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March 28, 2025

Via E-mail (comdev@sunnyvale.ca.gov)

Trudi Ryan
Community Development Director
City of Sunnyvale
456 W. Olive Ave.
Sunnyvale, CA 94086

Re: **777 Sunnyvale-Saratoga Rd. Project — Fourth Amended State Density Bonus Law Letter of Intent and Reservation of Rights**

Dear Ms. Ryan,

We represent 77Seven Housing Partners, LLC (“7HP”) in connection with its application to redevelop a 5.36-acre parcel located at 777 Sunnyvale-Saratoga Rd. (APN 201-36-002) with 242 new homes including 162 apartments, and 80 townhomes (the “Project”) in Sunnyvale, California (the “City”). The Project site is considered a Housing Element housing inventory site under both the 2015-2023 Housing Element¹ and in the 2023-2031 Housing Element;² redeveloping the site with 242 new homes is consistent with and will assist in meeting the City’s housing goals.

The purpose of this letter is to apply for certain rights under the State Density Bonus Law (Gov. Code § 65915) and reserve the right to apply for others at a later date. The Project’s “base” plan includes (1) 12 townhomes affordable to moderate income households (15% of the for-sale portion of the Project) and (2) 17 apartments affordable to low-income households and 8 apartments offered to very-low income households (approximately 15% of the for-rent portion of

¹ City of Sunnyvale, Housing Element of the General Plan (January 31, 2015 – January 31, 2023) at 183, *available at* <https://www.sunnyvale.ca.gov/home/showpublisheddocument/1944/637821553465400000>.

² City of Sunnyvale, 2023-2031 Housing Element (October 2023) at 5-40, *available at* <https://www.sunnyvale.ca.gov/home/showpublisheddocument/4789/638321223808100000>.

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the Project and 10% of the Project as a whole).³ The “base” Project is therefore entitled to all of the following *separate* categories of incentives for each portion of the Project:

- (1) An up to 20% density bonus over the base density (not applied for at this time; please see details below);
- (2) One mandatory concession or incentive (one concession applied for at this time; please see details below);
- (3) Any required physical waivers of development standards to accommodate the Project (sixteen waivers applied for at this time, please see details below); and
- (4) Applicable mandatory residential parking standards (applied for at this time, please see details below).

Details on each of the above categories is provided below:

1. **Density Bonus - *None Applied for at This Time, Right to Remainder Reserved.***

Under the “base” project proposed in response to the City’s eligibility contentions, the Project is entitled to a 20% mandatory density bonus by contributing more than 10% of its units as affordable to low-income households.⁴

Although not currently planned, 7HP reserves the right to apply for density bonus units, up to the maximum, if determined necessary to make the Project financially feasible during the development of the Project.⁵ 7HP notes that it is not required to take a density bonus in order to qualify for the below incentives and waivers, additional incentives to which it is separately entitled under the State Density Bonus Law by virtue of providing the requisite affordable housing units.

2. **Mandatory Concession(s) or Incentive(s) - *One Applied for at This Time; Right to Modify Concession(s) or Incentive(s) Reserved.***

A concession is defined to include, among other things, “reduction in site development standards or a modification of zoning code requirements or architectural design requirements,” including a reduction in setbacks and square footage requirements, and “[o]ther regulatory incentives or

³ As described in our prior correspondence, the Applicant intends to submit an alternative plan for compliance with the City’s inclusionary ordinances following approval of the Project, without waiver of any of the applicable rights under the State Density Bonus Law.

⁴ Gov. Code § 65915(f)(4).

⁵ Gov. Code § 65915(a)(3)(D)(ii) (“Any determination required by this subparagraph shall be based on the development project at the time the application is deemed complete. The local government shall adjust the amount of density bonus and parking ratios awarded pursuant to this section based on any changes to the project during the course of development.”).

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concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions to provide for affordable housing costs.”⁶ However, the Court of Appeal has confirmed that the applicant for an incentive “is not required to establish that cost reductions will result.”⁷

Under the “base” project proposed in response to the City’s comments, the Project is entitled to one concession by contributing more than 10% of its units as affordable to low-income households.

7HP has identified a specific need for one concession(s) or incentive(s) at this time, but hereby reserves the right to modify these concession(s) or incentive(s) through the City’s application review and approval process prior to a formal determination of a complete application.

