

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Preliminary Drafts of Assignment Language
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From: Phan, Johnny
Sent: Friday, February 12, 2021 10:54 AM
To: Miller, J. Gregg <gmler@coblenzlaw.com>
Subject: Preliminary Drafts of Assignment Language

Hi Gregg – See attached. City staff has not reviewed the proposed changes but want to keep things moving . . . Thanks. Johnny

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12.1 Transfers; Restriction on Transfer of District-Wide Utility System. Subject to Section 12.4, Developer shall have the right to sell, assign, convey, hypothecate, or otherwise transfer or alienate in whole or in part its rights, duties, obligations, or interests under this Agreement to any person or entity at any time during the term of this Agreement (a "Transfer") without the consent of City; provided, however, that in no event shall the obligations or benefits conferred upon Developer under this Agreement be at any time so Transferred except through a transfer of the associated, concomitant portion of the Project Site to which that obligation or benefit relates. In the event of a transfer of a portion of the Project Site, Developer shall have the right to Transfer its rights, duties, obligations or interests under this Agreement that are identified as Transferred with the transferred real property and to retain all rights, duties, obligations or interests other than those Transferred with the transferred real property. The foregoing notwithstanding, Developer shall not have the right to Transfer any property, facilities, rights, duties, obligations, or interests in any District-Wide Utility System or any portions thereof, including any utilidor.

12.2 Assignment and Assumption Agreement. Subject to the provisions and conditions of this Subsection, upon the Transfer of any or all of the rights, duties, obligations or interests under this Agreement and receipt by City of an assignment and assumption agreement as provided for herein, Developer may assign those obligations under this Agreement and the Approvals that: (a) are specified in the assignment and assumption agreement as having been Transferred with the transferred real property and assumed by the Transferee, or (b) necessarily relate to the development or redevelopment of improvements located on the transferred real property owned by the Transferee, and (c) are not otherwise specified in the assignment and assumption agreement as having been retained by Developer. Upon providing such assignment and assumption agreement to City, any default by a Transferee of any rights, duties, obligations or interests so Transferred and assumed by the Transferee shall not thereby constitute a default or breach by Developer with respect to the rights, duties, obligations or interests not Transferred.

Failure by a Transferee to deliver a written assignment and assumption agreement hereunder shall not affect the validity of a transfer by Developer of the portion of the Project Site so transferred to the Transferee, except that the assignment and assumption agreement shall only be effective and Transferee shall only obtain any rights for the transferred property pursuant to the terms of this Agreement at such time as the City has received a fully executed copy of the assignment and assumption agreement. The parties to an assignment and assumption agreement shall use its best efforts to coordinate with the City (including City attendance at meetings) to address in detail whether and how each obligation and right set forth in this Agreement shall be divided, allocated, assigned or otherwise Transferred, in whole or in part, between Developer and a Transferee; so as to avoid later confusion regarding what obligations and rights have and have not been Transferred. Developer shall reimburse City for the costs of coordination with the Developer and each potential Transferee, whether or not the coordination results in a transfer. Where a transfer of a portion of the Project Site has been completed Developer and said Transferee shall be jointly and severally liable and obligated to City, to fulfill any duty or obligation under this Agreement and under the other Approvals or Vested Elements where Developer and a Transferee do not agree as to which party is responsible (between Developer or a Transferee) for fulfilling or performing a duty or obligation under an assignment and assumption agreement. Where a transfer of a portion of the Project Site has been completed, and notwithstanding the

foregoing, City shall have the right to look to Developer, and Developer shall remain liable and obligated to City to fulfill any duty or obligation under this Agreement and under the other Approvals or Vested Elements where City has not received an assumption agreement Transferring a particular duty or obligation under this Agreement or under the Approvals or Vested Elements in question.

Provided that City has received an assignment and assumption agreement pursuant to Section 12.2 hereof, any Impact Fees, Mitigation Measures, Processing Fees, taxes or special assessments or school district fees, and any other costs, burdens, obligations, mitigation measures, and exactions of any kind to implement development of the Project pursuant to this Agreement (which City may impose or require only consistent with this Agreement) (collectively, "Additional Conditions") imposed by City as a condition to the approval of any development permit application for such development submitted or authorized to be submitted to City by any Transferee of any portion of the Project Site related to a portion of the Project Site owned by the Transferee shall be imposed entirely on the Transferee and shall not be imposed by City directly on other portions of the Project Site or the owners of such other portions; provided, however, that nothing in this Section precludes City from imposing upon a Transferee that applies or authorizes an application for a development project those costs, burdens, obligations, mitigation measures and exactions appropriate to such proposed development project and otherwise consistent with this Agreement. Further, in the event of any Transfer pursuant to Section 12 hereof, all fees, costs, burdens, obligations, exactions, or other requirements of any kind transferred to Transferee shall be completed prior to the issuance of any temporary certificate of occupancy for the Project Site Transferred.

