

July 31st, 2023

Dear Mr. Harris, Mr. Blitzer, and Mr. Adelman,

We write to you as The Shift, an international organization and movement dedicated to securing the human right to adequate housing globally. The Shift is headed by Leilani Farha, the former United Nations Special Rapporteur on the right to adequate housing (2014-2020) and works with individuals, governments, and the private sector to help ensure the right to housing is enjoyed by all.

We wish to express our serious concern regarding the proposed development of a new Philadelphia 76ers basketball arena in Philadelphia’s Fashion District, and in particular the impact that this may have on the city’s Chinatown and its community. Having spoken directly with community members who are impacted by the arena plans, we believe that this proposed development may be inconsistent with international human rights law. On this basis, we call upon you to take immediate action to protect the homes and livelihoods of Philadelphia’s Chinatown community, in line with your human rights responsibilities.

The facts in this matter, as we understand them, are:

Background

Philadelphia’s Chinatown (Chinatown) is located in Center City. Its history goes back over 150 years, when Chinese laundry workers established businesses in the area. Since that time, Chinatown has grown to become a vital space for people with Chinese and Asian ancestry, as well as for many others.

Today, Chinatown is home to around 5,000 people,¹ with close to 50% of its population being of Asian descent.² Many families have lived and worked in Chinatown for generations and the area also serves the many Asian Americans living in the Delaware Valley region and in surrounding states. In addition to homes, Chinatown is an important business hub, containing many successful restaurants, shops, factories, and markets, and is an essential place for social interaction, cultural and spiritual expression and celebration, and festivals which connect people to their communities and heritage.

¹ See, PolicyMap, ‘Community Profile of Chinatown’ online at: <https://www.documentcloud.org/documents/23798008-policymap-community-profile-of-chinatown>

² This far exceeds the state population of people of Asian descent, which stands at around 4%, See, PolicyMap, ‘Community Profile of Chinatown’ online at <https://www.documentcloud.org/documents/23798008-policymap-community-profile-of-chinatown>

The community has worked tirelessly to create the Chinatown which exists in Philadelphia today, establishing many vital services, including schools, churches, civic and arts organizations, seniors' housing, and affordable housing.

Testimony from members of the community describes Philadelphia's Chinatown as "irreplaceable", "thriving", "a reminder of home and family", "vibrant", "filled with culture", "a central place of celebration", "a precious cultural melting pot" and "one of the only places the Asian community can feel at home".

Those who live and work in, and visit, Chinatown describe it as a space where people of Asian descent can feel safe and secure, particularly in the face of increasing racism, discrimination, and violence perpetrated against people of Asian descent in the US.³ Community members spoken to by The Shift noted they came to Philadelphia's Chinatown to escape this discrimination and it is the only place where they feel they have a sense of belonging and where they can exist without fear and prejudice.

Struggles Against Development

Despite its clear importance, since the 1970s Philadelphia's Chinatown has, on numerous occasions, been threatened by large-scale development projects. Each time, the community has united and fought back to protect their homes, businesses, and livelihoods. In the 1970s they prevented an expressway from destroying Chinatown, though it was built with modifications and cut the community in two while leading to the demolition of a substantial amount of housing.⁴ The community was also impacted by a train tunnel project on its east side which razed two blocks of housing between 8th and 9th Streets,⁵ and a convention center on its west side that displaced 200 people.⁶ In the years since they have successfully battled a baseball stadium, a casino, and a prison.⁷ Despite the incredible and exhausting effort needed to protect the community from these developments, each time they have stood strong. These fights evidence the importance of Chinatown to the community, and their unswerving drive to preserve it for current and future generations. Chinatown's continued existence stands as proof of the community's resilience, resolve, and resistance to racial bias.

³ Kimmy Yam, 'Anti-Asian hate crimes increased 339 percent nationwide last year, report says' (January 31st, 2022) NBC News, online at: <https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-increased-339-percent-nationwide-last-year-repo-rcna14282>; See also, Nydia Han, 'The Virus of Hate: Covid's Impact on Asian Americans' (May 21st 2020) 6abc, online at: <https://6abc.com/coronavirus-backlash-covid-19-asian-american-hate-crimes/6201660/>

⁴ Aliya Uteuova, 'This Chinatown is divided by a freeway. A bold project could reunify the community' (May 5th, 2023) The Guardian, online at: <https://www.theguardian.com/us-news/2023/may/05/a-freeway-tore-through-this-chinatown-decades-ago-now-a-new-threat-looms>

⁵ Roseann Liu, 'Reclaiming Urban Space: The Growth of Philadelphia's Chinatown and the Establishment of a Community School' (May 2012) in Legacies (The Historical Society of Pennsylvania) Vol. 12, No. 1, page 21.