- (1) *Concession of Requirement for Recessed Windows.*

The El Camino Real Specific Plan requires that windows include a recess of at least three inches from the main wall plane to cast shadows and articulate the building and prohibits individual windows from being flush to the wall elevation.⁸ While the additional space required to accommodate these recessed windows is modest, the costs of providing this additional framing, including building supplies and labor, are damaging to the financial feasibility of the Project. 7HP has consulted with a construction expert to estimate the per window costs of compliance. The creation of an exterior recess requires additional lumber, waterproofing, stucco and other materials, increasing the costs of construction. Additionally, the reduced interior window pocket eliminates typical and more economical window treatment options. This requirement would significantly increase the per window costs by approximately \$620 per window. For further details regarding the basis for this cost estimate, please see Exhibit A of this letter. As the Project contains hundreds of windows subject to this requirement, this increased cost would undermine the Project’s financials. The modification of this standard does not cause any public health or safety or environmental problems, does not harm historical property, and is not contrary to law.

7HP has previously identified a concession as to the commercial requirement for multiple-family dwellings and a concession as to the inclusionary ownership requirements. The “base” project provides 2,050 square feet of commercial use and complies with the inclusionary ownership requirements, thus obviating the need for these concessions. Nevertheless, 7HP continues to reserve its rights under State law. For further information regarding these concessions, please refer to the First Amended State Density Bonus Law Letter of Intent.

⁶ Gov. Code § 65915(k).

⁷ *Schreiber v. City of Los Angeles* (Sept. 28, 2021) 69 Cal.App.5th 549 (“By requiring the city to grant incentives unless it makes particular findings, the statute places the burden of proof on the city to overcome the presumption that incentives will result in cost reductions.”).

⁸ City of Sunnyvale, El Camino Real Specific Plan (2022) at 125, *available at* <https://www.sunnyvale.ca.gov/home/showpublisheddocument/4743/638308972840970000> (“ECRSP”)

3. Waivers - *Sixteen Applied for at This Time; Right to Identify Further Waiver(s) Reserved.*

In addition to, and separate from, the limited number of concessions/incentives described above, the State Density Bonus Law specifies that a project is entitled to a waiver from “any development standard that will have the effect of physically precluding the construction of a development... at the densities or with the concessions or incentives permitted by this section.” Unlike concessions/incentives, waivers are unlimited in number, and approval is mandatory if the standard would preclude development of the Project at its permitted density including any density bonus units.

Based on the enclosed formal application, 7HP has identified the need for/eligibility for sixteen waivers at this time. Pursuant to Gov. Code § 65915(a)(2), 7HP has provided the below information to comply with the requirement to provide “reasonable documentation to establish eligibility” for the waivers as part of its application.

- (1) *Waiver of Standards for Vehicle Access from Primary Street Frontage.*

Pursuant to the El Camino Real Specific Plan, the Project must provide a minimum five-foot wide pedestrian walkway on at least one side and a minimum three-foot wide landscaped area on both sides.⁹ The Project is entitled to a waiver of this requirement under the State Density Bonus Law¹⁰ and we therefore hereby apply for this waiver as part of the Project’s State Density Bonus Law application.

The Project proposes two driveways on S. Mathilda Avenue. The primary entrance, located to the south, generally complies with the landscaping and pedestrian requirements. A five foot walkway is provided with a three-foot wide landscaped area on the west side of the primary entrance. The Project partially complies on the east side, providing a three-foot landscaped area except where interrupted by a necessary loading zone. The secondary entrance on S. Mathilda Avenue, located to the north, is unable to comply due to the narrow nature of the site. 7HP has determined that complying with the 11-foot pedestrian and landscaping requirements at both of the S. Mathilda Avenue driveways would compromise the ability of the Project to achieve the desired density and would render the Project infeasible and would further result in a significant reduction of 1,000 square feet of useable residential space. Complying with the pedestrian and landscaping requirements would preclude construction at the permitted density. This requirement must be waived unless doing so would result in a specific, adverse impact to health and safety. Please note that a “specific, adverse impact” is defined to mean “a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety

⁹ ECRSP at 134 (Section 6.2.a Standards for Vehicle Access from Primary Street Frontage).

¹⁰ Gov. Code § 65915(o)(1) (“‘Development standard’ includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.”).

