestrian facilities. The Draft EIR answered screening questions from the LADOT Transportation Assessment Guidelines ("TAG") to determine which pedestrian-related programs and plans apply to the Project on pages IV.I 24-29. Then, the Draft EIR analyzed pedestrian infrastructure included in the design of the Project. Compared to existing conditions, the Project materially enhances the pedestrian realm by improving sidewalks to comply with the Mobility Plan, increasing sidewalk widths, providing pedestrian passage to new uses from the site perimeter, improving landscape and streetscapes, and generally creating a more enjoyable walking environment around the Development Site. See Draft EIR, page IV.I-32-40. Therefore, it is inaccurate for the Appellant to claim that the Draft EIR failed to analyze pedestrian activity.

For geometric design features, Threshold (c) queries whether the Project would substantially increase hazards due to a geometric design features (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment). Words matter, especially when dissecting a legal threshold of significance. Here, the threshold considers sharp curves or dangerous intersections as "geometric design features." The Project does not propose or require roadway modifications that could change any intersection or add a sharp curve around the Project Site. Moreover, the Draft EIR demonstrates that the existing access driveways on S. Fairfax Avenue and on W. 3rd Street would be retained. On S. Ogden Drive, the Project would provide one service driveway to access the retail spaces, and would provide two new ingress/egress driveways to access the residential and commercial driveways into the parking structure, respectively. The proposed driveway locations and widths would be consistent with the City's design regulations.[2] LADOT reviewed the site plan for the Project and concluded that project access and circulation is acceptable. To put it simply, the Project does not include sharp curves or dangerous intersections. Therefore, it is disingenuous for the Appellant to claim that the Project introduces, or substantially increases hazards due to, a geometric design feature.

The real complaint from the Appellant appears to be about the existing crosswalks around the Project Site, and the personal tendencies of pedestrians using those crosswalks or signalized intersections, for circulation in the neighborhood. Surely, the Commission recognizes that controlling the behavior of individuals using pedestrian facilities is beyond required CEQA analysis. We respectfully request that the Commission be clear-eyed about this issue: the personal decisions of individuals to jaywalk or use crosswalks and intersections is a personal choice not governed by CEQA analysis.

[2] See LADOT, Manual of Policies and Procedures – Section 321: Driveway Design.

2. The Appellant's Crosswalk Arguments are Noted, but Crosswalks Are Not Part of the Project as Defined in the Project Description.

The appeal contains numerous statements about crosswalks, ranging from existing pedestrian crossing patterns midblock, alleged existing hazards due to pedestrian movements, speculations about how future residents may behave, questions about how to implement crosswalks, and opinions about the developer. Most, if not all, of the Appellant's points about crosswalks are not relevant to the EIR analysis because the Project does not propose new crosswalks. The impact analysis in the EIR did not require new crosswalks to mitigate potential transportation impacts. The Final EIR made this point abundantly clear, stating "[i]nstallation of a potential future crosswalk connecting Gilmore Lane to the south side of W. 3rd Street is not a part of the Proposed Project as described in the Draft EIR. Thus, this comment does not raise an issue germane to the Draft EIR impact analysis. Also, if the City implemented a crosswalk, or the Project applicant includes such a feature as a voluntary benefit, those actions would not add new significant information to the EIR or create new or more severe impacts." See Final EIR, page II-36.

Granted, the Applicant has discussed crosswalks with the Appellant several times. The Applicant has also discussed crosswalks with the community. The Applicant remains committed to providing crosswalks to the community as a voluntary benefit. If that occurred, then LADOT would need to approve the crosswalks before installation. We have contacted the Appellant's counsel to discuss this matter in an attempt to resolve the Appellant's concerns.

Importantly, the City (including LADOT) concluded that the transportation analysis in the Draft EIR did not trigger mitigation measures that require crosswalks. Accordingly, the City's Letter of Determination ("LOD") does not include conditions of approval for crosswalks. Note that the LOD does include certain pedestrian and streetscape improvement conditions, such as pedestrian pathway, pedestrian paseo, and sidewalk improvements consistent with the Mobility Plan street standards for certain frontages at the Development Site. See Conditions 7,8 and 16, respectively in the LOD. This demonstrates that the City exercised its discretion based on evidence in the record regarding the appropriate pedestrian improvements associated with the Project. Therefore, we request that the Commission uphold the City's prior approval, and the conditions of approval, as is.