⁶ Claudia Lauer, 'Sudden arena plan angers, unnerves Philadelphia's Chinatown' (July 25th, 2022) AP News, online at: <https://apnews.com/article/philadelphia-76ers-nba-sports-b8b278d5439c9c4b6b552e950d45b1b2>

⁷ Claudia Lauer, 'Sudden arena plan angers, unnerves Philadelphia's Chinatown' (July 25th, 2022) AP News, online at: <https://apnews.com/article/philadelphia-76ers-nba-sports-b8b278d5439c9c4b6b552e950d45b1b2>

The proposed 76ers arena, however, presents yet another struggle for the survival of Philadelphia's Chinatown and its community.

The Proposed 76ers Arena Development

In July 2022, the 76ers announced their intention to construct a new arena in the City's Fashion District, an area in Central Philadelphia next to Chinatown, and relocate from their existing arena, the Wells Fargo Center.⁸ The proposed arena, known as 76 Place, will have capacity for 18,000 people and will be situated on part of the site of the current Fashion District Mall immediately abutting the south side of Chinatown.⁹ The project is expected to cost \$1.3bn, with the arena becoming operational in 2031.¹⁰ In order to facilitate the arena development, a development company, 76 Devcorp, has been established.¹¹

Despite 76 Place representing a major development project in the local area that will impact the lives of people living and working in Chinatown, the Chinatown community was not meaningfully involved in the plans from the outset. Many residents and business owners have noted they were given no notice of the plans prior to them being announced, with some first finding out about the proposed development through local television news. This came as a considerable shock to them, causing significant anxiety and stress, and gave the community no opportunity to express their concerns or wishes to the developers and ensure that the plans protected and promoted their long-standing interests. Initial engagement exercises instigated by 76 Devcorp consisted of invitation only closed-door meetings, rather than broad public consultations designed to elicit a wide range of perspectives.¹² After 5 months of waiting, the community itself called its own townhall meeting and invited the developers to attend, however it is understood that the only senior attendee was 76 Devcorp's Chief Diversity and Impact Officer. Community members who attended this townhall meeting noted that the representatives of the developers refused to answer all the questions they posed or hear all their concerns and ended up leaving early via a kitchen door.¹³ The community have noted that subsequent townhall meetings demonstrated the overwhelming opposition of the community to the project.

⁸ See, <https://www.nba.com/sixers/news/76ers-announce-new-arena-development>; The team had previously looked at alternative sites, including one at Penn's Landing, however they lost out on development rights to another bidder, see, Jacob Adelman, 'Rebuffed from Penn's Landing plan, Sixers may begin hunt for new home elsewhere in Philly' (September 16th, 2020) The Philadelphia Inquirer, online at: <https://www.inquirer.com/business/sixers-76ers-new-arena-sites-philadelphia-camden-penns-landing-20200916.html>

⁹ Michael Tanenbaum, 'Chinatown organization takes stand against 76ers' arena plan, 'disappointing' the team's developer' (March 16th, 2023) Philly Voice, online at: <https://www.phillyvoice.com/76ers-arena-chinatown-philadelphia-neighborhood-new-opposition/>

¹⁰ Michael Tanenbaum, 'Chinatown organization takes stand against 76ers' arena plan, 'disappointing' the team's developer' (March 16th, 2023) Philly Voice, online at: <https://www.phillyvoice.com/76ers-arena-chinatown-philadelphia-neighborhood-new-opposition/>

¹¹ <https://76place.com/>

¹² See, Letter of Xu Lin in 'Letters to the Editor' (December 8th, 2022) The Philadelphia Inquirer, online at: <https://www.inquirer.com/opinion/letters/letters-to-the-editor-dec-8-20221208.html>

¹³ Jordan Levy, 'Hands off Chinatown!' Hundreds question Sixers' commitment to community engagement at raucous meeting on arena proposal' (December 14th, 2020) Billy Penn at WHYY, online at: <https://billypenn.com/2022/12/14/chinatown-sixers-arena-community-meeting-pushback/>

76 Devcorp has requested the Philadelphia Chinatown Development Corporation (PCDC)¹⁴ create a steering committee to address community concerns regarding the arena project. This committee, which is made up of 13 Chinatown business owners, organizations, and residents at first wanted to update a PCDC study reviewing the economic and social conditions, population trends, and challenges faced in Chinatown with the intention of identifying whether the arena will benefit the community.¹⁵ However, with a survey by PCDC finding that the arena plans are opposed by 93% of Chinatown business owners, 94% of Chinatown residents, and 95% of Chinatown visitors,¹⁶ PCDC and the steering committee have emerged as firmly opposed to the arena.

Community members have noted that they feel that 76 Devcorp has not made a determined effort to provide them with regular and relevant updates regarding the development. They have stated that a large amount of the information they have obtained regarding the arena plans has been from advocates making Freedom of Information requests, rather than from voluntary disclosure. Aside from some color renderings, no details of what the arena will actually look like have been provided by the developers and information which has been given about the project has often been provided in English, and in English language publications.¹⁷ Resultantly, to the extent that they have been afforded information, local advocates say they have been forced to undertake educational activities in other languages to properly inform non-English-speaking community members about the plans.

