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VIA EMAIL

The Honorable Planning and Land Use Committee
of the City of Los Angeles
200 North Spring Street, Room 350
Los Angeles, CA 90012-2601

Sharon.dickinson@lacity.org

Re: Council File No. 16-0687 ; ZA-2015-3213-CUB-CUX-ZV-1A; ENV-2015-3214-MND – Response to Appeal

Dear Chairman Huizar and Committee Members:

This responds to the appeal filed by Unite HERE Local 11 ("**Appellant**") challenging the above-referenced approval for the NOMAD Hotel adaptive re-use project at 649 South Olive Street and 505 West 7th Street (the "**Project**").

As set forth in greater detail below, the pending appeal of the Project should be denied.

1. SUMMARY OF THE APPROVAL AND APPEALS

This firm represents Sydell Group ("**Applicant**") who proposes adaptive re-use of the building historically known as the Bank of Italy, which is designated Los Angeles Cultural Monument LAHCM #354. The building was built in 1923 and—typical of buildings from that era—contains no on-site parking. The building is located in the heart of downtown Los Angeles' "Restaurant Row" and is an ideal setting for the adaptive re-use of the Bank of Italy building into a thoughtful, design-driven boutique hotel with food and beverage service – a concept that Sydell Group has successfully implemented elsewhere in Los Angeles, as well as New York, Miami and Chicago.

a. <u>The Zoning Administrator Issued a Thoughtful and Heavily-Conditioned Approval</u>

Associate Zoning Administrator Fernando Tovar ("**ZA**") carefully considered and approved conditional uses and variances for the adaptive re-use of the Bank of Italy building. The ZA approved conditional use permits to allow the service of alcohol and dancing, and approved a variance to permit an outdoor rooftop pool and bar. The ZA imposed strict conditions on the operation and adopted a Mitigated Negative Declaration ("**MND**") concluding that with the inclusion of mitigation measures the Project would not result in any significant environmental impacts. The ZA approved the requests, adopted all required findings, and issued its determination letter on February 25, 2016 (the "**ZA Approval**").

Appellant failed to appear at the ZA hearing on January 20, 2016, and failed to comment on the Project application or the MND before the ZA made his determination.

The ZA Approval cites the existing condition of the Bank of Italy building and the benefits of re-use as enhancing public safety. The ZA observed in Finding 1 that the building is currently vacant and adaptive re-use will re-activate a historic building, contribute to revitalizing the Downtown Historic Core, and restore the property to a use in-line with the needs and projected growth of Downtown Los Angeles. Unlike the vacant property it is today, conditions of approval imposed by the ZA require night time illumination and a security plan approved by the LAPD. The Project is located along the $9.175 million streetscape improvement plan funded by the new Wilshire Grand Center to improve pedestrian and multi-modal access along 7th Street. Properly relying on these facts and observations, the ZA concluded that the physical presence of a 24-hour hotel "will remove current signs of blight and degradation such as graffiti and broken windows, *restoring a sense of safety to this corner*." (*ZA Approval, Finding #2* [emphasis added].)

Furthermore, the ZA imposed numerous conditions assuring the safe and responsible service of alcohol, including a mere 7-year life of the Conditional Use Permit for a hotel designed to stand for another 100 years. *(ZA Approval, Condition #10*.) If, at any time, operation of the Project disrupts or interferes with peaceful enjoyment in the vicinity, then the ZA has the right to require a Plan Approval process and impose additional conditions. (*ZA Approval, Condition #11*.) LAPD training is required for all

employees who manage, supervise, or dispense alcoholic beverages. (*ZA Approval, Condition #19*.) The ZA required the Applicant to implement a Designated Driver Program to reduce any risk of DUI. (*ZA Approval, Condition #20*.) The ZA required the Applicant to implement electronic age verification and a signage program to prevent under-age drinking. (*ZA Approval, Conditions #21 and #22*.) Among the general public safety requirements imposed upon this Project is a requirement to comply with LAPD's "*Design Out Crime Guidelines: Crime Prevention Through Environmental Design*." (*ZA Approval, MND Mitigation Measure 30.g*.)