It should also be noted that there are two existing crosswalks adjacent to the Project Site for pedestrians to cross to the northside of W. 3rd Street from the Project Site to the Grove and Farmers Market (S. Ogden Drive/W. 3rd Street and W. 3rd Street/S. Fairfax Avenue), and one midblock crosswalk on S. Ogden Drive, connecting the Development Site to the adjacent shopping center. Nonetheless, the Applicant is willing to pursue the additional crosswalks requested by the Appellant – as an independent effort – and subject to LADOT approval.

We also point out for the Commission that pedestrian improvements deemed to enhance mobility for pedestrians and bicyclists do not lead to substantial or measurable increases in vehicle travel and are presumed to have a less than significant transportation impact.[3] LADOT

[3] See Table 2.3-1 on page 2-16 of the TAG.

considered the Project (including the additional population and employee increases)[4] and concluded that: (1) the Project would not result in adverse access or circulation conditions; (2) the analysis adequately discloses operational concerns; (3) the Project would be consistent with the TAG requirements to the extent those are applicable based on when the City started environmental review.[5]

Finally, we see the Appellant's attempt to bootstrap into a legal argument regarding how a project could exacerbate an existing condition. Specifically, the Appellant argues that future residents of the Project may follow the existing crossing patterns of the public . . . and that such personal behavior somehow "significantly exacerbates the aforementioned hazardous midblock crossing on Third Street by introducing 700+ high income individuals in a luxury housing complex across from the principal entrance to the Grove" in the Appellant's words. A few points for the Commission to consider. One, the Appellant is speculating about the future behavior of people. Two, the Appellant is implying that all of the future residents would use a certain travel path to adjacent land uses. Three, the Appellant is trying to stretch the legal definition of "environment" per Public Resources Code, Section 21083, so it would encompass nearly any effect a project could have on a future resident or user. That is beyond a fair reading of the statute. Thus, the Appellant's argument is factually speculative and legally misconstrued.

Even if we did give credence (which we are not) to the Appellant's twisted analytic approach above, the Draft EIR disclosed the existing conditions associated with adjacent roadways and intersections; and analyzed the Project consistency with applicable policies related to pedestrian facilities, to the extent required by applicable planning documents. See, for example, Draft EIR, pages IV.I-23-40. This informed decision making by the City based on existing conditions and potential impacts of the Project.

Ultimately, the Appellant's concerns about extracting crosswalks from the Applicant are likely moot. As noted above, the Applicant is committed to delivering crosswalks as a voluntary benefit. However, continual attacks by the Appellant against the Project, and the filing of this administrative appeal, are counterproductive.

3. The Draft EIR Analyzed Queuing to the Extent Required by LADOT.

The Appellant claims that "the EIR conclusively dismisses the transportation hazards posed by queuing of cars along both 3rd street and Ogden." That claim is not true because the EIR does contain queuing analysis. The Appellant raised a similar queuing issue in its comment on the Draft EIR. The City provided a detailed response in the Final EIR explaining that the Project is designed consistent with LADOT requirements and in a manner that alleviates queuing issues. We refer the Commission to Response to Comment 7.13 in the Final EIR for details.

[4] See Vehicle Miles Traveled ("VMT") Calculator Output in Appendix H.1 CEQA Transportation Analysis. Note also that the Transportation Impact Study included counts of pedestrians and bicycles at the study intersections. See Appendix H.2 Non-CEQA Transportation Analysis.
[5] See Appendix H.1 CEQA Transportation Analysis, to the Draft EIR.

In a nutshell, the Project's driveways and circulation features accommodate queuing to ensure traffic does not back up onto adjacent streets. Moreover, we point out that potential queuing impacts on area streets (including W. 3rd Street and Ogden Drive) from traffic congestion is not a CEQA issue pursuant to the TAG and LADOT. Nonetheless, it should be noted that the City prepared a conservative analysis and included the July 2019 Non-CEQA Traffic Analysis in Appendix H.2(A) of the Draft EIR, which applies the old LOS methodology that includes additional vehicle queuing analysis in surrounding intersections for informational purposes. Therefore, the Draft EIR and Final EIR adequately address queuing issues in any case.

4. The Baseline and Methodology for Traffic Impact Analysis are Correct.

The Appellant claims that "[t]he transportation analysis is also faulty as it relies on outdated and incorrect information." The Appellant bases that claim on the dates of the initial traffic study in relation to the closing of the K-Mart store that used to occupy the Development Site. As we explain below, the City used the correct baseline and methodology for impact analysis.

