EXHIBIT 12

Appeal

glendale Planning

CaseNo PDBP2120753

Date November 15, 2022

Submit 3 copies of this application, along with the required fee, to:
Permit Services Center (PSC), 633 East Broadway, Rm. 101, Glendale, California, 91206 (Monday thru Friday, 7:00 am to 12:00 pm);
Or to:
Community Development Department (CDD), 633 East Broadway, Rm 103, Glendale, California, 91206 (Monday thru Friday, 12:00 pm to 5 p.m.).
For more information please call the PSC at 818.548.3200, or the Planning Division at 818.548.2115.

Please complete (PRINT or TYPE) the following information:

PART 1 – NOTICE TO APPELLANT (please read carefully)

A. This form must be prepared, and **3 copies filed, within 15 days of the date of the decision being appealed.**
B. Every question must be answered.
C. If a question does not apply, you must answer "does not apply" or words to that effect.
D. Failure to properly fill out this notice or failure to make a sufficient statement of a case in this notice, even if in fact you have valid and sound grounds for appeal, may cause your appeal to be dismissed forthwith.
E. Attach additional pages for long answers.
F. Prior to completing this form, read the Glendale Municipal Code, Title 2, Chapter 2.88 Uniform Appeal Procedure on the City's webpage at www.ci.glendale.ca.us/gmc/2.88.asp

PART 2 – APPELLANT INFORMATION

A. Grant Michals / Glendale Homeowners Coordinating Council

First Name | Last Name | Email Address: grant@michals.com

2710 Piedmont #12 | Montrose, CA 91020 | 818 957-5518

Street Address | City | State | Zip Code | Area Code - Phone Number

PART 3 – APPEAL BACKGROUND INFORMATION

A. State the name or title of the board, commission or officer from which this appeal is taken
Planning Commission

B. Were you given written notice of the action, ruling or determination? Yes ☐ No x
☐ If "Yes," attach a copy of the written notice and write the date you received it here N/A out of town
If "No," give the following information concerning your receipt of notice of the action, ruling or determination.
Date November 2, 2022 Time _____ Location Commission Hearing Manner _____

C. State generally what kind of permit, variance, ruling, determination or other action was the basis for the decision from which the appeal is taken
Approval of Density Bonus Application for an 11-unit project

D. State the specific permission or relief that was originally sought from the board, commission, or officer
Appeal of decision by the Planning Hearing Officer to grant with incentives and waivers a Density Bonus application for an 11-unit project that includes demolition of an existing three-unit multi-family building.

E. Were you the party seeking the relief that was originally sought? Yes ☒ No ☐
If "No," how are you involved with the permit, variance, ruling, determination, or other action referred to above?

F. Does this matter involve real property? Yes ☒ No ☐
If "Yes," give the address, or describe the real property affected 246 N. Jackson

PART 4 – STATEMENT OF ERROR

A. Do you contend that there was a violation of a specific provision of law, which forms the basis for this appeal? X Yes ___No If "Yes", state each specific provision of law that you contend was violated: See attached

B. Do you contend that the board, commission or officer exceeded its authority by virtue of any of the provisions of law given in answer "A"? X Yes ___No If "Yes", state which provisions, and state specifically each act that was in excess of authority: See attached

C. Do you contend that the board, commission or officer failed to fulfill a mandatory duty by any provision of law given in answer "A"? X Yes ___No If "Yes", state which provision, and the specific duty that it failed to exercise: See attached

D. Do you contend that the board, commission or officer refused to hear or consider certain facts before rendering its decision? X Yes ___No If "Yes", state each such fact, and for each fact, state how it should have changed the act, determination or ruling: See attached

E. Do you contend that the evidence before the board, commission or officer was insufficient or inadequate to support its action, determination or ruling or any specific finding in support thereof? X Yes ___No If "Yes", state what evidence was necessary, but lacking: See attached

F. Do you contend that you have new evidence of material facts not previously presented, which if considered should change the act, determination or ruling? X Yes ___No If "Yes", state each new material fact not previously presented to the board, commission or officer. For ea fact, state why it was not available, or with the exercise of reasonable diligence could not have been discovered and previously presented by the appellant: See attached

Statement of additional facts related to the appeal: See attached

The foregoing statements, contained in PARTS 2, 3 and 4 above, are true and correct to the best of my knowledge and belief.

Grant Michals for GHCC

Appellant's Name – Please Print

Appellant's Signature

11-16-2022

Date Signed

FOR STAFF USE ONLY Date Stamp

Date received in Permit Services Center _____ Received by _____

Fee paid _____ Receipt No. _____

Case No. PDBP2120753
Date November 16, 2022
Grant Michals (Glendale Homeowners Coordinating Council)
Appeal of Density Bonus Application at 246 N. Jackson St.
Supplemental Information

Part 4. Statement of Error

A. Do you contend that there was a violation of a specific provision of law, which forms the basis for this appeal?

Yes. The Planning Commission approved the Density Bonus Application based on invalid calculation of base density, contrary to GMC 30.10.70(H) and invalid calculation of density bonus units. The City failed to comply with the California Public Records Act by unlawfully redacting documents related to the City's handling of the Density Bonus Application. Among those missing include 1) information related to circumvention of the Glendale Municipal Code to change the base density; 2) the Operating Agreement of the LLC that owns the property; and 3) documents related to Findings of Fact for waivers after staff acknowledged that the findings of fact could not be made, contrary to GMC 30.36.080(B)(1). Staff failed to require necessary information to justify the waivers, contrary to GMC 30.40.020(B)(3). Staff miscalculated the incentives, counting multiple setback variances at each story and along the street-front, side, and interior as one incentive, contrary to GMC 30.36.030 and explicit direction from Council. There is no evidence that one of the units was owner occupied and thus the number of replacement affordable units is deficient under Cal. Gov. Code 65915.