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standards, policies, or conditions as they existed on the date the application was deemed complete.”¹¹

- (2) *Waiver of Maximum Building Height.*

Pursuant to the Sunnyvale Municipal Code, building heights for node properties are limited to 75 feet.¹² The Project is entitled to a waiver of this height limit under the State Density Bonus Law¹³ and we therefore apply for this waiver as part of the Project’s State Density Bonus Law application.

The Project generally complies with the maximum building height standard for the townhouse structures. The apartment building exceeds the maximum building height by one story. 7HP has determined that it is infeasible to comply with the maximum height standard; doing so would compromise the ability of the Project to achieve the desired density and would result in a significant reduction of an entire level of residential units, approximately 32 homes. The Project is entitled to a waiver of this requirement under the State Density Bonus Law, and we therefore hereby apply for this waiver as part of the Project’s State Density Bonus Law application.

- (3) *Waiver of Fifth Story Stepback*

Pursuant to the Sunnyvale Municipal Code, the Project must provide a 10-foot stepback from the face of the building for at least 60% of the building frontage length for the fifth story and above.¹⁴ The Project is entitled to a waiver of this requirement under the State Density Bonus Law¹⁵ and we therefore apply for this waiver as part of the Project’s State Density Bonus Law application.

The Project provides a stepback along approximately 37% of the frontage on S. Mathilda Avenue where the Project exceeds five stories. 7HP has determined that complying with the stepback requirement for the upper stories would compromise the ability of the Project to achieve the desired density and would further result in a significant reduction of more than 2,580 square feet of useable residential space. Complying with the stepback requirement would preclude construction at the permitted density. The Project is entitled to a waiver of this

¹¹ Gov. Code § 65915(e)(1); Gov. Code § 65889.5(d)(2).

¹² SMC § 19.36.100(b); Table 19.36.100B, A1.

¹³ Gov. Code § 65915(o)(1) (“‘Development standard’ includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.”).

¹⁴ SMC § 19.36.100(b), Table 19.36.100B, B1, C.

¹⁵ Gov. Code § 65915(o)(1) (“‘Development standard’ includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.”).

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requirement under the State Density Bonus Law, and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

- (4) *Waiver of Minimum Daylight Plane Angle (From Lot Line Shared with a Non-Plan Area Property)*

Pursuant to the Sunnyvale Municipal Code, the Project must provide a minimum daylight plane angle of 45 degrees as measured from the lot line shared with a non-plan area property.¹⁶ The Project is entitled to a waiver of this requirement under the State Density Bonus Law¹⁷ and we therefore apply for this waiver as part of the Project's State Density Bonus Law application.

The Project shares a property line with a non-plan parcel to the south. The Project generally complies with the minimum daylight plane angle requirement. At limited locations along both the townhome and multifamily portions of the development, the Project encroaches into the daylight plane angle. Given the shallow depth of the Project site, it is infeasible to comply with the daylight plane angle at all locations. 7HP has determined that doing so would compromise the ability of the Project to achieve the desired density and would further result in a reduction of at least two units. The Project is entitled to a waiver of this requirement under the State Density Bonus Law, and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

- (5) *Waiver of Minimum Ground Floor Active Use Area*

Pursuant to the Sunnyvale Municipal Code, the Project must provide a minimum area of ground floor active use area.¹⁸ The Project is entitled to a waiver of this requirement under the State Density Bonus Law¹⁹ and we therefore apply for this waiver as part of the Project's State Density Bonus Law application.

Following discussions with City staff, 7HP has agreed to incorporate 2,050 square feet of commercial area into the planned apartment building at a significant cost to the financial feasibility of the Project. 7HP continues to reserve its rights under State law to seek a full concession as to the commercial requirement as described in prior correspondence. Without waiver of its prior requests, the Project requests a waiver of the minimum ground floor active use area requirement. The Project locates amenities on the ground floor. Given the constraints of the

¹⁶ SMC § 19.36.100(b), Table 19.36.100B, G1.

¹⁷ Gov. Code § 65915(o)(1) ("Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.)).

¹⁸ SMC § 19.36.110; SMC § 19.36.100(b), Table 19.36.100B, D.

¹⁹ Gov. Code § 65915(o)(1) ("Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.)).