Section III, Environmental Setting, of Draft EIR described permissible baselines pursuant the general rules of Section 15125 of CEQA regarding existing conditions, and the permissible use of future or historical baselines when conditions warrant. It states specifically, "[a]ccordingly, a lead agency has discretion to treat historical conditions, or conditions that predate publication of the notice of preparation, as the baseline for evaluating an impact particularly when such baseline conditions represent actual levels of past use." See Draft EIR, page III.2.

It follows that the City had the legal right and discretion to use traffic counts for the Development Site that were taken when K-Mart was open. Appendix H.2(A) Non-CEQA Traffic Analysis, page 16 disclosed that manual traffic counts at each of the study intersections were conducted when the K-Mart store was open to the public. The City's selection of a traffic baseline that assumed occupancy of the K-Mart was not merely hypothetical because it was not based solely on permitted uses to occupy or reoccupy the building, but was also based on the actual historical operation of the space for many years. That type of baseline is acceptable under the law because it represents actual levels of past use. Note that K-Mart occupied the location at the Development Site from 1977 until December 2018, which was only two months before the City published the NOP in February 2019. Therefore, the baseline used for the Level of Service analysis was adequate by law.

Most importantly, the baseline traffic counts that the Appellant questions in the appeal were rendered legally irrelevant for EIR analysis when LADOT switched its method of traffic analysis from Level of Service to VMT as required by State law. See Appendix H.2(A), cover page, which explains precisely the effect of changes in State law and how LADOT thereafter switched its CEQA analysis method to VMT. It states, in part that, "the Project is not considering vehicle delay as a significant impact on the environment. The analysis in the Traffic Impact Study contained in this Appendix H.2 applies the Level of Service (LOS) analysis, and is therefore being provided for informational purposes only and not for determining whether the

Project will result in significant impacts to the environment under CEQA." And, it states that "[a]s a result, this analysis is not being used to inform an impact determination for the Project, per LADOT guidance issued August 9, 2019." The baseline traffic counts that the Appellant complains about are in Appendix H.2(A), which the Commission can clearly see is not the binding data source for CEQA analysis or data driver for impact conclusions per State law and the City's implementation of it.

5. The Traffic Analysis Is Based on Accurate Data and Follows LADOT's Adopted Rules.

The Appellant asserts that the traffic analysis does not account for transportation/vehicle use habits caused by the COVID-19 pandemic, and fails to discuss the impacts of ride hailing services from Transportation Network Companies ("TNCs") like Uber and Lyft. Even though both of these issues are mostly irrelevant for the EIR analysis, we address each in turn below.

Regarding COVID-19, the Appellant claims that the Draft EIR should have used data that considers changes in transportation habits due to the pandemic. That position is not supported by fact or law. The Appellant provides no facts or evidence to demonstrate that the existence of COVID-19 invalidates transportation studies conducted prior to the pandemic. The law is also clear that lead agencies can rely on transportation studies conducted before the pandemic because that was when the City started its environmental review process. The City released the NOP on February 20, 2019, more than a year before the pandemic. Pandemic-induced traffic patterns were thus not considered part of the environmental baseline. If anything, such studies present a more conservative and realistic assessment of driving patterns and volumes pre-pandemic. Now, much of the traffic flow has returned to pre-pandemic levels. That trend is likely to continue as the pandemic wanes and traffic patterns recalibrate between now and the start of construction and operation of the Project. Therefore, the traffic studies were accurate and based on proper data.

Regarding TNCs, the Appellant raised concerns about TNCs in its Draft EIR comment letter. The Final EIR provided a substantive response to those comments in Section II, Responses to Comments, of the Final EIR, Response to Comment No. 7.3. In summary, TNC trips are not expected to affect the overall rates of trip generation or assumptions used in the ITE Trip Generation Manual. In addition, the TAG does not require TNC analysis as part of CEQA. We also note that the Applicant adjusted the design of the Project, at the request of the Appellant, to create dedicated pick-up/drop-off areas in a porte-cochere to further minimize any effects TNCs may have on circulation.