B. Do you contend that the board, commission or officer exceeded its authority by virtue of any of the provisions of law given in answer "A"?

Yes. The Planning Commission failed to consider overwhelming evidence of the City's violation of the Glendale Municipal Code, cited no evidence for its decision to uphold the Planning Hearing Officer's Decision, and made no findings.

C. Do you contend that the board, commission or officer failed to fulfill a mandatory duty by any provision of law given in answer "A"?

Yes. The Planning Commission failed to consider overwhelming evidence of the City's violation of the Glendale Municipal Code, cited no evidence for its decision to uphold the Planning Hearing Officer's Decision, and made no findings.

D. Do you contend that the board, commission, or officer refused to hear or consider certain facts before rendering its decision?

Yes. Appellant's presentation (hereafter "the presentation") laid out detailed evidence, including emails among staff and between the developer and staff, of egregious violation in the calculation of the base density and density bonus that showed "special treatment" given to the developer (email from Cassandra Pruett to Erik Krause, Nov. 2, 2021~~, see exhibit 1~~). At the appeal hearing, City Attorney Yvette Neukian stated that the City would gift the developer city-owned property for the purpose of increasing the gross lot area of the building site, thus allowing him to achieve a base density of 6.096 (rounded up to seven) units instead of the actual base density of 5.99 (rounded up to six) units. This city-owned property had been deeded by previous owners in 1972 (exhibit 1) and as such cannot be counted toward calculating the base density per Glendale Municipal Code. With a true base density of six units the developer should have applied for a nine-unit project (including density bonus), not eleven units, the number approved.

The plan to circumvent the Code *is described by the developer himself in an email to Erik Krause* as "neither…clean [n]or appealing," just before he proposes a "totally off record" call to discuss his idea with Mr. Krause (exhibit 1). It involves the developer giving the land the City has gifted him right back to the City, along with additional property for an ADA-compliant sidewalk, as spelled out by Ms. Neukian at the hearing. This is a cheat. The City is allowed to count new easements toward the gross lot area, but only part of the easement is new. Astonishingly, a project condition imposed by the Planning Commission, at the suggestion of Ms. Pruett, was: "The applicant must apply for and complete the conditional vacation of the existing Street Easement…and record a new street easement…" (Decision Letter, Nov. 2, 2022), as though the City had no intention of enforcing the off-the-record scheme until the approval was appealed and it came to light.

At the Planning Commission hearing, Ms. Pruett noted that there were "further discussions" regarding the easement "that weren't shown in the [appellant's] slides." However, these "discussions" were nowhere to be found in the public record; they had

been redacted, despite the obvious public interest in learning how the City helped the developer circumvent the law.

The presentation provided detailed evidence that even though the City's Density Bonus Application *requires* "reasonable documentation" in support of incentives and waivers, in this case the City required none. Indeed, documentation was so inadequate that Ms. Pruett emailed Art Simonian *two weeks after the public hearing had closed*, stating: "Staff needs additional information about the project to make the waiver findings of fact" (email, June 15, 2022). Soliciting information after the public review process has concluded is illegal and a betrayal of public trust. This email not only documents the lengths the City goes to pander to developers but provides indisputable evidence that long after the Planning Hearing Officer hearing had concluded, the City was unable to make the requisite findings of fact based on submitted materials from the applicant and information in the record. Waivers *cannot* be granted without such findings per Glendale Municipal Code. There is no information in the public record to explain how the City made the required findings of fact after stating the findings of fact could not be made. This information had been redacted, despite the obvious public interest in knowing how the City manufactured the findings to approve the Application.

The presentation provided detailed evidence that the City is allowed to—and should—require more affordable units than the single one offered by the developer in exchange for 10 market-rate units. The project would demolish three units of identical size that rented for $1500 a month as of July 2020, when the current tenants were kicked out so that the apartments could be sold as vacant, which allows the developer to replace affordable units based on a formula rather than based on the renters' actual income (Cal. Gov. Code 65915 (c)(3)(B)(i)). Glendale's median household annual income from 2016-2020 was $70,596. $1,500 a month, or $18,000 a year, is less than 30% of that figure; in other words, these are "affordable dwellings" per the Department of Housing and Urban Development. And yet the City required the developer to provide *only one* affordable unit. Because Glendale has the Rental Rights Program, the City can require a developer who is demolishing "any dwelling unit…that is or was occupied by persons or families above lower income" to replace them with affordable units (Cal. Gov Code 65915(c)(3)(C). Attorneys for the City disputed the claim, stating that one of the units

was occupied by the owner, who apparently owns "several properties" in Glendale (Yvette Neukian, Planning Commission Hearing) but chose to live in an outdated one-bedroom unit that is under 600 square feet. The City's assertion is not supported, in part because the City provided no information to prove owner occupancy of the unit despite a Public Records Act request.

