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July 20, 2020

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RE: Willey Creek Mixed-Use Overlay District

Dear Mayor Bain, Members of Council and City Officials and Consultants,

We have had the opportunity to discuss the Willey Creek Mixed-Use Overlay District with Council, since its amendment, at the June 24th and July 15th Council meetings. After consultation with the Law Director, and my client, we have determined that it is in everyone's best interest to withdraw the Zoning Amendment pending before Council at this time. We do so upon reliance from the Law Director that the pending Ordinance 2019-33, which has a one year moratorium on issuing of permits and zoning approvals, will not prevent my client from submitting a new request to create the Overlay District for the Beech Brook, New Directions and Parker Properties.

We plan to immediately start work with Council and its consultants to make revisions to the most recent draft of the Zoning Amendment, largely based on George Smerigan's Memorandum of July 11, 2020 which we received after the Council meeting of July 15, 2020, as well as the comments and observations made by the Council Members during the July 15th meeting so that we can submit a new application to be reviewed by Council as soon as possible. Our goal is, and always has been, to effectively collaborate with Council and the residents. It has become obvious in our conversations with the City that our goal of being on the November 2020 ballot has become a major stumbling block in achieving that goal. Although this will be the third time we have delayed our timeline as a sign of

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good faith and willingness to work with the City, we believe that continued communication with Council is key to a successful public process and hope that our actions today will help to more effectively facilitate that communication in the future.

So that there is no misunderstanding, we were unaware that we were expected to present at the July 15th Special Council Meeting, and we assumed the agenda was reserved for presentation at the Public Hearing that was scheduled for July 29, 2020. We apologize if anyone misunderstood our intentions, we simply were not informed of the need to present on July 15, 2020.

As a result of withdrawing our Application for the Rezoning of the Mixed-Use Overlay District, the Public Hearing for July 29, 2020 should be cancelled. We do look forward to more public debate and public opportunities to discuss the Mixed-Use Overlay District which we will submit with further revisions to Council, as provided in Section 1260.04 of your Zoning Code in the next few months. Withdrawing the amendment eliminates the need for Council to act before August 5, 2020, in order to get the matter on the ballot in November 2020. It also gives ADG Willey Creek, LLC an opportunity to further refine the amendment, receive more input from the City's professional team, and Council, and to avoid the necessity for technical amendment changes in the future.

The remaining point, which I am sure Council and the City Officials will want to know, is what is our plan for our initiative petition to rezone the three (3) properties that was filed with the City on July 9, 2020. . At this time, we will not be withdrawing the petitions, but the continued hope is that we will be able to do so in a timely fashion so the matter will not have to be voted on by the residents in November. This will occur after we have had an opportunity to meet with the City's consultants and to receive further input from City Council and can get feedback on revisions that we will make to the Zoning Amendment. We have determined that the current practice of the Cuyahoga County Board of Elections is that withdrawal of the Petition, by written notice from the Petition Committee, can be made essentially at almost any time, even past the sixty (60) day deadline set forth in the Ohio Revised Code. This recently happened with Initiative Petitions in the City of Cleveland to amend its Charter, regarding the composition of City of Council Members. In that case, the petition committee agreed to withdraw the petitions shortly before the election, after the ballots had been printed, and the Board of Elections posted notices that the matter had been withdrawn and the initiative petition votes would not be counted.

We look forward to continuing to work with the City with the knowledge that we will be able to meet all of George Smerigan's comments and concerns and tighten up the Ordinance in ways that will be satisfactory not only to the Council Members but the residents of the City. Bryan Stone and myself remain open for comments, suggestions, questions, and explanations of the changes that were already made to the Ordinance. For example, George Smerigan did not understand why we lowered the height limits from 45' to 40' but increased the number of stories from 3 to 3.5 stories. I will be presenting George Smerigan and the Council with some elevations that will explain why that works better for the community in areas around the Willey Creek Riparian Corridor. We will be able to fortify issues regarding minimum requirements for non-residential uses, calculations of open space and we will provide further education to the City and the community on the wisdom of utilizing a

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mixed-use development, particularly at this site.

Thank you for your patience and willingness to consider this important matter.

Sincerely,

THRASHER, DINSMORE & DOLAN, LPA

A handwritten signature in blue ink, reading "Dale H. Markowitz". The signature is written in a cursive, flowing style with a large, stylized "D" and "M".

Dale H. Markowitz, Esq.

DHM/mp
Enc.