C. Greenhouse Gas Emissions

The Appellant rehashes its transportation claims stating that "the EIR's transportation and trip generation analyses are faulty as they rely on seriously outdated and incomplete and even misleading information." The Appellant then infers, without stating such, that the Greenhouse Gas Emission ("GHG") analysis in the Draft EIR is also inadequate. The Appellant provides no justification or evidence for this claim. The Draft EIR contains comprehensive GHG analysis. See Section IV.C, Greenhouse Gas Emissions of the Draft EIR. As explained above,

the City prepared the transportation analysis and GHG analysis according to adopted rules and pursuant to applicable CEQA requirements. No further rebuttal is warranted here.

II. THE CITY MADE PROPER FINDINGS SUPPORTED BY EVIDENCE.

To finish its appeal, the Appellant's make several misleading and inaccurate claims about the City's findings.

First, the Appellant claims that the City could not find the Project compatible with existing and future development. That is almost a comical claim considering that the existing residential development (i.e., Plazzo apartments) directly across S. Drive Ogden from the Project Site are similarly situated multi-family residential units. Furthermore, the apartment buildings in Park La Brea (the Appellant's own community) are also multi-family residential units, many located in high rise towers. In addition, the Project includes commercial uses that enliven a site that contains existing commercial uses. So it is flatly false for the Appellant to claim incompatibility when the uses on the Project Site, and near to it, are the same types of uses proposed by the Applicant. The City made factual and legal findings in the LOD that further prove this point.

Second, the Appellant misleads the Commission by mincing the words of finding two regarding residential projects and recreational/service amenities. The Appellant leaves out the recreation component of the finding and makes a hollow one-sentence claim that "the Project fails to minimize impacts on neighboring properties." Again, words matter, and if the Appellant wants to attack the finding, then at least read all of the words in it. The words of the finding verbatim are: "Any residential project provides recreational and service amenities in order to improve habituality for the residents and minimize impacts on neighboring properties." The LOD states very clearly (in the findings) that the Project includes open spaces, outdoor courtyards, roof deck, pool deck, and amenity rooms that would be programmed for the varying recreational needs of the residents. In addition, Initial Study, page 85-86 analyzes potential impacts on recreational facilities and concludes the Project would not have impacts on recreational facilities; and Draft EIR, Section H.4, Parks and Recreation contains detailed analysis that proves that the Project would minimize impacts on neighboring properties by: (1) including onsite recreational amenities; (2) not generating substantial demand for offsite recreational facilities; and (3) paying Quimby fees to further minimize any potential offsite impacts on neighboring properties. As stated in the Draft EIR, page IV.H.76, the City's Department of Recreation and Parks concurred with this conclusion. Therefore, the City's finding is supported by deep analysis and substantial evidence.

As a side, the Appellant notes that the adjacent school supports the Project. This is an important point. The Applicant worked closely with the school to ensure a robust analysis of all potential impacts, not only on the school, but the community at large. As the City has found, and the administrative record proves in spades, the Project has no significant impacts, period. The Appellant's unsupported claims otherwise do not pass muster.

As another side, in this section of the appeal, the Appellant seems to cast dispersions on the community outreach process as if it was not transparent or community oriented. That position could not be farther from the truth. As noted above, the Appellant engaged in several

years of community outreach and meetings. The participants were diverse and represented multiple interests in the community, ranging from residents, school members, business owners, neighborhood councils, interested stakeholders, the local council district, and others. That process resulted in meaningful engagement – so much so – that the Applicant changed its original high-rise design to a mid-rise building and voluntarily agreed with the City to pursue an EIR even though that was not required by law because the Project had no significant impacts. The community engagement did not stop there. It continued and resulted in ongoing refinement of project design and voluntary commitments to more benefits for the community. Personally, I have never seen a more robust public engagement process in my decades of land use practice. The Appellant's claim that the process was not transparent, or for the community as a whole, is to deny the reality of what occurred.

Third, the Appellant claims the City could not find the Project in substantial conformance with the General Plan and Community Plan. Let us get the basic law clear first. A proposed project should be considered consistent with a general plan or elements of a general plan if it furthers one or more policies and does not obstruct other policies. Generally, given that land use plans reflect a range of competing interests, a project should be compatible with a plan's overall goals and objectives, but need not be in perfect conformity with every plan policy. Even with this legal flexibility, the EIR examined General Plan and Community Plan consistency closely. Substantive discussions are found in Section IV.E, Land Use and Planning, Section IV.G, Population and Housing, Section IV.H, Public Services, and Section IV.I, Transportation, of the Draft EIR, and especially Appendix M, Land Use Consistency Analysis Tables to the Draft EIR.