The presentation provided detailed evidence that the applicant had requested and received incentives far in excess of the requirements of Cal. Gov. Code 65915. Staff counted multiple variances from setbacks at the first, second, and third stories, and at the street, side, and interior, as *one* incentive. Ms. Neukian herself pointed out that the quantity of setbacks counted as one incentive contradicted City Council's explicit direction at a meeting on October 5, 2021. She declared that it is outside the City's power to remedy the policy by which it has mishandled incentives, because staff have not yet returned to Council with a proposal. However, Council already provided policy direction, and no revision to the Code is required. Indeed, Council's preferred policy is already laid out in the Glendale Municipal Code. Section 30.36.030 defines density bonus incentives as "a reduction in site development standards" and "Development Standard" as "a site or construction condition, including, but not limited to, a height limitation, *a* setback requirement, a floor area ratio…" (emphasis added). Staff have simply refused to implement either the policy stipulated in the Code or Council's express wishes.

E. Do you contend that the evidence before the board, commission or officer was insufficient or inadequate to support its action, determination or ruling or any specific finding in support thereof?

Yes. Commissioners could cite no evidence for their decision beyond perfunctory comments on the need for housing in Glendale. One stated that the project was acceptable despite the evidence presented because it is small. These are not relevant facts; the City should not condone unlawful and disreputable behavior based on the size of a project or the need for housing, which would be well served by a nine-unit project, especially if the City requests the affordable housing to which it is entitled.

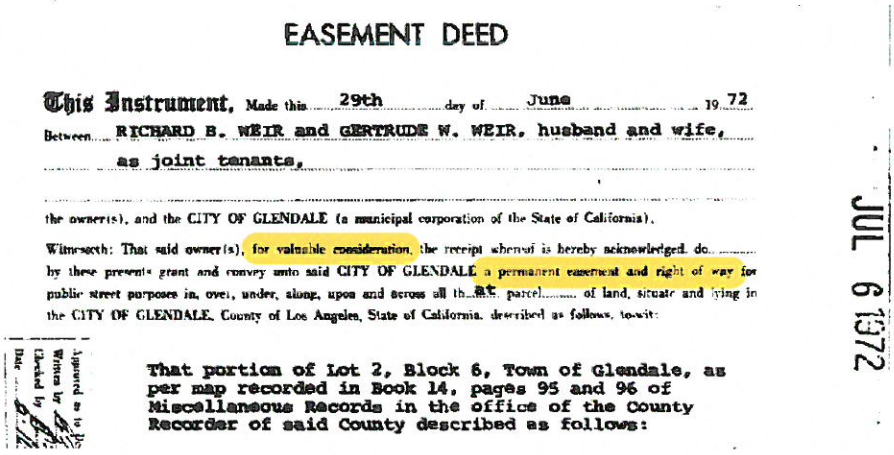
F. Do you contend that you have new evidence of material facts not previously presented, which if considered should change the act, determination, or ruling?

It is not only possible but probable that new evidence will come to light when unlawfully redacted materials are produced, which may yield further details on the City's special treatment of the developer and LLC.

Evidence supporting the appeal, PR denotes documents accessed through a Public Records Act Request

1. The Easement

a) Detail from 1972 Easement granting corner of Jackson and California to the City (PR vol. 1 p. 4214).



EASEMENT DEED

This Instrument, Made this 29th day of June 19 72

Between RICHARD B. WEIR and GERTRUDE W. WEIR, husband and wife, as joint tenants,

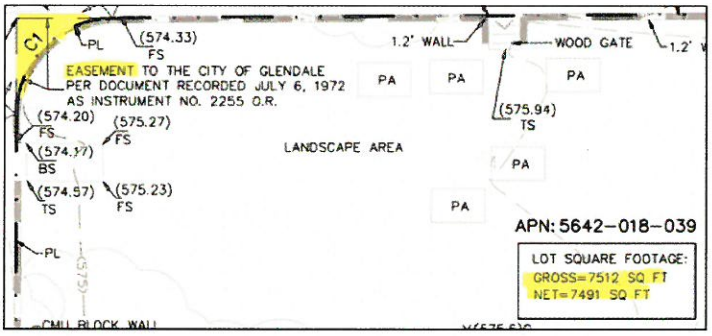
the owner(s), and the CITY OF GLENDALE (a municipal corporation of the State of California),

Witnesseth: That said owner(s), for valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant and convey unto said CITY OF GLENDALE a permanent easement and right of way for public street purposes in, over, under, along, upon and across all that parcel of land, situate and lying in the CITY OF GLENDALE, County of Los Angeles, State of California, described as follows, to-wit:

That portion of Lot 2, Block 6, Town of Glendale, as per map recorded in Book 14, pages 95 and 96 of Miscellaneous Records in the office of the County Recorder of said County described as follows:

JUL 6 1972

b) Map showing 1972 street easement in yellow, with Bill A'Hearn's (Public Works) question why the easement was counted toward calculating the project's base density, which is based on net area of 7491. In the R-1250 zone, 7491 square feet yields a base density of 5.99 units, rounded up to 6 units, not the 7 units applicant was given (PR vol. 1 p. 3533).