b. <u>The Area Planning Commission Rejects Appellant's Appeal for Lack of Evidence and Notes that Appellant Never Commented or Participated in the ZA Approval Process</u>

Appellant appealed the ZA Approval on March 11, 2016, to the Central Area Planning Commission (the "**APC**"). Appellant filed an improperly brief one-page appeal (the "**APC Appeal**") that failed to meet its burden of providing substantial evidence that the ZA erred or abused his discretion in grating the ZA Approval and adopting the MND. The APC Appeal did not directly challenge ZA Approval or the MND at all. Although the APC Appeal claimed to challenge the entire decision, it only raised general and unspecified concerns about crime and parking; and the parking concern is expressed as a component of a speculative public safety concern. Nowhere did the APC Appeal identify errors in the ZA Approval or the MND. The APC Appeal merely disagreed with the ZA Determination.

At the APC hearing on May 10, 2016, Appellant raised new environment arguments, asserting that the MND failed to comply with the California Environmental Quality Act ("**CEQA**") with regard to traffic, parking, water supply, and cumulative impacts. Again, Appellant provided no evidence supporting these speculative impacts.

The APC questioned why the Appellant had not availed itself of the process before appealing the ZA Approval and the Appellant had no good answer:

> **COMMISSIONER BROGDON**: ANOTHER QUESTION: AND WHY DID YOU NOT GO TO THE EARLIER HEARINGS, AS Z.A. TOVAR TALKED ABOUT?

> **MR. HERMOSILLO [For Appellant]**: WE -- WE MISSED IT. WE WERE BUSY WITH OTHER THINGS. . . .

The Applicant's team and the ZA provided substantial evidence refuting all the Appellant's arguments. The APC carefully considered all the evidence and arguments. The APC unanimously denied the Appellant's appeal in its entirety—finding that the ZA Approval was carefully conditioned and that the Appeal was unpersuasive and lacked supporting evidence.

> **COMMISSIONER BROGDON**: I DON'T SEE THE GROUNDS FOR AN APPEAL. I DON'T FIND THE PRESENTATION PERSUASIVE. I'M -- I DON'T SEE THE ISSUE WITH C.E.Q.A. HERE.
>
> . . . .
>
> **COMMISSIONER CHEMERINSKY**: I TEND TO AGREE. AND I WOULD ALSO ADD THAT THE CONDITIONS OF THE GRANT ARE SUFFICIENT TO ENSURE THAT SAFETY CONCERNS ARE MET, REQUIRING ILLUMINATION OF THE AREA, COMPREHENSIVE SECURITY PLANS, SECURITY CAMERAS. I THINK THAT THAT'S – THOSE CONDITIONS, WE HAVE EVERY REASON TO BELIEVE WILL GO A LONG WAY TO ENSURE EMPLOYEE AND PUBLIC SAFETY.
>
> . . . .
>
> **COMMISSIONER CHUNG KIM**: I AGREE WITH EVERYTHING THAT YOU'RE SAYING. AND ADDITIONALLY, I JUST DIDN'T FEEL LIKE THERE WAS ANY EMPIRICAL EVIDENCE.

On May 17, 2016, the APC published its determination denying the Appellant's APC appeal and sustaining the ZA Approval (the "**APC Determination**").

c. Appellant's Appeal to City Council is as Inadequate and as Unsupported as Its Appeal to the APC

On May 31, 2016, Appellant's filed yet another improperly brief one-page appeal of the APC Determination to the City Council (the "**Appeal**"). Appellant reveals a woeful lack of concern and respect for the City's elected and appointed decision-makers

by routinely filing abbreviated appeals that do not even attempt to demonstrate how the decision-maker erred or abused his/her discretion and that offer no evidence whatsoever in support of the appeal. The Appeal in this case is no different.

The Appeal raises the same speculative and unsupported traffic, parking, water supply, and cumulative impacts that the APC rejected as "unpersuasive" and lacking "empirical evidence."