Project site, it is infeasible to relocate these facilities to accommodate an active ground floor use as described in Sunnyvale Municipal Code § 19.36.110. 7HP has determined that doing so would compromise the ability of the Project to achieve the desired density and would further result in a reduction of approximately 7 apartments and 16 townhome units. The Project is entitled to a waiver of this requirement under the State Density Bonus Law, and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

- (6) *Waiver of Landscape and Open Space Standards in ECR-MU Zoning District*

Pursuant to the Sunnyvale Municipal Code, the Project must provide 20% of the lot area as other landscaped area.²⁰ The Project is entitled to a waiver of this requirement under the State Density Bonus Law²¹ and we therefore apply for this waiver as part of the Project's State Density Bonus Law application.

The Project provides approximately 36,760 square feet of other landscaped area on the site, or approximately 16.1% of the lot area. Given the shallow depth of the Project site, it is infeasible to comply with the 20% lot area requirement. 7HP has determined that doing so would compromise the ability of the Project to achieve the desired density and would further result in a significant reduction of approximately 44,500 square feet. The Project provides 118.6 square feet of usable open space per unit, but given the shallow depth of the Project site, it is infeasible to comply with the 150 square feet per unit. Doing so would result in a reduction of approximately 7,600 square feet of residential space. The Project is entitled to a waiver of the landscape and open space standards under the State Density Bonus Law, and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

- (7) *Waiver of Individual Lockable Storage Space for Multiple-Family Residential*

Pursuant to the Sunnyvale Municipal Code, the Project must provide a minimum 200 to 300 square foot lockable storage space for each unit.²² The Project is entitled to a waiver of this requirement under the State Density Bonus Law²³ and we therefore apply for this waiver as part of the Project's State Density Bonus Law application.

The Project provides shared bicycle storage space for the future Project residents. However, given the shallow depth of the Project site, it is infeasible to comply with the individual lockable

²⁰ SMC § 19.36.130, Table 19.36.130; *see also* SMC chapter 19.37.

²¹ Gov. Code § 65915(o)(1) (“‘Development standard’ includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.”).

²² SMC § 19.38.040.

²³ Gov. Code § 65915(o)(1) (“‘Development standard’ includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.”).

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storage requirement. 7HP has determined that doing so would compromise the ability of the Project to achieve the desired density and would further result in a reduction of approximately 5,000 square feet of residential space. The Project is entitled to a waiver of this requirement under the State Density Bonus Law, and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

- (8) *Waiver of Community Room or Club House Requirement for Multiple-Family Residential*

Pursuant to the Sunnyvale Municipal Code, the Project must provide a community room or clubhouse of 450 square feet for use by all members of the residential community.²⁴ The Project is entitled to a waiver of this requirement under the State Density Bonus Law²⁵ and we therefore apply for this waiver as part of the Project's State Density Bonus Law application.

The Project provides an approximately 730-square foot community room as part of the affordable apartment building usable to the residents of that building. Given the shallow depth of the Project site, it is infeasible to provide a separate facility for use of the townhome residents. 7HP has determined that doing so would compromise the ability of the Project to achieve the desired density and would further result in a reduction of at least two units. The Project is entitled to a waiver of this requirement under the State Density Bonus Law, and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

- (9) *Waiver of Minimum Ground Floor Commercial Area Requirements for Mixed-Use Development.*

Pursuant to the Sunnyvale Municipal Code, the Project must provide a minimum area of ground floor commercial area.²⁶ The Project is entitled to a waiver of this requirement under the State Density Bonus Law²⁷ and we therefore apply for this waiver as part of the Project's State Density Bonus Law application.

Following discussions with City staff, 7HP has agreed to incorporate 2,050 square feet of commercial area into the planned apartment building at a significant cost to the financial feasibility of the Project. 7HP continues to reserve its rights under State law to seek a full concession as to the commercial requirement. The Project requests a waiver of the ground floor

²⁴ SMC § 19.38.045.

²⁵ Gov. Code § 65915(o)(1) (“‘Development standard’ includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.”).

²⁶ SMC § 19.36.090.

²⁷ Gov. Code § 65915(o)(1) (“‘Development standard’ includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.”).

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commercial area requirements. 7HP has provided a modest 2,050-square foot commercial area in the apartment building. Given the constraints of the Project site, it is infeasible to provide the minimum commercial area as described in Sunnyvale Municipal Code § 19.36.090. 7HP has determined that doing so would compromise the ability of the Project to achieve the desired density and would further result in a reduction of approximately 10,250 square feet of usable residential space or 16 units in the apartment building.²⁸ The Project is entitled to a waiver of this requirement under the State Density Bonus Law, and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

- (10) *Waiver of Minimum Ground Floor Plate Height (Commercial).*

Pursuant to the Sunnyvale Municipal Code, the minimum ground floor plate height for the commercial components of a mixed use project is 18 feet at a node and 16 feet at a segment.²⁹ The Project is entitled to a waiver of this requirement under the State Density Bonus Law³⁰ and we therefore apply for this waiver as part of the Project's State Density Bonus Law application.

