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STEPHEN C. SCORDELIS  
C. DAVID SPENCE

TEN ALMADEN BOULEVARD  
ELEVENTH FLOOR  
SAN JOSE, CALIFORNIA 95113-2233

TELEPHONE: (408) 286-5800  
FACSIMILE: (408) 998-5388

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ALESHIA M. WHITE  
DENNIS CHIN  
ALEXANDRIA N. NGUYEN  
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FOUNDERS

SANFORD A. BERLINER (d. 2020)  
SAMUEL J. COHEN

OF COUNSEL

STEVEN L. HALLGRIMSON  
PEGGY L. SPRINGGAY  
FRANK R. UBHAUS  
RALPH J. SWANSON  
NANCY L. BRANDT

BRADLEY HEBERT  
ERIC D. CAPRON  
STUART B. SPENCER  
THOMAS P. MURPHY  
KATHRYN G. SPELMAN

November 20, 2023

**VIA FEDEX, FACSIMILE, and EMAIL**

*To Developer:*

Glen Loma Corporation  
7888 Wren Ave, Suite D-143  
Gilroy CA 95020  
Attn: John M. Filice  
Emails: [augie.dent@gmail.com](mailto:augie.dent@gmail.com)  
[Filicej@glenloma.com](mailto:Filicej@glenloma.com)  
Facsimile: 408-847-3380

*To Owners:*

c/o Glen Loma Corporation  
7888 Wren Ave, Suite D-143  
Gilroy CA 95020  
Attn: John M. Filice  
Emails: [augie.dent@gmail.com](mailto:augie.dent@gmail.com)  
[Filicej@glenloma.com](mailto:Filicej@glenloma.com)  
Facsimile: 408-847-3380

Re: Glen Loma Development Agreement  
Our File No.: 04706-099

Dear Sirs:

This letter is written in my capacity as City Attorney of the City of Gilroy with respect to that certain agreement entitled “Development Agreement Between City of Gilroy and Glen Loma Ranch,” dated November 21, 2005 (the “Development Agreement”) which concerns the development of the Glen Loma Ranch Project (the “Project”).

This letter constitutes a formal notice sent to the Developer and the Owners (collectively “Developer”), as defined in the Development Agreement, pursuant to Section 12.1 of the Development Agreement.

As you know, a development agreement is a contract between a city and a landowner/developer regarding the future development of the landowner’s property. The law

generally prevents one city council from restricting the police powers of future councils, so normally a developer who sets out to develop a project over a period of years cannot assume that the city's zoning and other regulations will stay the same during the development period. The Development Agreement legislation, Govt. Code Sec. 65864 et seq., changes that rule by allowing for a written contract between a city and an owner/developer that can give the owner/developer certainty regarding the future development of the project.

In order for such an agreement to be legally valid, there must be consideration for the contract. Since the owner/developer receives a vesting of rights that is otherwise not obtainable, they in turn must give the city consideration over and above whatever fees or other exactions would normally be required of them.

In this case, the Developer received many benefits under the Development Agreement. Among other benefits, these included the vested right to build out the Project in accordance with the adopted Specific Plan, consisting of 1693 dwelling units plus a commercial component. The Developer received "RDOs", i.e., the numerical entitlements for the units. In addition there was protection against changes in zoning or new development fees or exactions.

In turn, the Developer agreed in the Development Agreement to build a number of Public Improvements and dedicate them to the City, including some that formed the essential consideration to the City. Thus, the Developer agreed to construct and dedicate to the City two Public Parks (Development Agreement Sec. 4.4.1.1) and a Fire Station (Development Agreement Sec. 4.4.1.2). The total cost for the two Parks and the Fire Station was subject to a Cost Cap stated in November 2005 dollars subject to a construction cost index escalation (Development Agreement Sec. 4.4.1.3).

In particular, Section 4.4.1.2 of the Development Agreement states in part:

Fire Station. Approximately 1.5 acres of the Property, designated on the Site Plan as "Fire Station," shall be developed and constructed as a fire station to City Standards and design, it being the contemplation of the Parties that the improvements shall be generally similar in scope and size to the existing Sunrise fire station improvement. Developer shall, at Developer's sole expense design and improve the fire station site, including construction of the building thereon, and shall Dedicate the land and improvements to the City upon completion, all of which shall occur prior to the issuance of the building permit for the 1,000<sup>th</sup> residential unit of the Project."