Also, we note that the Project is essentially by-right due to its facial conformance with zoning and land use designations set forth in the general plan and applicable code. The Project does not require a zone change or general plan amendment. Instead, the Project proposes residential and retail uses that are currently permitted by existing land use laws and regulations. The Draft EIR land use analysis (see Draft EIR, Section IV.E, pages 1-33; and Appendix M. Land Use Consistency Tables) and the City's general plan consistency findings, make this point abundantly clear.

The Appellant also provides bullet points in the final section of the appeal as an alleged laundry list that is tied directly the Project. We note, however, that several of those bullets merely restate conditions recognized as existing "issues" in the community plan area when it was adopted. Those are not policies or goals for analysis. In other bullets, either the Draft EIR did analyze relevant goals and policies as noted above, or the Project facially complies per its approved plans. Accordingly, the EIR and supporting evidence in the record demonstrates how the Project complies with the applicable provisions of the Wilshire Community Plan and General Plan. We cannot say it more clearly than this – the Project is a bullseye – with respect to compliance with zoning and land use designation, so much so that it is essentially by-right.

The last substantive point raised by the Appellant is that "the project is quadrupling the number of parking spaces on the redeveloped portion from 237 to 996 spaces." This is another misleading statement. The required amount of parking for the Project is 892 spaces, and the Project provides 996 spaces. The excess parking can help overflow needs at the existing

commercial center, which further improves circulation in the area, and generally improves the retail experience at the center. Thus, the Project Site will be parked in compliance with the LAMC and to meet demand at a mixed-use commercial center with new residential units integrated. The Appellant's "quadrupling" statement is more fear mongering than relevant fact. As the Commission may know, the Project will transform a rather unsightly surface parking lot (i.e., the Development Site portion of the Project Site) into a well-designed, pedestrian-friendly, landscape-enhanced, and functionally integrated mixed-use development that fits with the community. The Applicant is doing all of this within the bounds of the existing zoning and land use designations. This is the type of project that the City should be able to applaud, instead of being forced into procedural delays by the Appellant.

III. CONCLUSION

Altogether, the City and the Applicant completed exhaustive environmental review and community outreach that ensured a robust administrative process. The Appellant was an active and vocal member of the community working groups. The Applicant listened to the Appellant and the community and modified the Project along the way. The City selected the most defensible and comprehensive environmental document available under CEQA. The resulting analysis and evidence is deep and proved the Project has no significant impacts. The Project is squarely within the rights of the zoning code and applicable land use documents. This was a clear cut case for City approvals. Therefore, we respectfully request that the Commission deny the appeal and uphold the City's prior approvals.

Best regards,

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Re: Response to Luna & Glushon Letter

Dear President Gold and Commission Members:

As you know, we represent Third Fairfax, LLC ("Applicant") regarding its proposed mixed-use residential development located generally at 300-370 S. Fairfax Avenue and 6300-6370 W. 3rd Street ("Property") in the City of Los Angeles ("City"). This letter responds to the recent letter submitted by Luna & Glushon ("Glushon Letter"), on behalf of Barbara Gallen ("Appellant"), to the Central Area Planning Commission ("Commission") on April 4, 2022.

On April 1, 2022, we submitted a detailed letter ("Sheppard Mullin Letter") that rebutted all of the claims raised in Appellant's original appeal. We trust that the Commission has read that important letter. As we discuss below, the new Glushon Letter repeats most of the same issues and raises a few new points that we respond to herein. Once again, the Appellant has failed to raise legitimate claims and not met its burden to prove that the City erred or abused its discretion while certifying the Environmental Impact Report ("EIR") or approving the Third & Fairfax project ("Project"). Accordingly, we request that the Commission deny the appeal based on the strong evidence in the record, prior approvals by the City, and as recommended in the staff report for this case.

As we pointed out in the Sheppard Mullin Letter, the Applicant has worked in good faith with Ms. Gallen for several years trying to appease her desires. As you will see during the hearing, the Applicant modified the Project to include several items requested by Ms. Gallen. We also want the Commission to know that we have contacted Ms. Gallen's counsel several times to see if there was an amicable way to resolve this matter. Ms. Gallen would not authorize her counsel to speak with us. These tactics are the hallmark of a NIMBY that will oppose the Project on personal grounds no matter how good the Project is for the community and the City. Thus, we ask the Commission to deny the appeal so the Applicant can implement the Project and redevelop the aging site with much needed housing and new commercial uses.