Again revealing Appellant's lack of respect for the process and its decision-makers, Appellant now raise two new – equally speculative – environmental concerns in its Appeal to City Council. The Appellant now adds speculation regarding greenhouse gas emissions and noise to its list of speculative environmental impacts. Again, the Appellant merely says the words without providing any analysis or addressing the MND directly.

d. <u>Appellant Confuses APC Commissioner Chung Kim's Husband with a Celebrity Chef by the Same Name and Recklessly Accuses APC Commissioner Chung Kim of a Conflict of Interest</u>

The Appeal betrays an appalling carelessness and disrespect by falsely accusing APC Commissioner Chung Kim of a conflict of interest. Demonstrating Appellant's careless disregard for the truth and a reckless unwillingness to confirm its speculation, Appellant wrongly suggest that APC Commissioner Chung Kim's husband, Roy Choi, is employed by the Applicant.

Ten minutes of research by Appellant would have revealed that the Roy Choi employed by the Applicant is not the same Roy Choi married to APC Commissioner Chung Kim. The Roy Choi married to APC Commissioner Chung Kim is the Chief Executive officer of the KCM Agency in Los Angeles. The Roy Choi employed by the Applicant is a celebrity chef at POT Bar—the food and beverage operation at LINE Hotel Los Angeles of which the Applicant is a partner. Chef Roy Choi (born February 24, 1970) is a Korean American chef who gained prominence as the creator of the gourmet Korean taco truck, *Kogi*. He is a chef who is celebrated for "food that isn't fancy" and is known as one of the founders of the food truck movement.[1]

[1]. https://en.wikipedia.org/wiki/Roy_Choi.

2. THE APPEAL FAILS TO PROVIDE ANY EVIDENCE OR BASIS UPON WHICH TO OVERTURN THE APC DETERMINATION

a. The Appeal Fails to Meet its Burden of Showing the ZA Erred or Abused its Discretion or Failed to Follow the Law

The City Council can only overturn the APC Determination if substantial evidence shows that the APC erred or abused its discretion or otherwise failed to follow applicable legal requirements. It is the Appellant's burden to provide such evidence; and the Appellant has utterly failed to meet that burden. In this case, the Appellant has entirely failed to address the APC Determination or the ZA's MND findings and has entirely failed to provide substantial that the APC Determination should be overturned.

Although the Appeal claims to challenge the entire decision, it only raises general and unspecified concerns about traffic, parking, water supply, and cumulative impacts. Nowhere does the Appeal identify errors in the APC Determination, the ZA Approval or the MND. The Appeal provides no evidence to supports its speculation, but merely disagrees with the APC Determination.

Furthermore, Appellant failed to comment on the MND during the public comment period or participate in any way with the initial ZA process. The Appellant raised no CEQA challenges to the MND in its written appeal to the APC. Appellant first raised CEQA issues in oral testimony at the APC hearing—and did so without offering any evidence in support of its position.

The APC rightly rejected the Appellant's APC Appeal for lack of evidence, and the City Council must do the same.

b. Appellant's Parking Concerns are Contrary to the Adaptive Re-use Ordinance

Neither the ZA nor the APC have the authority to impose a parking requirement on an adaptive re-use project. The City Council could only impose a parking requirement on an adaptive re-use project by amending the Adaptive Re-Use Ordinance.

The Adaptive Re-Use Ordinance ("**ARO**") expressly states that when a historic building has no on-site parking and is adapted for permissible re-use, the new use is not

required to provide parking – unless the new use expands the existing floor area. Whether a hotel – even without on-site parking – is a permitted use of the Bank of Italy Building is not within the discretion of the City. A hotel without on-site parking is permitted by-right. The Project is an adaptive re-use of an existing historic landmark and does not expand the floor area of the use. Consequently, neither the ZA nor the APC erred or abused their discretion by approving the Project without on-site parking. To the contrary, it would have been an error and an abuse of discretion to impose any parking requirement in contradiction to the plain language of the ARO.