2) The easement document referenced is actually a street dedication processed in 1972. Why is this area being included in the lot size if it is not a dedication that is part of the current project?

c) It is not Glendale policy to count old street dedications (PR Vol. 1 p. 2997).

Pruett, Cassandra

From: Zemaitaitis, Vilia
Sent: Thursday, August 19, 2021 4:10 PM
To: Pruett, Cassandra
Cc: Asp, Kristen
Subject: RE: 246 N Jackson lot size

Our practice has always been to calculate density based on the lot size prior to any dedications that are required as part of the submitted project (not dedications done decades before).
Unfortunately, I do not know of any additional written standards that would further substantiate our practice.

d) Glendale Municipal Code establishes that only current easements count: easements that "are made," not that "were made" (PR vol. 1, p. 2079).

30.10.070 Zoning districts—Regulations.

H. Density. The density of development has been established for each zone in accordance with the comprehensive general plan in order to promote the orderly, efficient and most appropriate growth within the city, consistent with the planned capability of services and infrastructures. **Density shall be calculated from the area of the lot before any public right-of-way dedications are made.** An accessory dwelling unit and/or junior accessory dwelling unit on a lot developed with single-family or multifamily dwelling unit(s) is deemed a residential use consistent with the existing general plan and zoning designation for the lot, as provided for in the Government Code of the State of California, Section 65852.2.

e) Is there a difference between easements and dedications? There is not! (PR Vol. 1 p. 2882, 3004).

From: Villaluna, Ruel
Sent: Friday, August 6, 2021 11:34 AM
To: Pruett, Cassandra
Cc: A'Hearn, William
Subject: RE: 246 N Jackson

Cassandra,

The easement is a street dedication. The location of the property line was adjusted for the easement.

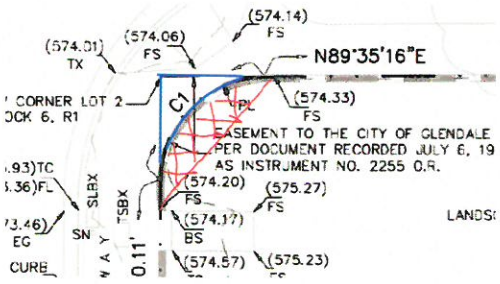
Ruel M. Villaluna, P.E.
City of Glendale
Public Works Dept. • Engineering Division
Land Development Section
633 E. Broadway, Room 205, Glendale, CA 91206
(818) 937-8251 • rvillaluna@glendaleca.gov

From: A'Hearn, William <WAHearn@Glendaleca.gov>
Sent: Thursday, August 12, 2021 11:37 AM
To: Pruett, Cassandra <CPruett@Glendaleca.gov>
Subject: RE: 246 N Jackson lot size

Hi, Cassandra

I just talked to Mike Mathias, our retired Real Property Agent, and dedications and easements are the same thing. The terminology is different (dedication vs easement) depending on the vehicle used to create a street/alley. Streets and alleys are dedicated on the tract maps by subdividers, and property owners grant an easement for streets and alleys. He also mentioned that Miah and Gillian understand that they are the same too.

f) Per email from Bill A'Hearn, August 24, 2021, to Cassandra Pruett. The applicant could count the additional easement to comply with ADA requirements (shown in red) that land would count toward the net lot area and thus the base density. The previous easement from 1972, which does not count, is in outlined in blue (my addition) (PR vol. 1, p. 2955).



g) Staff and City Attorneys agreed that Mr. Simonian **could not count** the fifty-year-old easement toward the base density (PR vol. 1, p. 4227).

From: A'Hearn, William <WAHearn@Glendaleca.gov>
Sent: Wednesday, September 1, 2021 11:59 AM
To: Hitti, Edward <EHitti@Glendaleca.gov>
Cc: Emrani, Yazdan <YEmrani@Glendaleca.gov>
Subject: RE: Urgent matter on 246 N Jackson project

Hi Edward and Yaz-

I just finished the meeting with Yvette Neukian and Miah Yun from Legal and Planning's Kirsten Asp regarding 246 N Jackson Ave. Per Yvette, after discussions with Mike Garcia and Miah, the 1972 Street Easement for the corner-cut at Jackson and California is considered a street dedication and the area corner-cut needs to be factored into the NET area of the parcel for density purposes.

Yvette also mentioned that she has had conversations with Mr. Simonian last week about this issue, and that she mentioned to him that it may be possible to add the extra units as ADUs.

Yvette will be informing Mr. Simonian that he has to use the NET area (the original area minus the area of the street easement) of the parcel to determine the density for planning purposes, and to look into adding the extra units as ADU. You might want to hold off on responding back to Mr. Simonian until after Yvette has talked to him.

h) Mr. Simonian reaches out to Erik Krause to fix the problem (PR vol. 1, p. 3538).