I. THE CITY PROPERLY APPROVED THE WAIVER OF DEDICATION AND IMPROVEMENT FOR A PORTION OF THE SITE AND THAT DECISION IS UNAPPEALABLE.

The Appellant tries in vain to argue that the Applicant is developing the entire Town and Country Shopping Center. That is legally impossible for the Applicant to do even if it wanted to because the Applicant has no legal rights to own or control the western portion of the center. Accordingly, the only portion of the center that the Applicant has any right to develop is the eastern portion, which the City rightfully considered the Development Site for impact analysis in the Draft EIR.

The Appellant acts as if any development proposal, on any portion, of any site, necessitates considering all of a site for environmental review. That thinking is too simplistic for complicated land use projects, not consistent with City precedent, and ignores the focus of CEQA, which is to examine the change in the physical environment created by the Project and the City's associated discretionary actions. Here, the Project is limited to the eastern portion of the site and the Draft EIR is abundantly clear about that point in the narrative and site plans. In addition, the City has used this same approach to delineate boundaries for impact analysis for projects on media studio campuses, retail centers, and large commercial parcels where (in each case) there are unused or underutilized portions of a large site that are subject to redevelopment while the remainder of the site continues operations. That is not an error as the Appellant claims, instead it is the reality of complex planning and environmental review methods in urbanized locations.

As a related issue, the Appellant claims the Waiver of Dedication and Improvement ("WDI") was in error because the City did not require the Applicant to improve all of the frontages around all of the shopping center. As noted above, the Applicant has no legal ability to make those improvements because it does not own all of the shopping center. And, importantly, the Project boundaries are only for a portion of the shopping center site – i.e., the Development Site. Thus, the City properly required the Applicant to improve the frontages around the Development Site to meet current development standards. The result is a vastly improved pedestrian realm around the Development Site and the creation of a modern mixed-use development that replaces an obsolete portion of the shopping center.

The Appellant gregariously asks the Commission so "when will the City require these admitted and absolutely necessary pedestrian safety improvements?" for the entire shopping center. The answer is when the City has a legal basis to require such improvements. The Commission surely understands that the City is not in the business of unlawful exactions or imposing unlawful conditions of approval. So, the City here properly applied lawful conditions of approval that require the Applicant to improve the Development Site frontages. It follows, that the City also approved the WDI for those frontages that are neither on the Development Site nor controlled by the Applicant. That approach is legally sound and consistent with City precedent.

Moreover, as noted in the staff report, the Appellant has no right to appeal the WDI decision pursuant to the Los Angeles Municipal Code. Hence, the issue is moot and the Commission need not consider it.

II. JAYWALKING AND CROSSWALKS ARE NOT CEQA ISSUES.

The Glushon Letter, on behalf of Ms. Gallen, harps again on crosswalks and jaywalking as a central theme. The Sheppard Mullin Letter addressed those points in detail. In sum, crosswalks and people jaywalking are not CEQA issues for this Project, especially considering that it has no significant impacts on transportation or any other environmental issue.

The Glushon Letter further litters the record with pictures of people breaking the law and jaywalking. But that personal behavior does not change the required scope of CEQA analysis under the law. Moreover, if the Appellant genuinely wants the Applicant to voluntarily fund new crosswalks, then you would think she would allow her counsel to at least discuss that solution with us. Yet, our attempts to further appease the Appellant go unanswered as noted above. Nonetheless, the Applicant remains committed to funding crosswalks as part of the voluntary benefits for the community.

Finally, like the WDI issue above, the City cannot arbitrarily exact conditions or mitigation measures that do not bear a sufficient nexus to the impacts of the Project. That is partly why the City has not, and cannot, impose crosswalk conditions on the Project. The City is respecting the law. Simply stated, there are no impacts that legally necessitate such an improvement. And still, the Applicant remains committed to voluntarily funding crosswalks if LADOT approves and that process is outside of the administrative review associated with the Project.

Therefore, we urge the Commission to deny the appeals for the legal grounds set forth in our letters and based on the overwhelming evidence in the administrative record, so the Applicant can proceed with the Project and deliver its benefits to the community.

