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**VIA E-MAIL**

Ms. Payal Bhagat  
City of Menlo Park  
Planning Division  
701 Laurel Street  
Menlo Park, CA 94025

**Re: Density Bonus Law Request for 123 Independence Drive Project**

Dear Payal:

This letter provides the applicable State Density Bonus Law (“SDBL”) requests related to the 123 Independence Drive housing development application (“Project”) proposed by The Sobrato Organization (“TSO”), and supersedes the requests submitted to the City of Menlo Park (“City”) on May 23, 2022, October 28, 2022, June 13, 2023, and July 5, 2023. There are only two changes in this letter compared to prior letters: TSO renews its request to waive the commercial automobile parking requirement and retracts its request to waive commercial bicycle parking requirement.

In sum, TSO’s SDBL’s requests for incentives/concessions and waivers are as follows:

**Incentives/Concessions**

Incentive 1: Clustering the Affordable Townhomes. Municipal Code section 16.97.100 requires that affordable units be “integrated into the project.” The City’s Below Market-Rate Guidelines (“BMR Guidelines”) further state that “[t]he BMR units should be distributed throughout the development.” (BMR Guidelines, § 5.1.) These requirements would preclude a market-rate developer from partnering with an affordable housing developer to provide the affordable component of a project. Affordable housing developers require their own parcel on which they can construct a one hundred percent affordable housing development to be able to leverage lower cost financing that results in actual and identifiable cost savings. Similarly, organizing the affordable units on their own parcel allows the affordable housing developer to easily oversee construction, reducing complexity and resulting in actual and identifiable cost savings.

For the affordable townhomes, TSO wishes to partner with an affordable housing developer, namely Habitat for Humanity Greater San Francisco (“HGSF”), due to HGSF’s

greater expertise in providing for-sale affordable housing. While the affordable townhomes (“HGSF Project”) would be integrated into the overall site plan, they would not be integrated and dispersed in each townhome building block. Instead, the HGSF Project would be located on their own parcel, labeled Lot C on the Project drawings. Accordingly, TSO and HGSF request a concession from Municipal Code section 16.97.100 and BMR Guidelines section 5.1 to allow the HGSF Project to be developed on one parcel and not distributed throughout the townhome portion of the Project.

Incentive 2: Timing of the Affordable Townhome Units. Municipal Code section 16.97.100 requires that affordable units be “constructed concurrently with market rate units.” Similarly, the BMR Guidelines require that the affordable units be ready for final inspection at approximately the same time as the market rate units. TSO requests a concession to this Municipal Code and BMR Guideline requirement because the affordable townhome units may not be constructed concurrently with the market rate townhomes due to TSO’s partnership with HGSF. TSO and HGSF have different construction practices that lead to potentially different delivery timelines. Specifically, HGSF relies on (i) a volunteer labor and “sweat equity” model whereby the future owners of homes provide some labor and (ii) donated goods and materials. Both volunteer labor and donated materials result in cost savings for affordable housing but lead to a less predictable timeline than traditional construction methods and procurement practices.

This past spring, the City asked TSO to provide a connection between the construction of the market-rate townhomes and the HGSF Project and a guarantee that HGSF will complete its project. In response, TSO provided the following timeline and assurances for the HGSF Project:

- HGSF is required to submit a building permit application(s) for the 18 affordable townhomes within 6 months of the building permit submittal for the first market rate townhome.
  - If HGSF fails to pull building permits within 6 months after the City issues the first building permit for the market-rate townhomes then some of the proposed 18 affordable townhomes would become market rate townhomes and some of the market rate townhome units would convert to affordable units, such that a total of 15 percent of the townhomes would be affordable (i.e., a door-by-door approach).

Under this approach, the Project would require only one waiver for the minimum common open space dimension. Specifically, City Municipal Code section 16.45.120(4)(C)(iii) requires a parcel with 10 to 50 units to provide a minimum of 400 square feet of common open space, with minimum dimension of 20 feet. Lot C includes 400 square feet of common open space, but its dimensions are 10 feet by 40 feet rather than 20 feet by 20 feet. A waiver is required because the Project cannot fit the units as designed at the density allowed and provide a common open space on Lot C that is 20 feet wide. To provide another 10 feet of open space, the Project would need to have fewer units.