Following discussions with City staff, 7HP has agreed to incorporate 2,050 square feet of commercial area into the planned apartment building at a significant cost to the financial feasibility of the Project. 7HP continues to reserve its rights under State law to seek a full concession as to the commercial requirement. The Project requests a waiver of the minimum ground floor plate height requirements. Increasing the floor plate height to accommodate the 2,050-square foot commercial area would require the relocation of the amenity space directly above, requiring its relocation and the removal of three units. The Project is entitled to a waiver of this requirement under the State Density Bonus Law, and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

- (11) *Waiver of Building Length and Articulation (ECRSP Design Guideline 3.4.1.a).*

Pursuant to the El Camino Real Specific Plan, building elevations must be divided into smaller volumes through the use of major and minor recesses.³¹ Major recesses are a minimum of 50 square feet per floor while minor recesses are 18 square feet per floor.³² Both major and minor recesses must extend vertically through the entire height of elevation.³³ Providing the required major and minor recesses would result in the loss of approximately 4,600 square feet of residential space. The Project is entitled to a waiver of this requirement under the State Density

²⁸ The reduction calculation is based on City's Comment PL-9 in its December 21, 2023 letter regarding incompleteness.

²⁹ SMC § 19.36.100(b); Table 19.36.100B, F1.

³⁰ Gov. Code § 65915(o)(1) ("Development standard' includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.").

³¹ ECRSP at 120 (Section 3.4.1.a).

³² *Id.*

³³ *Id.*

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Bonus Law³⁴ and we therefore apply for this waiver as part of the Project's State Density Bonus Law application.

7HP has determined that complying with the recess requirements would compromise the ability of the Project to achieve the desired density and would render the Project infeasible and would further result in a significant reduction of approximately 4,600 square feet of useable residential space. Complying with the recess requirements would preclude construction at the permitted density. This requirement must be waived.

- (12) *Waiver of Perimeter Landscape Requirement*

Pursuant to the Sunnyvale Municipal Code, a ten foot landscaped buffer is required for any property with a nonresidential use in a residential zoning district that abuts a residential use.³⁵ As a preliminary matter, the Project site and the parcel to the north are both designated Corridor Mixed Use, which is not included in the description of residential zoning districts under SMC § 19.18.020. Assuming without admitting that the ten foot landscaped buffer requirement is applicable, the Project is entitled to a waiver of this requirement under the State Density Bonus Law³⁶ and we therefore apply for this waiver as part of the Project's State Density Bonus Law application.

The Project provides compliant perimeter landscaping along 60% of the northern perimeter and 44% of the southern perimeter. 7HP has determined that complying with the ten foot landscape buffer requirement would compromise the ability of the Project to achieve the desired density and would render the Project infeasible and would further result in a significant reduction of approximately 12,000 square feet of useable residential space of apartments and at least four townhomes. Complying with the ten foot landscape buffer requirement would preclude construction at the permitted density. This requirement must be waived.

- (13) *Waiver of Minimum Setback and Landscape Standards (ECRSP Design Guideline 6.4.1.a and 6.4.1.e).*

Pursuant to the El Camino Real Specific Plan, parking structures must meet the minimum setback and landscape standards applicable to the zone in which the structure is located.³⁷ Chapter 19.36 El Camino Real Specific Plan provides a minimum side setback of 0 feet from a

³⁴ Gov. Code § 65915(o)(1) ("Development standard' includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.").

³⁵ SMC § 19.37.040(b); ECRSP at 135 (Section 6.3.c).

³⁶ Gov. Code § 65915(o)(1) ("Development standard' includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.").

³⁷ ECRSP at 136-37 (Sections 6.4.1.a and 6.4.1.e).

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lot line shared with another ECRSP Area property and does not specify a landscape buffer.³⁸ To the extent Sunnyvale Municipal Code § 19.37.040(b) is applicable, 7HP has requested a waiver of this provision above. El Camino Real Precise Plan Guideline 6.4.1.e nevertheless provides that landscape buffers in a minimum of ten feet must be provided on all sides of the parking structure.³⁹ The Project is entitled to a waiver of this requirement under the State Density Bonus Law⁴⁰ and we therefore apply for this waiver as part of the Project's State Density Bonus Law application.