III. THE DRAFT EIR PROPERLY ANALYZED RELATED PROJECTS AND CUMULATIVE IMPACTS PURSUANT TO CEQA.

The Appellant makes two claims about cumulative impacts including one about Whole Foods and the other about Television City Studios. Both claims are inaccurate and not supported by fact or law.

Regarding Whole Foods, the Appellant claims that the EIR "misled decisionmakers and has failed in its vital informational function" for failing to analyze the impact of the currently existing Whole Foods Market on the western portion of the shopping center potentially relocating into the commercial space in the Project. The Appellant also claims the "EIR feigns no knowledge of this fact." First of all, the Appellant is speculating about what commercial tenant would occupy the commercial space in the Project once built. That fact aside, the Draft EIR conservatively analyzed a supermarket as a potential commercial tenant in the Project. See Draft EIR, page IV.I-42, which expressly references supermarket use a potential component of the Project for analytical purposes. Also see Draft EIR, Appendix H.2(A), page 32, which identifies the Supermarket ITE Land Use Code 850 as a modeling assumption for Level of Service ("LOS") analysis of potential vehicle trips. Let us not forget that vehicle trip assumptions are mostly an old method of LOS analysis, and the City has now switched by law

to VMT analysis. Also, see Draft EIR, Appendix H.1(B), which explains how the Los Angeles Department of Transportation ("LADOT") Vehicle Miles Traveled ("VMT") calculator considers supermarket land uses in mixed-use projects. The City included these supermarket assumptions because that is the most conservative way to analyze potential retail tenants, considering that supermarkets have unique trip characteristics and can be (but are not always) higher trip generators than other retail uses. Stated differently, the Draft EIR used supermarket assumptions to ensure that the impact analysis covered the highest intensity use that could occupy the new commercial space. That envelope of analytical coverage would allow a supermarket, or any other less intense commercial use, to move into the Project under the scope of the EIR. That method also fully informs the decisionmakers about potential impacts and is conservative. Thus, the Appellant is simply wrong by stating that the EIR did not consider a potential supermarket use.

Moreover, it is a faulty logic jump for the Appellant to then claim that the Draft EIR must analyze the vacancy created on the western portion of the shopping center if in fact the Whole Foods did move into the Project. The Draft EIR noted repeatedly that the western portion of the shopping center is a functional commercial center and the operator and tenants will have ongoing activities, including but not limited to, tenant improvements and actions that require ministerial building permits and approvals from the City. As with any functioning commercial center, tenants come and go periodically and those type of tenant movements do not trigger discretionary actions when the center is zoned for fluctuating commercial tenancies by-right. Therefore, the Appellant's attempt to characterize potential tenant movements or improvements as a cumulative impact does not square with the law.

Regarding Television City Studios, the Appellant claims that the City erred by not including the Television City Studios redevelopment ("TVC 2050 Project") in the list of related projects, or as part of the cumulative impact analysis for the Project. The Appellant's position is legally wrong. The basic standard for compiling the list is to include past, present, and probable future projects when it is reasonable, feasible, and practical to do so. A probable future project is typically one that is undergoing environmental review or has at least progressed to the stage where an application is filed publicly. The lead agency has discretion to select a reasonable cutoff date for the future projects for cumulative impacts analysis.

The City can use the date of the Notice of Preparation ("NOP") as the cutoff date for purposes of the list of related projects. Here, the City published the NOP on February 20, 2019, which is more than two years before the TVC 2050 Project filed an entitlement application on May 13, 2021. Here, as is standard practice, LADOT created the list of related projects and the Department of City Planning vetted and approved that list, at the latest, in February 2020 during preparation of the Draft EIR. Even at that time, the TVC 2050 Project still had not filed an entitlement application. Thus, it was not a reasonably probable future project, and the City properly excluded it from the list of related projects. Going further out, if the City selected the date that LADOT approved the Transportation Impact Assessment for the Project on March 26, 2020 as the reasonable cutoff date, the TVC 2050 Project was still not filed until a year after that. Moreover, there was no application on file for TVC 2050 Project until after the City published the Draft EIR on March 29, 2021. Therefore, there is no rational basis or legally relevant timeline the Appellant can support with a straight face to claim that the City should have

included the TVC 2050 Project in the related projects list. As such, it was not reasonable, feasible, or practical to do in the chronology and legal procedure of the Project.