- HGSF will have 24 months after the issuance of the building permit for the HGSF Project to complete the 18 affordable townhomes.
  - HGSF will provide a milestone schedule at the start of construction that is consistent with completion within 24 months of pulling their building permit. HGSF will have regular check-ins with housing staff throughout the construction process, and larger bi-annual meetings that would include all stakeholders as determined by the City staff to discuss their progress. HGSF will provide construction schedule updates in the bi-annual meetings with City stakeholders.
- If HGSF starts construction and does not complete it within 24 months, City staff has two options: (1) allow HGSF to complete construction and require a bond to cover the costs to complete the construction, including additional project management and administrative costs, or (2) allow HGSF to complete the construction without requiring a bond.

### **Waivers<sup>1</sup>**

The waivers requested below are needed to either allow the Project to physically fit on the Property as designed and at the density allowed or to facilitate the “different timing” incentive that allows the HGSF Project to be constructed by HGSF with volunteer labor and donated goods.

Waiver 1: Equal Design. Municipal Code section 16.97.100 requires that the affordable units to “be of equal design and quality as the market rate units.” Section 5.2 of the BMR Guidelines clarifies that the “design and materials used in construction of BMR units shall be of a quality comparable to other new units constructed in the development but need not be of luxury quality.”

TSO and HGSF request a waiver to Municipal Code 16.97.100 and BMR Guidelines section 5.2 to allow the affordable townhomes to differ from the market-rate townhomes. The differences are that compared with the market-rate units, the affordable townhomes will have: (i) smaller average unit size, resulting in different interior layouts with fewer bathrooms, smaller living rooms, and more bedrooms than a similar sized market-rate townhome; (ii) less parking; (iii) smaller windows; (iv) different exterior finishes and massing, including different roof lines, (v) fewer balconies and balconies located in different locations; and (vi) different interior finishes, lighting, and appliances.

Regarding the differences in overall size, layout, bathrooms, living rooms, bedrooms, and parking spaces, these differences allow the Project to fit on the Property as designed and at the density allowed. Making the townhomes larger would allow more bathrooms, larger living

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<sup>1</sup> TSO reserves its right to request future waivers at any time if needed.

rooms, fewer bedrooms per square foot, and more parking, but doing so would decrease open space or necessitate another change, such as a loss of a unit.

Regarding the differences in window size, massing inclusive of rooflines, and balconies, these differences result in a product that is easier to construct than the market-rate townhomes. Providing an easy to construct product supports the concession above for separate timing, which is predicated in part by HGSF's use of volunteer labor.

Regarding the differences in exterior and interior finishes, including appliances, these differences allow HGSF to use donated materials, thereby supporting the concession above for separate timing, which is predicated in part by HGSF's use of donated materials.

Waiver 2: Common Open Space. Municipal Code section 16.45.120(4)(C)(iii) requires a parcel with 10 to 50 units to provide a minimum of 400 square feet of common open space, with minimum dimension of 20 feet. The Lot C includes 400 square feet of common open space, but its dimensions are 10 feet by 40 feet rather than 20 feet by 20 feet. Accordingly, TSO and HGSF request a waiver to reduce the 20-foot minimum dimension to 10 feet on this lot. The Project cannot fit the affordable townhome units as designed at the density allowed and provide a common open space on Lot C that is 20 feet wide. To provide another 10 feet of open space, the Project would need to have fewer units and different parcel lines.

Waiver 3: Commercial Parking. The Federal Emergency Management Agency ("FEMA") will suspend processing two types of flood map revision requests in 38 California counties starting July 1, 2023, making it impossible to obtain Letters of Map Revision Based on Fill (LOMR-F) and Conditional Letters of Map Revision Based on Fill (CLOMR-F) in the City. ([FEMA Press Release](#) (May 24, 2023).) FEMA's decision would have made it difficult to proceed with the Project as originally designed. Accordingly, TSO modified the Project to include 2,000 square feet of commercial space on the ground floor of the apartment building.

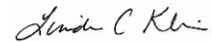
Municipal Code section 16.45.080 requires at least four or five automobile parking spaces and two bicycle parking space for a 2,000 square-foot commercial space. TSO requests a waiver to provide zero dedicated automobile parking spaces for the commercial space. While there are six parking spaces available to patrons of the commercial space, those spaces are designed to be shared with visitors to the apartments. Absent the commercial parking waiver, the Project would need a larger parking garage, which could be created only by reducing the proposed residential density.

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Please let me know if you have questions about the Project. We look forward to our City hearings and bringing much needed housing to the region.

Sincerely,

Cox, Castle & Nicholson LLP



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Cc: Eric Phillips, City Attorney  
Maureen Sedonaen, Habitat for Humanity Greater San Francisco  
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