The Committee of 100
*Board of Direct**ors*** Hollywood, Florida 33019

February 1, 2022

City of Hollywood Commissioners 2600 Hollywood Boulevard Hollywood, Florida 33020-4807

Re:
PPP Project located at 1301 South Ocean Drive

Dear Mayor Levy and City Commissioners,

My name is Mark Butler and I am an attorney and a longtime resident of the City of Hollywood. I am writing to you on behalf of the Board of Directors of The Committee of 100. The Committee of 100 is a longstanding association of City Residents organized and committed to the furtherance of good governance in the City of Hollywood. The Board of Directors of The Committee of 100 has requested that I write to you to voice our objections to the Public Private Partnership (P3) being proposed for the community center located at 1301 South Ocean Drive.

Every Board Member of The Committee of 100 is opposed to this project for the following reasons:

- **Beachfr**ont or Park Property cannot be sold, or otherwise **disposed of, without a City-wide Referendum; The project at 1301 South Ocean Drive does not qualify as a public private partnership under section 255.065 of the Florida Statutes;** A United Stated District Co**urt has previously ruled that there was no** valid P3 project since the **99 year lease of City property to a developer to build private condominiums was not a valid** public purpose; The Warranty Deed, 75-131193, from Ma**ilman Development Corporation to the City of** Hollyw**ood, dated Decemb**er 31st 1974, specifical**ly restricts the land at 1301 south Ocean Drive to open space, park, recreati**on and other public and municipal purposes;

Each and everyone of the listed objections is clear on its face and is a legal hurdle that the City must address and contend with before this project can be properly brought before the

City Commission. Each of our objections will be discussed in more detail below.

BEACHFRONT OR PARK PROPERTY CANNOT BE SOLD, OR OTHERWISE DISPOSED OF, WITHOUT A CITY WIDE REFERENDUM

The City of Hollywood's Charter is clear, beach or beachfront, or park property cannot be sold, or otherwise disposed of, without a majority vote of the City's electors. Section 13.01 of the City Charter states the following:

(c) Notwithstanding the provisions of **this section,** any real property which is **beach or beachfront, a park**, a golf course or another recreational facility, which

the city proposes to sell or **to otherwise dispose of, must be approved by a** majority vote of the city's electors voting on such proposal.

*City of Hollywood, Fl., Charter, § 13.01 (2018) (*emphasis added). Statutory construction requires that specific language take precedence over general language. Here the provisions dealing with the sale of city property, section 13.01, clearly states that **"beach or beachfront, a park"** which the city proposes to sell **or "to otherwise dispose of,"** must be approved by the voters. There is no reason to put in the language **"to otherwise dis**pose ot" if it did not contemplate a very, very, long-term lease, which would essentially dispose of the property. S*ee,* C.J. Moyihan, *Introduction to the Law of Real Property* 63 (1962) (Long term lease is for practical purposes substantially **the same as fee si**mple ownership of real property). Otherwise, this particular **language in secti**on 13.01 would be superfluous since the other language in this section of the charter already covers "all sales."

The City's Charter language in section 13.02 which discusses the lease o**f city-owned property does not** apply in this in**stance. The language in s**ection 13.02 is general language applying to leases in general, it does not contain specific language regarding the disposition of a particular type of property as contemplated by section 13.01, which specifically **designates a part**icular type of property **enumerated as** "beach or beachfront, a park" property. Therefore, under the statutory construction laws of the **State of** Florida such as M*endenhall v. State,* 8 So. 3d 740 (Fla. 2010) an*d Rinker Materials v. City of North Miami,* 286 So. 2d 552 (Fla. 1973), the specific language of the charter covering a particular and specific subject **matt**er is

controlling o**ver a gene**ral provision covering the same and other subjects in general terms. *Mendenhall, 8* so. 3d at 741.

Additionally, Charter section 13.01 wa*s,* according to the adoption date listed in the City's Code of Municipal Ordinances, passed on February 3, 1984 under City Ordinance O-84-14. This Charter Section language was promulgated after the City of Hollywood acquired the property located at 1301 South Ocean Drive on December 31st 1974. The fact that the City's Charter Section is listed as 13.01 and the beachfront / Park Property is also designated as 1301 is no coincidence, It was clearly contemplated that a **sale, or to** otherwise dispose of this Beachfront / Park property through a 99 year lease, would have to be taken to the City's electors to vote on such a proposal. Therefore, before the City can move *f*orward with the disposition of this beachfront / park property through a 99 year lease, the proposal must be taken to **elect**ors of the City of Hollywood.?