7HP has determined that complying with the ten foot landscape buffer requirement would compromise the ability of the Project to achieve the desired density and would render the Project infeasible and would further result in a significant reduction of approximately 26,000 square feet of useable residential space. Complying with the ten foot landscape buffer requirement would preclude construction at the permitted density. This requirement must be waived.

- (14) *Waiver of Visual Impact Standards (ECRSP Design Guideline 6.4.1.b)*

Pursuant to the El Camino Real Specific Plan, the Project must provide a minimum area of ground floor active use area wrapping at least 75% of the above-ground parking structure of the frontage along the public right of way that is at least 30 feet deep.⁴¹ The Project is entitled to a waiver of this requirement under the State Density Bonus Law⁴² and we therefore apply for this waiver as part of the Project's State Density Bonus Law application.

Following discussions with City staff, 7HP has agreed to incorporate 2,050 square feet of commercial area into the planned apartment building at a significant cost to the financial feasibility of the Project. 7HP continues to reserve its rights under State law to seek a full concession as to the commercial requirement. The Project requests a waiver of the visual impact standards. The Project provides approximately 10% of the frontage as active ground floor uses. The Project otherwise locates amenities on the ground floor. Given the constraints of the Project site, it is infeasible to relocate these facilities to accommodate additional active ground floor uses as described in Sunnyvale Municipal Code § 19.36.110 or in Design Guideline 6.4.1.b. 7HP has determined that doing so would compromise the ability of the Project to achieve the desired density and would further result in a reduction of approximately 6,750 square feet of residential use and the loss of 10 units. The Project is entitled to a waiver of this requirement under the State

³⁸ SMC § 1.3.100(b); Table 19.36.100B.

³⁹ ECRSP at 137 (Sections 6.4.1.a and 6.4.1.e).

⁴⁰ Gov. Code § 65915(o)(1) ("Development standard' includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.").

⁴¹ ECRSP at 136 (Section 6.4.1.b); SMC § 19.36.110.

⁴² Gov. Code § 65915(o)(1) ("Development standard' includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.").

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Density Bonus Law, and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

- (15) *Waiver of Surface Parking Lot Landscape Standards*

The Applicant previously requested a waiver of the provision of the Sunnyvale Municipal Code requiring that the Project provide 20% of any surface parking lot as landscaped area.⁴³ Reserving its right to reassert this request, if necessary, the Applicant understands that the Project design complies with this requirement and hereby withdraws its prior request.

- (16) *Waiver of Required Distance Between Main Building*

Pursuant to the Sunnyvale Municipal Code, main buildings erected on a single lot must be separated based on the height of the buildings, specifically by a minimum of 20 feet increased by 3 feet for each additional story.⁴⁴ 7HP maintains that because the townhome buildings will be located on separate lots, this requirement is inapplicable. Assuming without admitting that this requirement is applicable, the Project is entitled to a waiver of this requirement under the State Density Bonus Law⁴⁵ and we therefore apply for this waiver as part of the Project's State Density Bonus Law application.

The Project is unable to provide the required 26 feet of separation. 7HP has determined that doing so would compromise the ability of the Project to achieve the desired density and would further result in a significant reduction of approximately two townhomes. The Project is entitled to a waiver of this requirement under the State Density Bonus Law, and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

7HP hereby reserves the right to identify any further necessary waivers through the City's application review and approval process.

- (17) *Waiver of Frontage Zone Setback*

Pursuant to the Sunnyvale Municipal Code, buildings must provide a 15 foot frontage zone setback.⁴⁶ The Project is entitled to a waiver of this requirement under the State Density Bonus

⁴³ SMC Table 19.36.130.

⁴⁴ SMC § 19.48.030; *see also* SMC chapter 19.37.

⁴⁵ Gov. Code § 65915(o)(1) ("Development standard' includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.").

⁴⁶ SMC § 19.36.100; Table 19.36.100B, 2; SMC § 19.48.070.

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Law⁴⁷ and we therefore apply for this waiver as part of the Project's State Density Bonus Law application.