In addition, the Draft EIR clarifies in the cumulative impact analysis that the related projects within the City would be subject to the City's standard development review process and would be required to comply with the Transportation Assessment Guidelines ("TAG") to ensure consistency with applicable traffic, transit and pedestrian safety-related policies. The Draft EIR also states that if any of the related projects result in a significant VMT impact, the project would be required to mitigate such impacts through a Transportation Demand Management program to reduce vehicle trips. The TVC 2050 Project (like the related projects analyzed in the Draft EIR) would be required to go through this same standard development review process to ensure consistency with the TAG as well as any applicable traffic and transit policies.

Additionally, as if that was not enough, the Draft EIR protected against unknown related projects. For example, the Transportation Impact Assessment used a conservative ambient growth factor to account for unknown future related projects. The ambient growth factor is based on general traffic growth factors provided in the 2010 Congestion Management Program for Los Angeles County ("CMP Manual") and determined in consultation with LADOT. Based on the CMP Manual, for the West/Central Los Angeles area, existing traffic volumes are expected to increase at an annual rate of less than 0.20% per year between the years 2015 and 2023. The Draft EIR applied an aggressive annual growth factor of 1.0% to provide a conservative, worst-case forecast, of future traffic volumes in the area. That growth rate assumption substantially exceeds the annual traffic growth rate published in the CMP Manual and sufficiently captures unknown projects. The Draft EIR used a blended methodology whereby it applied both the related projects list and cumulative growth factors. That is a belt and suspenders approach to ensure adequate analysis and high legal defensibility. Therefore, in any case, the City properly analyzed cumulative impacts pursuant to CEQA and used conservative analytical methods to do so.

In closing, we respectfully request the Commission to deny the appeal and uphold the City's prior approvals.

Best regards,

James E. Pugh
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4893-8581-3018.3

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April 12, 2022

VIA ELECTRONIC MAIL ONLY

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Re: Voluntary Condition of Approval for Crosswalks - Case No. DIR-2018-2770-SPR-WDI

Dear President Gold and Commission Members:

As you know, we represent Third Fairfax, LLC ("Applicant") regarding its proposed mixed-use residential development ("Project") located generally at 300-370 S. Fairfax Avenue and 6300-6370 W. 3rd Street ("Property") in the City of Los Angeles ("City"). This brief letter proposes a solution to concerns we have heard from certain appellants, and other community stakeholders, requesting crosswalks around the Property.

To be clear, the City and the Los Angeles Department of Transportation ("LADOT") reviewed the Project during preparation of the Environmental Impact Report ("EIR") and determined that the Project did not have significant traffic or circulation impacts. Accordingly, neither the City nor LADOT required the Project to install crosswalks because there was no legal nexus supporting that position pursuant to the California Environmental Quality Act ("CEQA").

However, to continue its good-faith community engagement efforts, the Applicant will voluntarily agree to study, and implement if feasible and approved by LADOT, up to two crosswalks around the Property that enhance pedestrian circulation. That effort is outside of, and unrelated to, the CEQA process. With that understanding, the Applicant proposes that the City include a voluntary condition in the final Letter of Determination ("LOD") for the Project as follows:

> ***Voluntary Crosswalks***. *The applicant agrees to prepare, and submit to the Department of Transportation for review, a marked crosswalk warrant analysis to determine the feasibility of implementing pedestrian crosswalks across: (a) 3rd Street between Ogden Drive and Gilmore Lane; and (b) Fairfax Avenue between Blackburn Avenue and 4th Street. If LADOT produces a Traffic Control Report ("TCR") that confirms feasibility and approves one or both of the proposed crosswalks, then the applicant shall implement, or*

cause to be implemented, such crosswalk(s) prior to issuance of a final certificate of occupancy for the project as a voluntary community benefit.

As we mentioned in our prior letters, the Applicant has been committed to community engagement from the start of the administrative process years ago. This voluntary commitment to study, and implement crosswalks if feasible and approved, is more proof that the Applicant will deliver an excellent project that improves the Property and the community. We question, however, whether that will finally appease certain appellants or merely create another instance where the Applicant provides benefits and the appellant continues to oppose the Project on other grounds. We note that scenario for the record because we think it is important for the Area Planning Commission ("Commission"), and other City decision makers, to recognize that the time has come to approve the Project as a final act. The City needs housing and the Property needs redevelopment so it can become a better amenity for the community.

Therefore, we respectfully request that the Commission deny the appeals and approve the Project consistent with prior City approvals and staff's recommendation.

Best regards,

James E. Pugh
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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