THE **PROJECT AT 1301 SOUTH OCEA**N DRIVE DOES NOT QUALIFY AS A PUBLIC P**RIVATE PARTNERSHIP UNDER SECTION 255.065 OF THE FLORIDA STATUTES**

Section 255.065 sets out the operating limitations for public private partnerships for wh**ich every** municipality must adhere. The Critical language in section 255,065 js in two specific sections.

1 ***A*** **revie**w of the City's minutes from the 1984 Commission Meeting adopting Charter Section 13.01 will demons**trate** that the City contemplated that any "disposition" of this beachfront / park property by sale or 99 year lease would be taken to the electors of the City of Hollywood. The specific language, and enumerated headings (13.01 - 1301), were purposely placed there by the City Commission in anticipation of such an event as the 99 lease of this beachfront / park property. 2 Any argument that a referendum on the matter would cost the city money is disingenuous. A developer who is paying for many other items for this project, and would be making million of dollars on this project, would be required to pay for any costs of a referendum. It is abundantly clear that neither the City nor the developer would want this issue to go before the City electorate for the simple reason that they know it would not pass. Otherwise, **both the City and the developer would be more than happy to have a refere**ndum on this project.

(i) "Qualifying project" means:

1. A facility or project that se***rves a public purpose***, including, but not limited to,

any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other bujlding or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an **accepted public purpose o**r activity; (2) LEGISLATIE FINDINGS AD INTENT. – The Legislature finds that there is a public need for the construction or upgrade of facilities that are used p**redominately for public purposes** and that it is in the public's interest to provide for the construction or upgrade of such facilities.

Fla. Stat. § 255.065(1)1 & (2). (2021) (emphasis added). Clearly, any P3 project must be for a public purpose. Therefore, all the case law adopted in Florida, and in other jurisdictions, defining a public **purpose m**ust be considered in determining whether a P3 project qualifies as a "public purpose." Additionally, all throughout section 255.065 a key element is whether the projec**t serves a predomin**ately "public purpose." In this present case, building a large condominium, which will exclude the public at large, is essentially the predominant purpose and outweighs the publics' interest.

Public purpose is essentially a limitation on **the exercis**e of governmental power. As stated by the Florida Supreme Court in *Demeter Land Co. v. Florida Public Service Co*., 128 50.402,406 (1930):

A use to be public must be fixed and definite. It must be one in which the public, as such, has an interest, and the terms and manner of its enjoyment mut be within the control of the State, independent of the right of the private owner of the property appropriated to the use. The use of the property cannot be said to be public if it can be gainsaid, denied, or withdraw by the owner. **The public interest must dominate the private gain.**

*Id. a*t 406 (emphasis added). Clearly, the developer's private gain in the sale of 300 private condominium units will far outweigh the public's interest and the public's gain in this matter. Additionally, the private

3 A predominate or paramount public purpose requires a higher level of scrutiny than normal public purpose and, therefore, any benefits to a private party must by incidental. Predominate and paramount are synonyms of one another and are used interchangeably. *See,*

Marriam-We*bster Dictionary (*2021) for definitions and thesaurus. A A municipality can do a ground lease of public land for private purposes and this can be a valid public purpose provided that a power of the government is not used in furtherance, suc**h as the issuance of bonds, ex**penditure of public funds or exercise of eminent domain*, Jackson-Sha*w Co. v. *Aviation Authority,* 8 So. 3d 1076 (Fla. 2008), or that the legislature has not designated that a project or facility's public purpose must be the **predominate or** paramount purpose. The 1301 project is not a predominate public purpose because the private gain or use is not incidental and therefore when applying public purpose in this context, a higher scrutiny is applied by the co**urts when** reviewing public purpose, i.e. the public purpose must be the predominant purpose and the private gain or use must be incidental and this is triggered by: a) the City's acquisition of the subject property from the private property owner which could only occur by the City exercising its inherent power to grant the Summit additional density that the Summit did not have under the city's code at that time. Without using its power to grant the additional density, the City would not have acquired this property. It is a power granted to them like eminent domain. Therefore, the scrutiny for public purpose is higher; b) the property was specifically deed restricted in exchange for the City using its power to grant additional density and (from the Summit's point of view) to keep another building from going up and blocking the Summit's view; and c) a P3 project is different than a straight ground lease of city property, which

condominium owners can exclude the public at large because it is a private development. The private condominium own**ers can ex**clude the publicat large from any condominium amenities, as this is **a private,** NOT a public, condominium. Clearly, the private gain and private use outweighs the public use and public gain. The use of the park and **recreation c**enter do not dominate the private gain in this private condominium building and not one qualifying project in section 255.065 contemplates this type of a project for a P3 project, since the private gain would obviously dominate the public interest. Therefore, the project does not meet the requirements of section 255.065 and does not meet the public and municipal purposes of the deed restriction.

