

April 1, 2024

Via Email

Rina Zhou
Associate Planner
City of Santa Cruz, Department of Planning
and Community Development
809 Center Street, Room 108
Santa Cruz, CA 95060

**Re: Development Agreement between the City of Santa Cruz and
RTP - Delaware Avenue LLC
Updated 2023 Annual Compliance Report / Delaware Addition**

Dear Ms. Zhou:

RTP-Delaware Avenue LLC, a Delaware limited liability company (the “Owner”), and the City of Santa Cruz (the “City”) entered into a Development Agreement (the “Agreement”) with respect to the Project known as the Delaware Addition. Sections 5.1 and 5.2 of the Agreement provide for an Annual Review of the Agreement upon the Planning Director’s written request of same. Section 6 of the Fifth Operating Memorandum stated that the Annual Review shall be “completed by the Owner and submitted before the end of January each year.”

On January 16, 2024, a report was submitted on behalf of the Owner as the 2023 Annual Compliance Report pursuant to Article V of the Agreement. Pursuant to your request on February 14, 2024, the report was amended as requested and resubmitted. We received no response to that submission. We are resubmitting and supplementing this report now to make clear that we are seeking guidance from the Planning Director as to whether the actions that have been taken and the actions that are planned to be taken and that are described in this report are in good faith substantial compliance with the material terms of the Agreement. All capitalized terms not otherwise defined herein shall be defined as set forth in the Agreement.

Article II - Term

Section 2.3 - Subsequent Amendments or Termination

As discussed further herein, pursuant to the Fourth Operating Memorandum the Term of the Agreement has been extended to April 4, 2027.

Article III - General Regulation of Development of Project

Section 3.3 - Applicable City Regulations

Any construction and improvement work done in 2023 was performed in compliance with all Construction Codes and Standards and with Existing City Regulations.

Section 3.4.2 - Design Review Process for Subdivision Parcels Other Than Initial Development

On December 14, 2021, the Delaware Addition Association approved the design permit package submitted for Lot 4 of Building Pad 4, thereby confirming compliance with the Design Guidelines. In 2022, the City issued the design permit and its approval and the building permit to the owner of Lot 4. The owner of Lot 4 has substantially completed construction and has obtained a temporary certificate of occupancy.

On September 12, 2023, the City issued the design permit and its approval for Phase II of the Project. The City is currently reviewing the building permits for this Phase II.

Section 3.6 - City Fees

As required by this section, the Owner has paid all City Application Fees due and chargeable in accordance with City Regulations. No requests for payment by the Owner of any fees are currently outstanding.

Section 3.13 - Operating Memoranda

The City and the Owner have executed a total of five (5) Operating Memoranda for the Project, as follows:

- First Operating Memorandum by letter, dated November 12, 2009;
- Second Operating Memorandum, dated March 26, 2012;
- Third Operating Memorandum, dated October 30, 2013;
- Fourth Operating Memorandum, dated February 12, 2014; and
- Fifth Operating Memorandum, dated September 18, 2017.

As of the date of this report, no additional Operating Memoranda are being negotiated.

Article IV - Criteria and Obligations to Development

Section 4.1 - Requirements for Approval of Project

In 2014, the Owner recorded the approved condominium plan for Business Condominiums in Phase 1A and the Supplemental Declaration for Phase 1A Business Condominiums. In 2017, the Owner recorded the Phase 1B Final Map and Phase 2 Final Map.

In 2021, the owner of Lot 6 submitted its condominium plan paperwork to the California Department of Real Estate, and the Department issued its approval.

On September 12, 2023, the City issued the design permit and its approval for Phase II of the Project. The City is currently reviewing the building permits for this Phase II.

No further activities with respect to project approval occurred in 2023.

Section 4.3 - Infrastructure

All lots within Phase 1A are fully developed, and, therefore, no additional infrastructure work is required.

In 2018, on-site Phase 1B infrastructure improvements were completed. In early 2019, the off-site Phase 1B infrastructure improvements were completed, and were subsequently approved by the City on May 21, 2019.

There were no infrastructure improvement projects in 2023.

Section 4.5 - Initial Development/Common Area

As noted above, all lots within Phase 1A are fully developed, and there has been no new construction within Phase 1A.

As noted above, the on-site and off-site Phase 1B work is complete, with the latter being completed in early 2019.

In 2020 the owner of Lot 6 began construction on its buildings under its own separate applications and management. Construction work is complete and the owner of Lot 6 has received City approval.

No Common Area construction activities occurred in 2023.

Section 4.6 - Traffic Mitigations

No traffic mitigations are required at this time per the Project Approvals.