The Project generally complies with this requirement. However, at the third floor and above portions of the building protrude four feet into the frontage zone setback. The Project is thus unable to comply with the above requirement. 7HP has determined that doing so would compromise the ability of the Project to achieve the desired density and would further result in a significant reduction of approximately 3,144 square feet of residential space. The Project is entitled to a waiver of this requirement under the State Density Bonus Law, and we therefore hereby apply for this waiver as part of the Project's State Density Bonus Law application.

7HP hereby reserves the right to identify any further necessary waivers through the City's application review and approval process.

- (18) *Waiver of Parking Requirements*

The Applicant previously requested a waiver of the provision of the Sunnyvale Municipal Code requiring the Project to provide 339 spaces.⁴⁸ The City has now indicated its agreement that the Project is exempt from parking requirements due to its proximity to a qualifying major transit stop. Reserving its right to reassert this request, if necessary, the Applicant hereby withdraws its prior request for a waiver of the parking requirements.

- 4. **Mandatory Maximum Residential Parking Standards - *Not Applied for at This Time, Right Reserved to Request Reductions.***

Pursuant to the State Density Bonus Law, as a density bonus-eligible project and as further described in the enclosed submittal package, the Project has the right to meet mandatory maximum residential parking standards which as of January 1, 2021, are no more than:

- Zero to one bedroom: one onsite parking space;
- Two to three bedrooms: one and one-half onsite parking spaces; and
- Four and more bedrooms: two and one-half parking spaces.⁴⁹

The Project is not applying for a parking reduction under the State Density Bonus Law. Rather, 7HP hereby applies under AB 2097 as described above. We have been unable to locate a City form to assert the Project's qualification under AB 2097 and are therefore including this

⁴⁷ Gov. Code § 65915(o)(1) ("Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.").

⁴⁸ SMC § 19.36.120; SMC § 19.46.100.

⁴⁹ Gov. Code § 65915(p)(1), as revised by AB 2345 effective January 1, 2021.

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statement regarding qualification here. In the alternative, the Project seeks a waiver as described above.

7HP reserves the right to revise this proposal consistent with its rights under the State Density Bonus Law.

Thank you for your attention to this matter; we look forward to working with the City on bringing this project to fruition.

Sincerely yours,

HOLLAND & KNIGHT LLP



Tamsen Plume
Emily M. Lieban

Cc: Rebecca Moon
Anais Aquino
Doug Rich
Scott Connelly

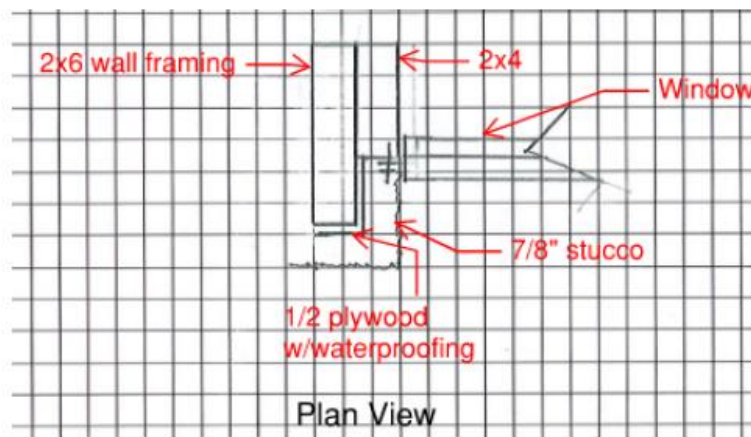
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EXHIBIT A

From: Ken Birdsall [REDACTED]
Sent: Tuesday, December 17, 2024 9:57 AM
To: Alex L. Ingram [REDACTED]
Subject: Recessed window cost

Alex,

Recessing the windows 3" requires sistering a 2x4 on four sides of each opening (three for sliding doors). The stucco will then need to be returned back to the frame which adds additional plywood, water proofing, lath corners and stucco. See rough sketch.



The cost of the additional framing, stucco etc is one concern but the bigger issue comes when installing interior window treatments. A typical 2x6 framed wall allows for an interior pocket of +/- 4" to install various types of blinds. A 2x4 only allows a +/- 2" pocket which drastically reduces the options. The reduced pocket allows for 1" Levelors (not very appealing inside a home) or surface mounted options which can be very costly.

The rough cost to create the exterior recess is around \$620.00 per window/ slider and it appears there are several hundred, if not thousands.

Let me know if this helps or if you need anything further.

Ken Birdsall
VP of Construction



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