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## MEMORANDUM FOR ADDRESSEE

### Extell's December 21, 2007, Letter to the Department of City Planning

January 18, 2008

You have asked us to consider whether the letter from Paul D. Selver on behalf of Extell Development Corporation ("Extell") to David Karnovsky of the Department of City Planning ("City Planning") dated December 21, 2007, adequately responds to City Planning's inquiry dated December 11, 2007, regarding issues that Riverside South Planning Corporation ("RSPC") raised with respect to Extell's failure to comply with its sustainable development obligations. We conclude that that it does not.

#### **I. THE DATE OF EXTELL'S PURCHASE DOES NOT CHANGE ITS OBLIGATIONS TO THE CITY AND RSPC.**

Extell states that it purchased parcels G-N in June 2005, when construction of Building G was underway and plans for Buildings H and I had advanced to the design development phase. It claims that these buildings are "based on the work, including any procedural steps required as a condition to design and construction, of

Extell's predecessor in title". However, neither the date of purchase nor the status of development at that time change: (1) the fact that Extell is bound by the Restrictive Declaration, subject to which it purchased the parcels; or (2) the City's entitlement to periodic reports from Extell on environmental sustainability compliance pursuant to the City Planning Commission's report issued in connection with its October 26, 1992, approval of special permits for the Riverside South General Large Scale Development (C 920358 ZSM) (the "CPC Approval").

The Extell letter also disputes claims asserted by RSPC against Extell in the lawsuit filed on November 29, 2007. Although it refers to Extell's private obligations, City Planning's letter does not address this litigation. While RSPC shared information about the lawsuit and its legal basis with City Planning, the basis for City Planning's primary inquiry is the CPC Approval--not the private agreements between Extell's predecessor developer and RSPC.

That said, Extell misrepresents its private contractual obligations to RSPC. The sunset provision it quotes applies to Donald Trump's obligations to abide by the Design Guidelines and to work with RSPC on park development and maintenance. The agreement germane to Extell--i.e., to bind subsequent purchasers of Riverside South to develop the project in accordance with the Design Guidelines and to work with RSPC--was not capped, and Extell assumed its obligations to RSPC in the Assignment and Assumption of RSPC Letter Agreement dated November 3, 2005.<sup>1</sup>

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<sup>1</sup> Extell's present interpretation is belied by its behavior following its June 2005 purchase. It funded RSPC, and Extell architects corresponded with the organization. In December 2005, Extell met with RSPC to inform it that Building I would have more glass than permitted by the Guidelines. Donna Gargano of Extell promised to provide RSPC with plans for Building I.

**II. EXTELL HAS AN ONGOING OBLIGATION TO REPORT TO THE CITY ON ENVIRONMENTAL SUSTAINABILITY COMPLIANCE.**

Although Extell does not explicitly deny its obligation to report to the City on environmental sustainability compliance, its letter notes: (1) that the City did not raise questions regarding energy conservation when Extell obtained approval from the Riverside South Implementation Task Force (the “Task Force”) for permits for Buildings I and J; and (2) that it has found no records indicating that the City sought to consult regarding the design of buildings I, J or K.

Those claims are irrelevant to--and do not extinguish--Extell’s obligations. First, pursuant to the Restrictive Declaration, the Task Force monitors “the Development and the Open Space Improvements” and reviews and reports “concerning any related waste water treatment facility, affordable housing plans, park plans, and highway and street plans”. (Restrictive Decl. § 2.10(a), (c).) The Task Force is not responsible for oversight of sustainable development. Nor does the CPC Approval envision the applicant’s reporting to the Task Force.

Second, as the CPC Approval makes clear, the obligation to report on environmental sustainability lies with Extell and not the City:

“[T]he applicant shall submit to that Commissioner . . . a co-operative program by which the applicant shall identify methods of feasible energy conservation, with a payback fo five years, to be incorporated into design and construction of the project. The co-operative program shall include an agreed-upon process of periodic reports to the Commissioner of Telecommunications and Energy and the Borough president, local elected officials and two local community boards.”

(CPC Approval at 58 (emphasis added).)

### **III. CONCLUSION**

Because Extell's letter fails to recognize the ongoing character of its obligations both to the City and to RSPC and glosses over Extell's environmental sustainability compliance reporting obligations, we do not believe that the letter responds adequately to the concerns raised by City Planning.

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