From: Art Simonian <asimonian@metinvestments.com>
Sent: Thursday, September 02, 2021 10:33 AM
To: Krause, Erik <EKrause@Glendaleca.gov>
Subject: Jackson project

CAUTION: **This email was delivered from the Internet. Do not click links, open attachments, or reply if you are unsure as to the sender.**

Hi Erik: I hope this email finds you well. I am at a total loss since yesterday I received the devastating news from Evette whereby legal has made the determination that the 1972 right of way Easement should have been a dedication. By the way that itty-bitty little right of way results in the loss of two units, crazy how the math works out.

I have come up with a few ideas and strategies neither of them are clean or appealing but I would love to get your guidance at this point to try to get this project out of the mud and moving at least in some direction. I really would appreciate a quick phone call at some point to strategize. Our call could be totally off record since I am just getting your guidance and thoughts. Can you please let me know what your availability might be for a quick phone call? Thank you,

Art Simonian
Metro Investments

i) On September 8, Mr. Simonian follows up with Mr. Krause (PR vol. 1, p. 2898).

Hi Erik: It was nice to catch up with you this afternoon. Attached is the survey to the property with a diagram depicting what public works will most probably require in order to meet the new right-of-way handicap ramp standards.

For your reference also attached is the 1972 ROW easement that was recorded on the property. We have the opportunity to clean up this old 1972 ROW Easement which is not per current Public Woks H/C ramp standards. The attached ROW Easement measures 9'-0" from the face of the H/C ramp to the property line. Per Chris Chew, the new Public Works H/C ramp standards require 12'-0" of distance from face of ramp to the property line. As such 3'-0" additional feet of ROW will most probably be required. To clean all this up we can replace the old 1972 Easement with a new ROW Dedication which will measure 12'-0" from the face of curb to the property line.

I look forward to your thoughts and feedback. Thank you again for all your help on this matter. Sincerely,

Art Simonian

j) Attorneys at the Planning Commission hearing clarified that "clean[ing] up" the 1972 Easement means the City will vacate it, giving it to the applicant, who will then rededicate it along with additional property for an ADA-compliant sidewalk, thus circumventing the City Code (PR vol. 1, p. 3582).

From: Art Simonian <asimonian@metinvestments.com>
Sent: Wednesday, September 22, 2021 2:23 PM
To: Krause, Erik <EKrause@Glendaleca.gov>
Subject: 246 N Jackson project

Hi Eik: I hope this email finds you well. Cassandra called yesterday and she mentioned that the City was looking to obtain a 2nd affordable unit from the project based on the City's inclusionary housing ordinance. I reminded her that the inclusionary housing ordinance does not apply to this project since the base density is less than 8-units (this had been vetted earlier already with Kristin). Cassandra said she would discuss this with you...

I just wanted to check in with you to see where this is coming from and why it is happening? I just seems like another road block after a slew of previous roadblocks. The city attorney's office has already verified the density bonus calculation and has verified that only 1-VLI unit appliances for the proposed 11 unit project. I am not sure where the confusion lies. Can you let me know please?

As for the right-of-way, Cassandra was unable to get much feedback from Public Works but they did indicate that there seems to be not enough space for a standard ramp, so our getting rid of the old easement and applying a new dedication idea, should work.

k) Why did the City decide to give up property it owns? All information concerning the decision has been redacted without explanation. One possibility is that the City hoped/expected to get a second affordable unit in exchange for increasing the total number of unit from 9 to 11. PR vol. 1, p. 2896.

From: Pruett, Cassandra
Sent: Tuesday, September 21, 2021 9:25 AM
To: Krause, Erik
Subject: RE: 246 N Jackson dedication

Erik,

Art pointed out to me that his base density is only 7 so the Inclusionary Housing ordinance wouldn't apply to his project since it gets triggered at 8 units. I think he's probably right. So that would mean we are NOT getting a second affordable unit from this project.

Given this, are we still good to go with him moving forward with the 11 unit project, 1 affordable unit, and using the existing lot size excluding the 1972 dedication as long as he records a new dedication for the handicap ramp?

Cassandra Pruett, AICP | Planner | City of Glendale
633 East Broadway, Room 103 | Glendale, CA | 818-937-8186
cpruett@glendaleca.gov | www.glendaleca.gov | Follow us!

2. Glendale Did Not Require Sufficient Affordable Units

a) Mr. Simonian claimed that submitted Form 593 proved owner-occupancy of one of the three existing units (PR vol. 2, p. 1112).

From: Art Simonian [mailto:asimonian@metinvestments.com]
Sent: Wednesday, February 02, 2022 4:08 PM
To: 'Fortney, Mike'
Cc: 'Shahnazarians, Michelle'
Subject: RE: 246 N Jackson
Importance: High

Dear Mike and Michelle: I hope this email finds you well. As a follow-up to our phone conversation I have attached documentation proving Leticia B. Bannag (the "Seller") was an owner occupant at close of escrow. Also attached are documents proving the other 2-tenants moved out prior to the close of escrow.