The words "1,000<sup>th</sup> residential unit of the Project" were changed to read "1,100<sup>th</sup> residential unit of the Project" by the "Second Operating Memorandum to the Development Agreement – Glen Loma Ranch", executed as of October 5, 2018. The construction and dedication of the fire station was not tied to the development of any particular neighborhood in the Project.

On December 2, 2019, at a public meeting, the City Council approved a proposed design for the fire station and directed the City Administrator to issue a notice to proceed to Glen Loma Corporation to begin construction of the fire station. On January 17, 2020, City Administrator

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Gabe Gonzalez sent you a letter stating in part: “This letter serves as the formal notification by the City of Gilroy for the Glen Loma Ranch fire station construction notice to proceed.”

Our understanding is that you have not yet commenced construction. Furthermore, there have been numerous conversations concerning a possible downsizing of the ultimate scope of the Glen Loma project. In the course of such conversations, we understand that you have expressed the possibility that the Project may not seek a building permit for as many as 1,100 residential units.

We understand that representatives of the Developer have recently stated to the City Administrator, including at a meeting on Sept. 25, 2023, a position that if you do not seek as many as 1,100 residential building permits, then you will not have to build and dedicate the Sunrise fire station to the City as required by Section 4.4.1.2 of the Development Agreement. This is not a position that Glen Loma had ever taken until very recently. It has always been the understanding by both Parties that the fire station would be built by the Developer. It could be built at any time, but in any event had to be completed no later than the issuance of the building permit for the 1100<sup>th</sup> residential unit.

While the City has not received a formal statement of this position from you, this letter is to put you on notice that the City strongly disagrees with that position and would interpret it as an anticipatory repudiation of the Developer’s obligations under the Development Agreement. Legally speaking, it is clear that Section 4.4.1.2 expresses a promise on the part of the Developer to build and dedicate the fire station. The reference to the building permit for the 1,000<sup>th</sup> (or 1,100<sup>th</sup>) residential unit merely imposes an outside timing condition, but does not change the nature of the fundamental promise to build and dedicate the fire station.

We think the meaning of the Development Agreement is clear. Such language in legal contracts is normally intended by the parties (and thus is so interpreted by the courts) to be understood in the manner mentioned above; that is, as an unconditional promise with an outside timing condition. Such provisions are not interpreted as constituting a promise subject to a condition precedent (i.e., that if the 1,100<sup>th</sup> permit is never pulled the fire station need not be built at all).

This promise was part of the essential consideration given by the Developer to induce the City to enter into the Development Agreement. The promise was made 18 years ago, and could have been fulfilled by the Developer at any time. The City and Developer have had numerous discussions concerning the design and budget for the fire station, which, as noted above, were approved by the City Council almost four years ago.

A repudiation of that promised performance under the Development Agreement would not only violate the express terms of the Development Agreement but also the duty of good faith and fair dealing. This duty requires that neither party act so as to by its actions deny the other party the bargained-for benefits under a contract. It is implied by law into every contract, and is specifically included in the Development Agreement. See Section 14.11, “Covenant of Good Faith and Fair Dealing.” That section provides in part: “No Party shall do anything which shall have the

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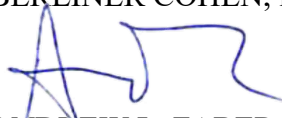
effect of harming or injuring the right of the other Party to receive the benefits of this Agreement...”

Accordingly, the City hereby demands that you provide reasonable assurance, in writing, within thirty days of the date of this notice, that you will in fact proceed expeditiously to construct and dedicate the fire station to the City. Providing such assurance is required by Section 14.12 of the Development Agreement. We will regard a failure to provide such assurance as constituting a potential event of default under the Development Agreement, in which case the City will then be free to avail itself of any remedies available at law or equity under the Development Agreement.

Please direct further communications concerning this matter to the undersigned.

Very truly yours,

BERLINER COHEN, LLP



ANDREW L. FABER

E-Mail: [andrew.faber@berliner.com](mailto:andrew.faber@berliner.com)

ALF

Cc: Jimmy Forbis, City Administrator