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March 17, 2023

Ms. Barbara J. Parker
City Attorney
Office of the City Attorney
One Frank H. Ogawa Plaza, 6th Floor
Oakland, CA 94612

via electronic mail

Re: Coliseum Connections, 805 71st Avenue
Appeal of City Determination under OMC 15.60.120E

Dear Ms. Parker:

Goldfarb & Lipman LLP represents Coliseum Transit Village One, LP (the "Owner"), the owner of the housing project located at 805 71st Avenue, and commonly known as "Coliseum Connections". This letter is written in response to your letter to the Owner dated February 13, 2023 (the "February 13 Letter"), and in response to the letter dated March 10, 2023 from Ms. Christina Mun to the Owner (the "March 10 Letter"). In addition, this letter constitutes the written request to appeal the City's determination that the Project's displaced tenants are entitled to relocation benefits under Section 15.60.040 of the Oakland Municipal Code (the "OMC") as set forth in the March 10 Letter.

The February 13 Letter stated that:

"The CCRP provides an exception related to natural disasters, including flooding, but the property owner has the burden of demonstrating that resultant 'damage was not caused by the acts or negligence of the property owner or by a preexisting condition in the building that violated applicable building, housing, fire, or other health and safety codes.' (OMC §15.60.040(B)(7).) This Office is not aware that Coliseum Transit Village One LP has demonstrated that this exception applies."

In response to the February 13 Letter, the Owner delivered a letter dated March 2, 2023 (the "Owner Response"), which provided, in significant detail, the factual background that evidenced that the emergency closure of the Project was solely due to "flooding" (which occurred in connection with the unusually adverse weather events on, and about, the beginning of the year), and that the Owner was exempt from any payment obligation pursuant to OMC §15.60.040(B)(7). The Owner Response also clearly demonstrated that "...the damage was not caused by the acts or negligence of the property owner or by a preexisting condition in the building that violated applicable building, housing, fire, or other health and safety codes."

Even though the Owner Response clearly documents that the Project's closure was caused by flooding, the March 10 Letter makes no reference to the Owner Response, nor does it attempt to challenge any of the facts established in the Owner Response. Most importantly, the March 10 Letter does not establish any fact, or even assert any allegation, that could refute that the Project was forced to close due to the flooding. Rather, the March 10 Letter cryptically states that "the owner has not demonstrated that any exception applies" even though the Owner Response clearly documented that an exception applies and that the Owner qualified for the exception. Based on the plain meaning of OMC §15.60.040(B)(7), which specifically references "flood" and the documented evidence that shows flooding occurred at the Project, the Owner has demonstrated that the Project is not subject to the Code Compliance Relocation Program which is intended to cover code violations ... "caused by the negligence, deferred maintenance, or the illegal use of the structure as a residence created or permitted by the property owner" (OMC §15.60.020(B)).

The Project's closure was due to the flooding that resulted from the unprecedented rainstorm. This causation is self-evident. Prior to the rainstorm, the Project was open and provided decent, safe, and sanitary housing. After the rainstorm, the Project was forced to closed due to the flooding in the Project's garage. Since opening in March 2019, the Project has never received any notice of violation of any City codes or applicable law. Had the rainstorm never occurred, and had the City's storm drain system not failed, as noted in the Owner Response, the Project would still be providing decent, safe, and sanitary housing. The rainstorm and its effects (including the flooding around the Project) were declared a "major disaster" by the Federal Emergency Management Agency.

If necessary, we can provide photographs showing the flooding that affected the Project. Attached to this letter as Exhibit A, is an email from the Owner's insurance company stating that there was an "...accumulation of water on the street and then the water moved to the interior of the building, this is considered a flood or surface water". Thus, it is clear that the Project was forced to close due to a flood that was not caused by, and could not be stopped by, the Owner.

The March 10 Letter states that the Owner is required to deposit the "full unpaid amount" in dispute. Here, though, there is no "unpaid amount". Rather, the Owner has already spent over \$1,164,000 to provide temporary housing to the Project's residents. This amount already exceeds the maximum amount payable to tenants forced to relocate due to a "Qualifying Relocation Event" (as defined in the OMC) even though the flooding that damaged the Project is not a "Qualifying Relocation Event". Stated differently, the Owner was not required to make any relocation payments, and the payments the Owner elected to make were greater than the payments required by the City's ordinance. It is important to note that the Owner paid for the residents' temporary housing even though many residents have failed to pay rent during the COVID-19 eviction moratorium, and no rent has

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been paid since February 2023. As noted in the Owner Response, if the Owner had not paid for the residents temporary housing, then the residents would have been forced to find, and pay for, their own housing which would defeat the public purpose of the OMC.

The Owner appreciates the City's assistance in addressing the urgent need to repair the Project by committing an additional \$300,000 loan to the Owner. In addition, the Owner appreciates the City's commitment to fund the temporary housing costs for the Project's residents and the other assistance of the City in addressing the needs of both the Project and the Project's displaced residents as the Owner has already expended all available funds for the residents' temporary housing. However, the City must recognize that the Owner is not subject to the payment obligations set forth in the OMC, and acknowledge the significant payments already made to keep the Project's residents in temporary housing. We respectfully disagree with the conclusion made in the March 10 letter, and request that the City reconsider its determination.

The Owner remains committed to repairing all damage caused by the flooding and re-opening the Project as soon as possible so that the Project's displaced residents can return to their homes.

Please contact me at 510-433-6602 or wdicamillo@goldfarblipman.com if you have any questions, or need any additional information regarding the Project. Thank you in advance for your time and attention to this important matter.

Sincerely,



William F. DiCamillo
Goldfarb & Lipman LLP

cc: Michael Johnson

EXHIBIT A

EMAIL FROM OWNER INSURANCE PROVIDER

From: **Howard, Jay** <JHOWARD7@travelers.com>
Date: Wed, Mar 15, 2023 at 4:59 PM
Subject: Claim Nbr: FXA0919 - Travelers Property Casualty Company of America
To: MJOHNSON@URBANCORELLC.COM <MJOHNSON@urbancorellc.com>

Mr. Johnson,

I wanted to let you know that Travelers Legal Counsel has completed their evaluation for this claim. Because these damages were caused by accumulation of water on the street and then the water moved to the interior of the building, this is considered a flood or surface water. The policy does not cover damages caused by flood or surface water.

That being said, Travelers has decided to extend the Sewer and Drain Backup Extension that has a limit of \$50,000.00 for coverage.

Where would you like the check for \$50,000.00 mailed to.

Thank you

Jay Howard | Technical Specialist | Claims Services

Travelers

PO Box 650293

Dallas, TX 75265-0293

W:707-339-7962 F: 987.654.3210

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If further assistance is required, please contact my manager Francene Carrillo at fcarrill@travelers.com

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