Attached are the following material:

1. A Grant Deed indicating Seller sold the property to Artshar LLC (recorded on 9-2-2020);
2. The California Real Estate Withholding Statement, form 593, providing evidence that Seller was owner-occupied (obtained from Glen Oaks Escrow);
3. Signed Escrow Addendum indicating Seller's intent to sell and to deliver the property vacant of all tenants;
4. Signed Tenant Estoppel Certificate and signed Mutual Termination of Rental Agreement from tenant residing at 244 1/2 N Jackson Street; and
5. Signed Tenant Estoppel Certificate and signed Mutual Termination of Rental Agreement from tenant residing at 246 1/2 N Jackson Street.

b) Form 593, signed by the owner and dated August 18, 2020, establishes that the unit was *not* owner occupied, but the City claimed owner occupancy anyway (PR vol. 2, p. 1205).

TAXABLE YEAR **2020** **Real Estate Withholding Statement** CALIFORNIA FORM **593**

AMENDED: ☐

Part I Transferor Information ☐ REEP ☐ Qualified Intermediary ☐ Buyer/Transferee ☐ Other

Glen Oaks Escrow — FEIN 95-4189739

Part III Certifications which fully exempt the sale from withholding (See instructions)
Determine whether you qualify for a full withholding exemption. Check all boxes that apply to the property being sold or transferred.

1. ☐ The property qualifies as the seller's principal residence under Internal Revenue Code (IRC) Section 121.
2. ☐ The seller last used the property as the seller's principal residence under IRC 121 without regard to the two-year time period.
3. ☐ The seller has a loss or zero gain for California (CA) income tax purposes on this sale. Complete Part VI, Computation.
4. ☐ The property is compulsorily or involuntarily converted, and the seller intends to acquire property that will qualify for nonrecognition of gain under IRC Section 1033.
5. ☐ The transfer qualifies for nonrecognition treatment under IRC Section 351 or IRC Section 721.
6. ☐ The seller is a corporation (or a limited liability company (LLC) classified as a corporation), qualified through the CA Secretary of State or has a permanent place of business in CA.
7. ☐ The seller is a CA partnership or a partnership qualified to do business in CA (or an LLC classified as a partnership for income tax purposes that is not a single member LLC disregarded for income tax purposes).
8. ☐ The seller is a tax-exempt entity under California or federal law.
9. ☐ The seller is an insurance company, individual retirement account, qualified pension/profit sharing plan, or charitable remainder trust.

Part IV Certifications that may partially or fully exempt the sale from withholding or if no exemptions apply (See instructions)
Determine whether you qualify for a full, partial, or no withholding exemption. Check all boxes that apply to the property being sold or transferred.

10. ☐ The transfer qualifies as either a simultaneous or deferred like-kind exchange under IRC Section 1031.
11. ☐ The transfer of this property is an installment sale where the buyer must withhold on the principal portion of each installment payment. Copy of the promissory note is attached. Complete Part V Buyer/Transferee Information on Side 2.
12. ☒ No exemptions apply. Go to Part VII, Line 31.

Sign Here — It is unlawful to forge a spouse's/RDP's signature.

Seller's/Transferor's signature — Date 8-18-2020
Seller's/Transferor's spouse's/RDP's signature — Date
Buyer's/Transferee's signature — Date
Buyer's/Transferee's spouse's/RDP's signature — Date

c) Because the owner did not occupy the unit, and the units were vacant and the incomes of prior tenants unknown, the applicant must provide two affordable units. Under Cal. Gov. Code 65915, and based on HUD statistics (as acknowledged by the City), the City must replace 37% percent (the number of renters at or below 80% of Area Median Income) of the 3 units as affordable housing. This amounts to 1.11, rounded up to 2 affordable units (PHO Decision Letter, July 7, 2022, p. 3).

> Per the Los Angeles County Assessor, the project site contains three (3) residential dwelling units at one-bedroom each. The project site was purchased on September 2, 2020 and Applicant submitted a development application to Planning (PMPA2016969) on October 22, 2020. Applicant has provided Housing staff supporting documentation in the form of a Grant Deed, Real Estate Withholding Statements, an Addendum, Tenant Estoppel Certificates and Mutual Termination of Rental Agreements to confirm owner-occupancy of one (1) residential unit above 80% area median income and the vacancies of the remaining two (2) residential units. By applying the established rebuttable presumption of 37% to the two (2) remaining vacant residential units, one replacement unit at one (1) bedroom is required under State Density Bonus Law (37% x 2 = .74 (rounded up to 1)).

3. Glendale's Mishandling of Waivers

a) Glendale's Density Bonus Application *requires* reasonable documentation to support claims in support of a project waivers. In more than 7,000 documents, nothing was provided to support the 8 waivers (misrepresented as 2 waivers) granted for the project.

> *Reasonable documentation must be submitted that shows that the waiver or modification is necessary to make the development with the affordable units economically feasible and that the current development standards will have effect of precluding the construction of a housing development meeting the criteria of Code at the densities or with the concessions or incentives permitted by Code.*

b) Draft Findings of Fact at the Planning Hearing Officer hearing on June 1, 2022, argued for profitability, not necessity (p. 11-12):

> The requested waivers for increased floor area ratio and reduced minimum unit sizes are required to allow provision of a more balanced unit mix that will improve the project's financial pro forma and allow the provision of an affordable unit. The requested waivers will allow for the creation of one-bedroom dwelling units versus the creation of studio dwelling units and the creation of two-bedroom units versus one-bedroom units. In fact, without the waivers, the project would only be able to feature studio and one-bedroom units, which would negatively impact the financial viability of the project. As an example, unit 102 is 26 SF shy of the minimum 600
>
> bedroom units instead of studios and one-bedroom units. The increased number of bedrooms incorporated into the project will improve the viability and financial pro forma of the project and will enable the creation of a very low income affordable unit. In addition, the increased number of bedrooms will improve and

c) Two weeks after the close of the Public Hearing, Ms. Pruett wrote to Mr. Simonian, stating the findings of fact could not be made for the waivers and asking for his help. The waivers instead should have been rejected (PR vol. 2, p. 2434).