Thus, the Appellant's concerns about parking fail to address any of the findings or determinations made by the ZA, contradict the plain language of the ARO, and are not supported by any evidence.

c. <u>The Absence of On-Site Parking in the Project is Not a CEQA Issue</u>

CEQA expressly dictates that parking impacts shall not be considered significant impacts on the environment for a Project such as this adaptive re-use project. Appellant demonstrates a woeful misunderstanding of CEQA by implying that a lack of on-site parking might result in parking impacts.

The Project meets the CEQA definition of an "Employment Center Project" on an "In-Fill Site" in a "Transit Priority Area."[2] In such circumstances, CEQA dictates:

> "***[P]arking impacts*** of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area ***shall not be considered significant impacts on the environment***."[3]

Because the Project is an employment center project on an in-fill site within a transit priority area, the California legislature has precluded any CEQA argument regarding potential parking impacts.

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[2]. CEQA § 21099(a)1, (a)4, (a)7.
[3] CEQA § 21099(d)1 [emphasis added].

d. <u>Substantial Evidence Shows There is Adequate Public Parking Supply in the Vicinity of the Project</u>

Although no parking requirements can be imposed upon an adaptive re-use project such as this Project, concerns over any lack of parking are unwarranted because there is a large supply of publicly-available parking in the vicinity of the Project.

In response to the APC Appeal, the Applicant engaged Civic Enterprise Associates to prepare a Parking Supply Analysis ("**PSA**") of the surrounding area, attached hereto. The April 2016 PSA surveyed the stock of publicly available parking in the vicinity of the Project. The PSA provides substantial evidence showing:

> There are approximately 13,814 striped parking spaces in the Study Area [1,000 foot radius of the Project] that are available for public parking. There are two basic types of parking facilities:
>
> (a) Twenty-six (26) stand-alone parking facilities, with a total of 5,745 spaces (approximately 42% of all spaces). The parking facilities range in size from 14 to 1,590 striped spaces.
>
> (b) Eighteen (18) parking facilities appurtenant to other uses, with a total of 8,069 spaces (approximately 58% of all spaces). The parking facilities range in size from 50 to 1,895 striped spaces.
>
> At several facilities, parking attendants "stack" vehicles, and thus the actual parking capacity is higher than the number of striped parking spaces.

Table 1 and Figure 2 of the PSA identify the exact locations and number of spaces of each lot within the Study Area. Most of the lots and spaces are within 750 feet of the Project.

Thus, there can be no reasonable doubt that this supply of nearby available parking is more than adequate to safely accommodate the parking needs of patrons, guests, and employees of the Project.

e. <u>An Expert Traffic Study Refutes Appellant's Speculative Claim that the Project may Result in Traffic and Cumulative Impacts</u>

Appellant's unsupported speculation about potential traffic impacts are contradicted by a December 2015 expert analysis of potential traffic impacts of the Project (the "**Traffic Study**"). The Traffic Study concluded:

> "Future traffic conditions in the Study Area were forecast for the Project buildout year of 2017. Based on the LADOT significance criteria, impacts were determined to be ***less than significant at all of the study intersections*** under Future plus Project (Year 2017) Conditions during both the morning and afternoon peak hours. Therefore, no mitigation measures are required or recommended [emphasis added]."

The Traffic Study also studied potential cumulative impacts of 102 related projects. The Traffic Study concluded, based on an analysis approved by the City Department of Transportation, that the Project would not result in any cumulative traffic impacts.

The City Council should take special note that the Appellant never once mentioned or addressed the Project Traffic Study in its APC Appeal and does not do so it its Appeal to City Council. Appellant is content to merely take up the City Council's time with an Appeal that claims that CEQA compliance is inadequate with regard to traffic and cumulative impacts without ever addressing the technical analysis of those impacts that form the basis of CEQA compliance.

f. <u>The MND Refutes the Appellant's Fanciful Claim of Potentially Significant Greenhouse Gas Emissions</u>

Appellant's mere mention of potentially Greenhouse Gas ("**GHG**") emissions in its woefully brief and speculative Appeal hardly warrants a response. Implying that a boutique hotel – which is allowed by-right – could generate sufficient GHGs to make a significant impact on the global climate change simply reveals the Appellant's cavalier rejection of the burden to provide evidence supporting its Appeal.