12.3 Notice of Transfer. Developer shall, in accordance with the notice provisions, of Section [] and at least ten (10) days prior to the anticipated effective date of a proposed Transfer of any portion of the Project Site, provide written notice to the Director of PBCE of (a) the identity or identities and addresses of said Transferee(s), (b) the anticipated effective date of the Transfer of the portion of the Project Site at issue, and, (c) the right, title, or interest in the portion of the Project Site that is the subject of the proposed Transfer. A Transferor, including without limitation Developer, shall provide City with written notice of the effective date of a Transfer of any right, title or interest in any portion of the Project Site within ten (10) days from such effective date. Subject to Section 12.2 hereof, notwithstanding the foregoing, failure to provide either notice required under this Section 12.3 shall not, by itself, affect: (a) the validity of the Transfer at issue nor (b) the ability of a Transferee to provide an assignment and assumption agreement to City pursuant to the provisions of this Section.

12.4 Certain Limitations on Transfers of Office and Residential Development.
Notwithstanding the foregoing:

(A) With respect to office development, (1) Developer shall not have the right to Transfer to a Third Party portions of the Project Site designated for development of office space under the Approvals without first obtaining the City's written consent, which shall not be unreasonably withheld, conditioned or delayed, if such Transfer would be effective prior to the date on which Google LLC or any Google Affiliate has completed Construction and obtained at least a Temporary Certificate of Occupancy (TCO), for two million (2,000,000) or more gross square feet

of office development in the Project Site; and (2) at no time may the aggregate amount of gross square feet of potential office development on the portions of the Project Site Transferred to a Third Party(ies) exceed forty percent (40%) of the sum of (i) the amount of gross office square footage for which Google LLC or any Google Affiliate has then received a TCO and (ii) the amount of gross office square footage for which Commencement of Construction has then occurred but which has not then received a temporary certificate of occupancy. For the purposes of illustration only, if Google LLC or any Google Affiliate has received TCOs for two million (2,000,000) gross square feet of office development and Commencement of Construction has occurred on another one million (1,000,000) gross square feet of office development, then Transfers to Third Parties of portions of the Project Site intended for development of office space under the Approvals of up to one million two hundred thousand (1,200,000) gross square feet shall be allowed without City consent but otherwise subject to the provisions of this Article 12; and

(B) with respect to residential development, City's consent shall not be required for any Transfer so long as such Transfer is to (1) Lendlease or any Lendlease Affiliate or (2) a Qualified Developer.

12.5 Non-Transfers. The following shall not be considered a Transfer and shall not require the City's consent: (i) leases, subleases, licenses, , other agreements related to occupancy of completed structures; easements; or the granting of any mortgage or deed of trust or any foreclosure thereof or deed-in-lieu with respect thereto, (ii) any change, directly or indirectly, in the ownership interests of Google LLC or any Google Affiliate or any Transferee or any of their respective affiliates. provided that Google or a Google Affiliate controls at least 51% of the ownership interests, (iii) joint ventures in which Google LLC or any Google Affiliate controls at least 51% of the decision making authority; and (iv) any transfer of land or improvements to the City or the City's designee or to non-profits in satisfaction of obligations under this Agreement or the Approvals.

12.6 Reasonableness of Transfer Requirements. The parties agree that the restrictions and conditions on the right to assign any portion of the Project Site set forth in this Agreement are necessary and appropriate to assure the achievement of the objectives of the General Plan, the Approvals and this Agreement. Developer agrees to and accepts the restrictions herein set forth in this Article 12 as a material inducement to the City to enter into this Agreement.

12.7 City Administration. City shall administer the provisions of this Article 12 through the City Manager.

Defined Terms:

"Affiliate" means any entity that directly or indirectly owns, Controls, is Controlled by, or is under common Control with another entity..

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"Commence of Construction", "Commenced Construction" means commencement of the construction of vertical structural elements and improvements, excluding demolition, grading, excavation or foundation.

“Control” means: (i) the direct or indirect ownership of more than 50% of the profits or capital of another entity; (ii) the right to dictate the controlled entity’s decisions, subject to the rights of other owners; (iii) the right to appoint 50% or more of the controlled entity’s managers or directors.

“Google Affiliate” means any entity that directly or indirectly Controls, is Controlled by, or is under common Control by Google LLC, including (i) Alphabet, Inc.; (ii) Google, LLC, (iii) companies spun-off from Google LLC or Alphabet, Inc. and any of their Affiliates; and (iv) any entities related to Google LLC or Alphabet, Inc. as a result of merger, acquisition or by operation of law.

“Lendlease Affiliate” means any Affiliate of Lendlease.

“Qualified Developer” means any entity, or such entity’s project team, with experience developing projects of a similar scale in a similar urban environment and have completed a minimum of two (2) similar scale projects in an urban environment within the seven (7) year period preceding the effective date of the Transfer.

“Third Party” means any entity that is not a Google Affiliate or Lendlease Affiliate.

“Transferee” means any party that is the transferee in a Transfer.