From: Pruett, Cassandra [mailto:CPruett@Glendaleca.gov]
Sent: Wednesday, June 15, 2022 3:04 PM
To: Art Simonian
Cc: Zemaitaitis, Vilia
Subject: RE: 246 Jackson Ave

Hi Art,

Staff needs additional information about the project in order to make the waiver findings of fact. The waiver finding of fact standard (see below) is centered on "physically preclude," yet the focus of the justification that was provided for the project is it would make the project financially feasible or reduce costs, which is not the standard. We need the waiver finding to be written to use evidence that without the waivers the project would be physically precluded from being built. Can you please provide this revised write up and information?

1. The application of said development standard(s) will have the effect of physically precluding the construction of the housing development at the density and with the incentives or concessions granted pursuant to this chapter;

d) Mr. Simonian responded that same day (PR vol. 2, p. 2434).

Hi Cassandra, we will work on the revised language and we will get it to you hopefully by end of the day tomorrow. Sincerely,

Art Simonian

e) A flurry of unexplained redactions prevents us from explaining how the Findings of Fact were manufactured. As demonstrated in the PHO Decision Letter, July 7, 2022, they do not justify granting eight waivers from Glendale's development standards (p. 9).

The project is designed to optimize density with a balanced unit mix consisting of one-bedroom and two-bedroom apartments within the allowable 11-unit density (with the density bonus). The requested waiver from minimum unit sizes is needed to make this balanced unit mix physically possible to build. The waiver will allow relief to provide for a more balanced unit mix that will meet the 11-unit design of the proposed development project. The minimum unit size requirements of GMC §30.11.050 would physically

[redacted]

washer and dryer and adequate storage/closet area. Without the requested waiver the project would consist of five (5) studios and six (6) one-bedroom units, which would physically preclude the construction of the housing development at the allowable 11-unit density with the desired unit mix, and with the incentives or concessions. In addition to the increased number of bedrooms, the requested waiver will improve and balance the project's unit mix which will help provide a range of housing types which is consistent with the General Plan Housing Element.

Case No. PDBP2120753
Date November 16, 2022
Grant Michals (Glendale Homeowners Coordinating Council)
Appeal of Density Bonus Application at 246 N. Jackson St.
Supplemental Information

Updated

Part 4. Statement of Error

A. Do you contend that there was a violation of a specific provision of law, which forms the basis for this appeal?

Yes. The Planning Commission approved the Density Bonus Application based on invalid calculation of base density, contrary to GMC 30.10.70(H) and invalid calculation of density bonus units. The City failed to comply with the California Public Records Act by unlawfully redacting documents related to the City's handling of the Density Bonus Application. Among those missing include 1) information related to circumvention of the Glendale Municipal Code to change the base density; 2) the Operating Agreement of the LLC that owns the property; and 3) documents related to Findings of Fact for waivers after staff acknowledged that the findings of fact could not be made, contrary to GMC 30.36.080(B)(1). Staff failed to require necessary information to justify the waivers, contrary to GMC 30.40.020(B)(3). Staff miscalculated the incentives, counting multiple setback variances at each story and along the street-front, side, and interior as one incentive, contrary to GMC 30.36.030 and explicit direction from Council. There is no evidence that one of the units was owner occupied and thus the number of replacement affordable units is deficient under Cal. Gov. Code 65915.

B. Do you contend that the board, commission or officer exceeded its authority by virtue of any of the provisions of law given in answer "A"?

Yes. The Planning Commission failed to consider overwhelming evidence of the City's violation of the Glendale Municipal Code, cited no evidence for its decision to uphold the Planning Hearing Officer's Decision, and made no findings.

C. Do you contend that the board, commission or officer failed to fulfill a mandatory duty by any provision of law given in answer "A"?

Yes. The Planning Commission failed to consider overwhelming evidence of the City's violation of the Glendale Municipal Code, cited no evidence for its decision to uphold the Planning Hearing Officer's Decision, and made no findings.

D. Do you contend that the board, commission, or officer refused to hear or consider certain facts before rendering its decision?

Yes. Appellant's presentation (hereafter "the presentation") laid out detailed evidence, including emails among staff and between the developer and staff, of egregious violation in the calculation of the base density and density bonus that showed "special treatment" given to the developer (email from Cassandra Pruett to Erik Krause, Nov. 2, 2021). At the appeal hearing, City Attorney Yvette Neukian stated that the City would gift the developer city-owned property for the purpose of increasing the gross lot area of the building site, thus allowing him to achieve a base density of 6.096 (rounded up to seven) units instead of the actual base density of 5.99 (rounded up to six) units. This city-owned property had been deeded by previous owners in 1972 (exhibit 1) and as such cannot be counted toward calculating the base density per Glendale Municipal Code. With a true base density of six units the developer should have applied for a nine-unit project (including density bonus), not eleven units, the number approved.