Under section 255,065(i)**1 "Qualifying projec**t" not one single instance of a qualifying project indicates **that a 30 s**tory condominium building, whose initial gains are realized by the develo**per, would qualify as** a qualifying project. In fact, a review of **each and every project cited in section** 255.065(0)1 indicates that each and every one of the en**umerated projects woul**d benefit the public in general and that any private gain or benefit from these projects would be incidental! Not one of these qualifying projects would support a private condominium project, where the condominium would be private, the gains would be **private a**nd substantial, and the public interest in the park and recreation facility would clearly be incidental. This P3 project fails as a qualifying project

under section 255.065 because it does NOT s**erve a** predominately public purpose but instead serves a predominately private purpose which is forbidden under Florida law. Therefore, the City Commission should reject this P3 project for this additional reason.

A UNITED **STATED DISTRICT COURT HAS PREVIOUSLY RULED THAT THERE WAS NO VALID P3 PROJECT** SINCE **THE 99 YEAR LEASE O**F CITY PROPERTY TO A DEVELOPER TO BUILD PRIVATE CONDOMINIUMS ***W*AS NOT A VALID PUBLIC PURPOSE**

The issue of whether it is a valid public purpose to give a 99-year lease from a City to a private developer to build private condominiums on public property under a public private partnership, h**as already been** decided by one Federal District Court. The United States District Court for the District of Columbia has resoundingly found that it is NOT a public purpose*. District of Columbia v. Dept. of Labor,* 34 F. Supp. 3d 172 (2014).

The key question in the District of Columbia case was whether the redevelopment of the Washington Convention Center site is a "public work" for purposes of the Federal Davis-Bacon Act which re**quires** federal minimum wages. The City entered into a series of **agreements to lease land to private developers to construct a mix**ed-use development that will **feature cond**ominium and apartment buildings, t*wo* office buildings, a hotel, retail establishments, and some publi**c open spaces**. Although the project will sit on a parcel of land owned by the District of Columbia, it will be entirely privately funded, occupied, and

can be used for private purposes, because a P3 project requires a predominate public purpose, Fla. Stat. § 255.065(i)(2), a s**tandard ground lease does not. Therefore, wh**en applying public purpose in this context, a higher scrutiny is applied by the courts when reviewing public purpose and the publ**ic purpose must be the predominant purpose and the private gain or use must b**e incidental. The 1301 project is not a valid predominate public purpose since the condominium project is not an incidental private gain but a substantial priv**ate gain out**weighing the public interest in this project.

maintained for the duration of the developers' ninety-nine year leases with the

city. The District Court found that this was not a public work or public purpose.

Public work as defined in the Columbia case is the same as public purpose or public use in the Florida case law. In fact, the Federal District Court discusses incidental public benefits, public private partnerships and **st**ates that the Government "did not intend the term "public work" to embrace a large-scale private development like CityCenterDC, which will be neither built nor used by the government or the public." *id.* at 174. The District Court made it clear that this P3 project was not a public project and succinctly stated:

At bottom, there are two signature elements of a public works project: public dollars going into the project, and a public facility coming out of the project. City-CenterDC has neither. It is being privately financed by for-profit entities, and it will result in the creation of condominiums, apartments, office space, retail space, and a hotel that will be privately **owned a**nd operated. The fact that the project is expected to give rise to incidental public **benefits-such as employm**ent opportunities, increased tax revenue, and even a certa**in** amount of open space-does not transform it into a public work; these are the goals of e*ve*ry urban development project. And the fact that the District has imposed certain requirements-even some at the fevel of particularity of the width of the sidewalks-does not alter the essence of the finished product. The ARB's reliance on these details ignores the big picture: that the project is not being built by th**e go**vernm**ent, for the gover**nment, or for the people the government repre**sents.**

The CityCenterDC development may be a Jaudable and exciting public-private partnership, and it may entail a more comprehensive level of urban planning and cooperation than the ordinary project, but the exercise will result in the creation of an **enclave of private facilities.** What is being constructed will be no more for the use and benefit of the population of the District than any other condominium or hotel: members of the general public will be welcome to enjoy the surrounding sidewalks, and possibly the lobby, and they can spend their dollars in the nearby shops and restaurants, but at the end of the day, they will not be p**ermitted to go upstair**s. City-CenterD**C is not a public** work of the District of Columbia, and the ARB's decision to the contrary cannot be sustained.