Had Appellant looked carefully at the MND, Appellant would have seen that the MND addressed GHG emissions. First, the MND imposes a specific mitigation measure

– Mitigation measure VII-10 – to reduce GHGs generated during re-use of the building by requiring low- and non-VOC paints and materials, as well as requiring pre-fabricated panels whenever possible. The MND also addressed GHGs in MND Section III. The MND identified all the applicable local regional air quality thresholds and explained that the Project's emissions did not exceed those thresholds.

Again, Appellant never mentions, much less, attempts to refute the specific language in the MND addressing air quality and GHGs. Appellant is content to merely take up the City Council's time with an Appeal that claims that CEQA compliance is inadequate with regard to GHGs without ever addressing the specific discussion of GHGs and air quality in the MND.

g. <u>The MND Refutes the Appellant's Speculative Claim of Potentially Significant Water Supply Impacts</u>

Like with all of the Appellant's other abbreviated and speculative claims, the Appellant offers no evidence of potentially significant water supply impacts and does not even try to refute the analysis in the MND.

Section XVII of the MND addresses water supply. The MND concludes that adaptive re-use of the building into a boutique hotel remains within the projected growth and service models of the Los Angeles Department of Water and Power ("**LADWP**") and Urban Water Management Plan. Furthermore, the adaptive re-use of this historic building into a 21st Century boutique hotel will include all the Title 23 compliant measures to reduce water consumption and will be equipped with the latest technology for water conservation.

The Appellant fails to address any of these facts in the Appeal and provides nothing but mere speculation of potential water supply impacts.

h. <u>The MND and an Expert Acoustical Analysis Refute the Appellant's Speculative Claim of Potentially Significant Noise Impacts</u>

Once again, the Appellant offers no evidence of potentially significant noise impacts and does not even try to refute the analysis in the MND Mitigation measures and completely ignores the existence of an expert acoustical analysis.

The ZA imposed MND Mitigation Measures XII-20 and XII-60 to assure that noise impacts of the Project are less than significant. These measures generally limit construction hours and activities to assure compliance with noise regulations and by requiring wall floor and ceiling assemblies to meet specific sound transmission/attenuation criteria. Of course, the Appellant never addresses these noise mitigation measures in the Appeal.

An expert acoustical analysis, dated December 4, 2015, was prepared by Veneklasen and Associates (the "**Acoustical Analysis**"). The Acoustical Analysis performed a "property line noise assessment" to assure that noise generated from rooftop activities would not create significant noise impacts to neighboring properties. The Acoustical Analysis recommended one mitigation measure requiring a volume meter on the roof deck and concluded that requirements of the Los Angeles Municipal Code governing noise generation would be satisfied.

Both the ZA Approval and the APC Determination reference the Acoustical Analysis. On Page 24 of the APC Determination, the ZA's finding regarding the Acoustical Analysis is set forth:

> "The applicant submitted ***an acoustical report*** that measured sound transmission from the roof top deck and outlined sound mitigation measures to ensure compliance to the city's noise regulations. Those mitigation measures have been incorporated as conditions of the grant [emphasis added].

Again, the Appellant never mentions much less attempts to refute the specific language and mitigation measures in the MND addressing potential noise impacts. Appellant completely ignores the findings of an expert Acoustical Analysis. Appellant is content to merely take up the City Council's time with an Appeal that claims that CEQA compliance is inadequate with regard to noise without ever addressing the specific discussion of potential noise impacts in the MND and an accompanying Acoustical Analysis.

3. CONCLUSION

Thank you for your careful consideration of the Appeal and of the Project. We respectfully request that you deny the Appeal in its entirety and uphold the thoughtful and thorough ZA Approval and the APC Determination.

Very truly yours,

R.J. Comer

cc: Fernando Tovar, Associate Zoning Administrator
Central Area Planning Commissioner Jennifer Chung Kim
Sydell Group
Elizabeth Peterson Group