The plan to circumvent the Code *is described by the developer himself in an email to Erik Krause* as "neither…clean [n]or appealing," just before he proposes a "totally off record" call to discuss his idea with Mr. Krause (exhibit 1). It involves the developer giving the land the City has gifted him right back to the City, along with additional property for an ADA-compliant sidewalk, as spelled out by Ms. Neukian at the hearing. This is a cheat. The City is allowed to count new easements toward the gross lot area, but only part of the easement is new. Astonishingly, a project condition imposed by the Planning Commission, at the suggestion of Ms. Pruett, was: "The applicant must apply for and complete the conditional vacation of the existing Street Easement…and record a new street easement…" (Decision Letter, Nov. 2, 2022), as though the City had no intention of enforcing the off-the-record scheme until the approval was appealed and it came to light.

At the Planning Commission hearing, Ms. Pruett noted that there were "further discussions" regarding the easement "that weren't shown in the [appellant's] slides." However, these "discussions" were nowhere to be found in the public record; they had

been redacted, despite the obvious public interest in learning how the City helped the developer circumvent the law.

The presentation provided detailed evidence that even though the City's Density Bonus Application *requires* "reasonable documentation" in support of incentives and waivers, in this case the City required none. Indeed, documentation was so inadequate that Ms. Pruett emailed Art Simonian *two weeks after the public hearing had closed*, stating: "Staff needs additional information about the project to make the waiver findings of fact" (email, June 15, 2022). Soliciting information after the public review process has concluded is illegal and a betrayal of public trust. This email not only documents the lengths the City goes to pander to developers but provides indisputable evidence that long after the Planning Hearing Officer hearing had concluded, the City was unable to make the requisite findings of fact based on submitted materials from the applicant and information in the record. Waivers *cannot* be granted without such findings per Glendale Municipal Code. There is no information in the public record to explain how the City made the required findings of fact after stating the findings of fact could not be made. This information had been redacted, despite the obvious public interest in knowing how the City manufactured the findings to approve the Application.

The presentation provided detailed evidence that the City is allowed to—and should—require more affordable units than the single one offered by the developer in exchange for 10 market-rate units. The project would demolish three units of identical size that rented for $1500 a month as of July 2020, when the current tenants were kicked out so that the apartments could be sold as vacant, which allows the developer to replace affordable units based on a formula rather than based on the renters' actual income (Cal. Gov. Code 65915 (c)(3)(B)(i)). Glendale's median household annual income from 2016-2020 was $70,596. $1,500 a month, or $18,000 a year, is less than 30% of that figure; in other words, these are "affordable dwellings" per the Department of Housing and Urban Development. And yet the City required the developer to provide *only one* affordable unit. Because Glendale has the Rental Rights Program, the City can require a developer who is demolishing "any dwelling unit…that is or was occupied by persons or families above lower income" to replace them with affordable units (Cal. Gov Code 65915(c)(3)(C). Attorneys for the City disputed the claim, stating that one of the units

was occupied by the owner, who apparently owns "several properties" in Glendale (Yvette Neukian, Planning Commission Hearing) but chose to live in an outdated one-bedroom unit that is under 600 square feet. The City's assertion is not supported; on the contrary, evidence in the record indicates that the unit was *not* owner occupied (Form 593, dated August 18, 2020). In that case, the City *must* require replacement of two units.

The presentation provided detailed evidence that the applicant had requested and received incentives far in excess of the requirements of Cal. Gov. Code 65915. Staff counted multiple variances from setbacks at the first, second, and third stories, and at the street, side, and interior, as *one* incentive. Ms. Neukian herself pointed out that the quantity of setbacks counted as one incentive contradicted City Council's explicit direction at a meeting on October 5, 2021. She declared that it is outside the City's power to remedy the policy by which it has mishandled incentives, because staff have not yet returned to Council with a proposal. However, Council already provided policy direction, and no revision to the Code is required. Indeed, Council's preferred policy is already laid out in the Glendale Municipal Code. Section 30.36.030 defines density bonus incentives as "a reduction in site development standards" and "Development Standard" as "a site or construction condition, including, but not limited to, a height limitation, *a* setback requirement, a floor area ratio…" (emphasis added). Staff have simply refused to implement either the policy stipulated in the Code or Council's express wishes.

E. Do you contend that the evidence before the board, commission or officer was insufficient or inadequate to support its action, determination or ruling or any specific finding in support thereof?

Yes. Commissioners could cite no evidence for their decision beyond perfunctory comments on the need for housing in Glendale. One stated that the project was acceptable despite the evidence presented because it is small. These are not relevant facts; the City should not condone unlawful and disreputable behavior based on the size of a project or the need for housing, which would be well served by a nine-unit project, especially if the City requests the affordable housing to which it is entitled.

F. Do you contend that you have new evidence of material facts not previously presented, which if considered should change the act, determination, or ruling?

It is not only possible but probable that new evidence will come to light when unlawfully redacted materials are produced, which may yield further details on the City's special treatment of the developer and LLC.