*Id. (*emphasis added). In fact, the District of Columbia P3 project is very similar to the present 1301 P3 project. Both were going to develop private condominiums, both were going to have public parking and public amenities, both had 99 year leases from the City to the private developer, both had private

facilities from which the public would be barred and in both cases the private gain far outweighed the public gain. It should be abundantly clear by now that this P3 project is not for a public purpose because the developer's interest far outweighs the public's interest. Therefore, the Hollywood City Commission should reject this P3 proposal.

The Warranty Deed, 75-131193, from Mailman Development Corporation to the City of Hollywood, specifically restricts **the land at 1301 south Ocean Drive to open space, park, recreation and other** public and municipal p**urposes**

The City received a warranty deed dated December 31st, 1974 conveying what is now known as the 1301 property. The warranty deed contained a specific deed restriction that the City is now attempting to **circumvent. It reads as follows:**

This conveyance is for open space, park, recreational and other public and municipal purposes.

Special Warranty Deed, 75-131193 (1974) (emphasis added). The restriction allows the property to be used for open space, park, recreational and other public and municipal purposes. A recreation center, public parking and a public beac**h access and area are** clearly public and municipal purposes. A private condominium building, from which the public can be denied access is clearly NOT a public or municipal **purpose.**

The Florida Supreme Court has held that public purpose and municipal p**urpose are synonymou**s. *Daytona Beach Racing v. Paul, 1*79 So. 2d 349 (Fla. 1965); Fla, Stat. 166.021(2) (2021). Therefore, all case law **ref**erring to public purpose in Florida applies equally to municipal purposes. Under Florida case law, public purposes are projects primarily and predominantly for the public benefit even though there may be some incidental private benefit. A condominium building which will be for private use, and where the public **can be denied access and fro**m which the private gain to the private developer is substantial, as c**ompared** to the incidental public benefit from the recreation center and parking, is clearly not a public purpose and therefore is not a municipal purpose. Consequently, the deed restriction to the city cannot be **circumvented by att**empting to apply a P3 project to mask the substantial condominium project as a municipal purpose.

A review of the Florida Constitution and the Florida Statutes that discuss municipal purpose makes it abundantly clear that a private condominium project, generating hundreds of millions of dollars for the private developer, and which can deny access to the public, is not a municipal purpose, even when the **develop**er includes public parking and a public rec**reation center. see,** *District of Columbia v. Dept. of Labor, 3*4 F. Supp. 3d 172 (2014); Art. VIII, § 2(b), Fla. Const., (enumerating municipal purposes); Fla. Stat. 166.021(2) (2021) *(*enumerating municipal purpose); Fla Stat. 166.411 (2021) (enumerating municipal purpose in eminent domain); Fla. Stat. 180.06 (2021) (enumerating municipal purposes for public works); Fla. Stat. 255.065 (enumerating municipal or public purpose for public private partnerships). In none of the Federal Case law, the Florida Case law or the Florida Sta**tutes is found any authorization for a massive** private condominium project, generating hundreds of millions of dollars for the private developer on public property which is deed restricted! The small amount of public parking, and the public recreation center, that will be built at this site are not the predominant public use. Instead, the predominant use is a private one, the private condominium project.

a. The City is reading the deed restriction to broadly. When reading the deed restriction, the
intention of the parties must be gleaned from a reading of the entire text, at the time the restriction was entered into, and not just one part of the text.

The City is reading the text of the deed restriction too broadly. Other courts that have had to interpret deed restrictions in similar situations have noted that when reading a deed restriction from a "private party," the intention of the pa**rties must be gleaned from a reading of the entire text and not just one part** of it. *White v. Metro Dade County,* 563 So. 2d 117 (Fla. 3d DCA 1990) case. The *White* case involves a deed restriction for land at Crandon Park that, part of it, was ultimately **turned into a** tennis complex. The courts found that the tennis complex was indeed a "park" (public) purpose, so building the tennis co**mplex**

didn't violate the deed restriction that it was to be essentially kept as a park. However, the District Court did find that the deed restriction was violated when they held the ten**nis tournament at the tennis** complex because it excluded the general public from what was supposed to be a public area. This is exactly what will happen when you put a

private condo on public deed restricted land, however, the exclusion will be permanent and not temporary as in W*hite.* More importantly the court's language was very clear, The District Court **stated** that it is the intention of the parties that is important and that intention is determined by a fair interpretation of the ENTIRE TEXT of the deed restriction. *White,* 563 So. 2d at 123. Additionally, this is to be construed more strictly when the property is conveyed by private entities. *Id.*

