BRYAN CAVE LEIGHTON PAISNER LLP
SHARON Z. WEISS (State Bar No. 169446)
sharon.weiss@bclplaw.com
120 Broadway, Suite 300
Santa Monica, CA 90401-2386
Telephone: (310) 576-2100
Facsimile: (310) 576-2200

OLIVIA J. SCOTT (State Bar No. 329725)
olivia.scott3@bclplaw.com
1920 Main Street, Suite 1000
Irvine, CA 92614-7276
Telephone: (949) 223-7000
Facsimile: (949) 223-7100

JARRET P. HITCHINGS (*Pro Hac Vice*)
jarret.hitchings@bclplaw.com
One Wells Fargo Center
301 S. College Street, Suite 2150
Charlotte, NC 28202
Telephone (704) 749-8999
Facsimile: (704) 749-8990

Attorneys for Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re Treetop Development, LLC, Debtor	Case No. 2:22-bk-14165-BB Chapter 11 **SUPPLEMENT TO DEBTOR AND DEBTOR-IN-POSSESSION'S MOTION TO (I) MODIFY EXISTING DEBTOR-IN-POSSESSION FINANCING FACILITY AND (II) AMEND DEBTOR-IN-POSSESSION FINANCING BUDGET** **[Emergency Hearing Set By Court]** Date: August 3, 2023 Time: 10:30 a.m. Place: Courtroom 1539 (or via Zoom) 255 E. Temple Street Los Angeles, CA 90012

Treetop Development, LLC, as debtor and debtor-in-possession in the above-captioned chapter 11 case (the "Debtor"), by and through its undersigned counsel, respectfully submit this *Supplement* to its *Motion to (I) Modify Existing Debtor-in-Possession Financing Facility and (II) Amend Debtor-in-Possession Financing Budget* [Docket No. 268] (the "Modified DIP Motion).[1]

I. <u>**CRITICAL UPDATES SINCE THE HEARING ON JULY 27, 2023**</u>

The Court held a hearing on the Modified DIP Motion on July 27, 2023. Following that hearing, the Independent Manager learned for the first time that the City of Los Angeles (the "City") was threatening to expire the critical building permits that are the life blood of this case. If the permits are lost, the Property will lose substantial value, required the estate to spend several million dollars to restore the Property to its pre-development state, and the Debtor (or any future owner/developer) will need to obtain new permits based on wholly new plans which would cost at least $5 million. This estimate assumes that the Property could even be developed under present local code similar to its existing plans, which is unlikely given present-day development restrictions.

The City confirmed its threat on Friday, July 28, 2023. The estate and its professionals reacted quickly and were able to engage in meetings with the City. Importantly, as of late afternoon on July 31, 2023, the immediate threat to the permits has abated and the Debtor's professionals are working to confirm the current (and go-forward) status of the permits.

The potential of the City expiring the permits naturally raised alarms with all of the interested parties, including the DIP Lender. Absent a satisfactory resolution, the DIP Lender advised that it may move for immediate relief from stay to take control of the process. The Debtor provided updates to the interested parties on Friday, July 28, 2023, Saturday, July 29, 2023, and Monday, July 31, 2023 advising them of the City's position and the Debtor's proposed resolution plan. The Debtor is planning to schedule an all hands call on Tuesday, August 1, 2023 with all interested parties to provide a current update regarding the permits and the going forward strategy.

[1] Capitalized terms not otherwise defined herein are intended to have the meaning set forth in the Modified DIP Motion.

Besides utilizing the talents and connections of the estate's professionals to communicate with the City, the legal team began preparing a declaratory relief complaint and injunction motion to prohibit the City from expiring the permits under its inherent authorities pursuant to 11 U.S.C. § 105(a). *See San Clemente Ests. v. City of San Clemente*, 12 B.R. 209, 215–16 (Bankr. S.D. Cal. 1981) (recognizing that given the broad grant of power to the bankruptcy courts by Congress, a bankruptcy court has the power to issue both mandatory and prohibitory injunctions against a municipality where the acts sought to be restrained or compelled affect property of the estate).

A few hours before the Debtor filed its complaint and motion, the estate learned that the City agreed *not* to proceed to expire the Property's building permits, and agreed to issue one or more supplemental permits to extend the time for each of the building, retaining wall, and grading permits for the Property. This will preserve the value of the estate and permit construction of the current project design under the existing permits. It will also provide needed certainty as to the status and term of the Property's permits. The Debtor has requested that the City confirm in writing the extended expiration date of each permit. The Debtor has also requested confirmation that the Property has vested rights as to any subsequently adopted zoning ordinances (*i.e.*, the Property is not subject to more-restrictive development regulations adopted after the permits were first issued).

Relevant to the Modified DIP Motion, the Debtor understands that in order for the City to issue the supplemental permits, the Debtor will be required to submit to a permit review process and pay customary fees in connection therewith. The estate's general contractor, RJDB, estimates that the permit review process will take 7 to 10 days and we believe, but still confirming, the cost will be minimal related to the Supplemental Permits. Once the supplemental permits are issued and the existing permits extended, the Debtor understands that it will need to recommence construction at the Property within the 6 month of the re-issuance date. *See* LAMC 98.0602 (relying on the "commencement of work" definition in Informational Bulletin 2020-016). More specifically, the estate will be required to perform meaningful construction no later than December 2023. Again, the Debtor is still confirming this date.

II. **THE UPDATED PROPOSED AMENDED BUDGET**

The Debtor remains in negotiation with the DIP Lender with respect to the proposed final Amended DIP Budget. Among other things, given the City's actions and the steps the Debtor will need to take in order to ensure continuation of the permits – including the potential cost of the supplemental permit review process – the Amended DIP Budget will require further adjustment and likely increase. The Debtor expects to file that updated Amended DIP Budget as soon as it is finalized, and may determine to request a continuance of the August 3, 2023 hearing on the Modified DIP Motion to afford all parties-in-interest and the Court an opportunity to review that updated Amended DIP Budget. In the meantime, the respective rights of the Debtor and all parties-in-interest are expressly and fully reserved.

Dated: July 31, 2023

Respectfully submitted,

BRYAN CAVE LEIGHTON PAISNER LLP

/s/ Sharon Z. Weiss
Sharon Z. Weiss
Attorneys for Debtor-In-Possession