Section 4.8 - Operation and Maintenance of Project

No new or modified Conditions of Approval, CC&Rs, or O&M Programs were negotiated or approved in 2023.

On December 19, 2023, we submitted, on behalf of the Owner, a draft amendment to the CC&Rs to the Planning Department with a request that the Planning Department review the amendment and confirm that it complies with the Project Approvals. As of the date of this report, we have not received feedback from the Planning Department with respect to this request. For the purposes of determining the Owner's good faith substantial compliance with the material terms of the Agreement, please proceed on the assumption that the amendment in the form submitted to the Planning Department has been recorded in the form submitted.

The Project Approvals require that if the Residential Flats are mapped and inclusionary units have not been offered for sale then until such time as these inclusionary units are offered for sale the Owner shall provide seven units of affordable rental housing that shall be made available for rent to lower income households. Pursuant to the recorded Affordable Housing Development Agreements that were negotiated with the Housing and Community Development Manager of the City of Santa Cruz Economic Development Office, four of these units are to be located in the building constructed on Lot 20 and three are to be located in the building constructed on Lot 21. The Owner has negotiated a master lease agreement with the Regents of the University of California (the "Regents"), pursuant to which the Regents will master lease both buildings constructed on Lots 20 and 21. For operational reasons, the Regents desires to consolidate all seven of the affordable housing units onto Lot 21. In connection with such consolidation, the Regents would make all of the units in the building on Lot 21 (i.e., 62 units) available as housing for the Regents' employees. For the purposes of determining the Owner's good faith substantial compliance with the material terms of the Agreement, please proceed on the assumption that such consolidation of the low income affordable units has taken place.

Article VI - Permitted Delays, Subsequent Laws

Section 6.1 - Force Majeure

As indicated in prior reports, the Great Recession significantly delayed the development of the Project. The Owner and the City entered into the Fourth Operating Memorandum to memorialize the extent of the Force Majeure delay. Pursuant to the Fourth Operating Memorandum, the following extensions have been granted: (1) pursuant to Section 6.1 of the Agreement, the deadline for performance of each party's obligations under the Agreement has been extended by 1,190 days; (2) pursuant to Section 2.2 of the Agreement, the Term has been extended by 1,190 days, expiring on April 4, 2027; and (3) pursuant to Section 3.8 of the Agreement, the term of each of the Project Approvals has been extended by 1,190 days.

Beginning in 2020, the Project was significantly impacted by the COVID-19 pandemic, which impacts included delays and restrictions in response to COVID-19 and other similar bases that were not and are not within the reasonable control of the Owner. These delays in performance constitute Force Majeure under the Agreement. The Owner will work with the City to memorialize the Force Majeure delays and extend various deadlines as a result thereof.

Article VII - Events of Default

Section 7.1 - Events of Default

As of the date of this report, there have been no notices of failure to perform any material term or provision amounting to an “Event of Default”.

Article IX - Transfers

There have been no Transfers of any right or interest under the Agreement.

There were no transfers of the Initial Development or Common Area in 2023.

Article X - Amendment and Termination

There have been no Amendments or Terminations of the Agreement, aside from the Operating Memoranda discussed above.

The Agreement provides at Section 5.3 that if you find that the Owner has in good faith substantially complied with the material terms of the Agreement, or if you do not respond within 30 days after delivery of this report to you, then the annual review is deemed concluded and the Owner will be deemed to be in good faith substantial compliance with the material terms of the Agreement. Should you find non-compliance or that this report is inadequate, we request written notice from you specifying such deficiency pursuant to Section 5.3, in which case we will provide you with further information. Please note that, pursuant to Section 5.4, any notice to the Owner of a determination of noncompliance by the Owner under the Agreement shall specify in reasonable detail the grounds for such noncompliance and all facts demonstrating such noncompliance or failure, so that the Owner may address the issues raised in the notice of noncompliance or failure on a point-by-point basis in any hearing held by the City Council pursuant to the Agreement. If you are unable to make a determination of whether the Owner is in substantial good faith compliance with the material terms of the Agreement and are seeking City Council’s interpretation of the requirements of the Agreement, your response should still specify the issues on which you are seeking guidance from the City Council on a point-by-point basis so that the Owner may address those issues when they are presented to the City Council. Also note that under the terms of the Agreement any report to the City Council must include the contentions of the Owner with respect to the issues raised in the report. Accordingly, we request that you provide us with a draft of such report before it is submitted to the City Council so that

we can confirm that it adequately reflects the Owner's contentions as to the issues raised in the report.

Thank you for your review and consideration of this report.

Very truly yours,



Anthony D. Ratner

cc: Douglas P. Ley
Kelly Crow
Stephen Maxon
Lee Butler, Planning Director