Consequently, when reading the 1301 deed restriction, the intention of the parties must be gleaned from **a reading of the entire text**, not just the section that **says "and other public and municipal purposes."** which the City is relying on to say they can do this project under a lower level of public purpose scrutiny. If you read the first part of the text, which sets out the intention of the parties that "this **conveyance is for open space, park, recreation**al" then you come away with the absolute impression that the intention of the parties, from reading the entire agreement, would never have contemplated a 30 story condo tower on public deed restricted property. This is especially true when the main agreement for the tr**ansfer of** the beach property to the City, was that the City was to give additional density to the Summit Towers, which the Summit could not have obtained but for the transfer of the beachfront property to the City. The deed restriction, and the intention of the parties, contemplated that there would never be another residential tower at this location. The specific wording in the deed restriction controls the general wording, considered at the time the parties entered into the deed restriction. The court in *Hanna v.*

*Sunrise Recreation, 9*4 So. 2d 597, 600 (Fla. 1957) states the correct principle:

The doctrine of ejusdem generis applies where the enumeration of specific things is followed by a more general word or phrase, and in such cases the general phrase is construed to refer to a thing of the same kind or species as included within the preceding limiting and more confining terms.

Hanna, 94 So. 2d at 600 (emphasis added). In other words, the specific wording in the deed restriction **are the words "open space, park, recreation" and the general words** or phrases are the "public **and municipal purposes" phr**ase. Under *Hanna* the specific words followed by the general phrase are supposed to refer to the same kind or species as the limiting words in the deed restriction. Therefore, "public and municipal purposes" in this case mean "open space, park and recreation" NOT private condo buildings. Also, since the intention of the parties is

paramount, then it becomes apparent that the **conveyan**ce does not allow for a private condo tower on this deed restricted property.

In construing restrictive covenants the question is primarily one of intention, and the fundamental rule is that the intention of the parties as shown by the agreement governs, being determined by a fair interpretation of the entire text of the covenant.

White, 563 So. 2d at 123 (emphasis added). Application of the doctrine of ejusdem generis and a reading of the entire agreement for the intention of the parties, at the time the agreement was entered into, demonstrates that the general language of "public and municipal purposes" must refer back to the specific language of "open space, parks, and recreation." Since the property was given in exchange for

more density at the Summit Condo Towers, it goes without saying that it was contemplated between the parties that the transferred land would NEVER revert to another condo tower on the deed restricted land, Any other interpretation of this deed restriction, given its background, is disingenuous and irrational. Therefore, the Board of Directors of the Committee of 100 respectfully requests that the Hollywood City Commission reject this P3 proposal for all the **reasons stated herein.**

In conclusion, the problem isn't that the Related Group wouldn't d**o an adequ**ate job on this P3 project, they would. The problem is that this is not a legal P3 project. Trying to work your w**ay around numerous** legal hurdles will only get the City in more costly litigation that it can ill afford to take on at this point in time. The Hollywood Homeowners' Associations are against this project, the beach residents are agalnst this project, the Hollywood City Residents are against this project, the Sierra Club of Broward County is against this project, the South Florida Wildlands Association is against this project, the Broward Soil and *W*ater Conservation District is against this project, the Hollywood Hills Civic Association is against this project, the Sun Sentinel Editorial Board is against this project, the League of Women Voters of Broward County are against this project, the Friends of Hollywood are against this project, the North Central Civic **Associ**ation is against this project, the Hollywood Beach Coalition is against this project, The Hollywood Council of Civic Associations are agalnst this project, the Hollywood Historical

Society is against this project, the Downtown Parkside Royal Polnciana Civic Association is against this project, the Park East Civic Association is against this project and last but not least, the Committee of 100 is firmly against this project. It is no wonder that the city would never send this to the city electorate to decide. Perhaps the **best** alternative is to demon**strate to eac**h and every Hollywood resident that is against this project, and each and every organization that is against this project, that we will have a public project that is predominated by the public use and not predominated by the private use and the private gain. The Hollywood Residents want a beach project that predominately serves the public interests and not one that will predominantly serve private Interests. For all the reasons and arguments stated herein, The Committee of 100 Board of Directors stands firmly against the 1301 P3 project. *We* respectfully request that the City Commission reject this proposal.

Your time and Immediate attention to this matter is appreciated. Thank **you.**

Sincerely,

Myron L. Bailey President - Comryjttee of 100

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*M*ark Butler, Esq. Attorney For the Board of Directors of The Committee of 100

CC: Committee of 100 Board of Directors