As a result of the failure of 76 Devcorp or the 76ers to adequately engage with the Chinatown community, numerous local opposition groups have emerged to pushback against the development. The extent of these groups makes clear that there are large numbers of people across the city with concerns about this project and its effect on Chinatown. These groups have organized protests, marches, and petitions, all of which have demonstrated widespread community opposition and anger towards the arena plans, and served to highlight the negative impacts that the development will likely have on Chinatown's community.¹⁸

¹⁴ PCDC was established in 1966 and defines itself as a grass-roots, non-profit organization dedicated to addressing "the needs of urban renewal and affordable housing development" see, <https://chinatown-pcdc.org/mission/>

¹⁵ Joseph N. DiStefano, 'Chinatown groups unite to protect the neighborhood as Sixers plan a new arena' (December 1st, 2022) The Philadelphia Inquirer, online at: <https://www.inquirer.com/business/sixers-arena-development-chinatown-philadelphia-tsaio-20221201.html>

¹⁶ Dan Weckerly, 'Chinatown's Opinion of Montco Developer's City Center 76ers Arena: It's an Airball' (March 20th, 2023) Montco.Today, online at: <https://montco.today/2023/03/76-place-chinatown-reaction/>; Michael Tanenbaum, 'Chinatown organization takes stand against 76ers' arena plan, 'disappointing' the team's developer' (March 16th, 2023) Philly Voice, online at: <https://www.phillyvoice.com/76ers-arena-chinatown-philadelphia-neighborhood-new-opposition/>

¹⁷ It is noted that 76Place's website does provide translation into Chinese and interpreters were provided at the public meeting described above.

¹⁸ See, Jordan Levy, 'Thousands march and dance through Philly to protest the Sixers arena, chanting 'Hands off Chinatown'' (June 10th, 2023) Billy Penn at WHY, online at: <https://billypenn.com/2023/06/10/chinatown-march-anti-arena-sixers-protest-philadelphia/>; Asian Pacific Islander Political Alliance and Asian Americans United petition, available at: https://secure.everyaction.com/FM_OmzCimU-ITathsDHSqg2;

-----, 'Students rally against proposed 76ers arena in Chinatown' (March 3rd 2023) CBS News, online at: <https://www.cbsnews.com/philadelphia/news/students-rally-against-proposed-76ers-basketball-arena-in-philadelphia-chinatown/>

The Impact of the Arena Development

The 76 Place arena plans are already having a significant impact on the well-being of the Chinatown community. Community members have reported experiencing daily stress, anxiety, and trauma because of the plans, which they believe will destroy their community. They are afraid of losing their homes and businesses and of being forced away from one of the very few places where they feel safe. Many, including older persons who find themselves facing yet another development struggle, no longer have space to rest, having to instead dedicate the few hours they have outside of work and family duties to engaging in activism and advocacy to protect their space. Yet despite the impact that fighting the arena plans is having on their well-being, they have noted they have little choice but to persevere.

The Chinatown community has made it abundantly clear that the development of 76 Place will have a deeply negative impact on their community and that very few, if any, benefits are expected to be obtained. Construction is slated to last around 6 years, during which time local lives and livelihoods will be significantly impacted. Restauranters spoken with have been clear that the development will cause high levels of disruption and reduce the quality of the area to such an extent it will drive customers away, greatly reducing incomes. Many have stated that they have only just recovered from the impact of the Covid-19 pandemic and that they categorically do not expect their businesses to be able to last for the 6-year construction period. Similarly, 6 years of construction will make life extremely difficult for residents, subjecting them to noise, pollution, and construction traffic, and creating conditions where they will struggle to live in peace, security, and dignity. Concerns have particularly been raised regarding the impact of the construction on vulnerable members of the community. Older people, for example, are likely to be significantly affected by the noise and disruption caused by 6 years of construction. Community members have noted that the construction is likely to disturb seniors' peace and routines and prevent them from freely walking into Chinatown from seniors' housing located outside the area.

Once the construction is completed, those who are left in Chinatown will face yet more challenges. The community has emphasized that the existing road network would be unable to cope with the increased traffic an arena would bring.¹⁹ They have noted that the roads in and around Chinatown are narrow and that the Vine Street Expressway is already routinely congested and is unable to be adapted to allow for increased traffic due to geological constraints. They say the presence of the arena will, therefore, greatly increase traffic congestion in and around Chinatown, causing air and noise pollution, and potentially hampering emergency

¹⁹ It has been noted that the 76ers anticipate cutting arena attendance using automobiles to around 40%, down from the 85% of people who currently drive to the Wells Fargo Center for events. Yet the community has argued that this assertion is based on assumptions rather than firm evidence regarding fans' actual behaviour. Similarly, experts have noted the cultural challenges the team face in cutting car usage to such levels, with one stating that "[t]he preference for driving will only change minimally in a downtown arena, if at all." See, Jeff Gammage, 'Sixers say area around proposed Center City arena could handle thousands of cars on game days' (June 15th, 2023) The Philadelphia Inquirer, online at: <https://www.inquirer.com/real-estate/76ers-new-arena-chinatown-parking-capacity-20230615.html>

service access. This poses a threat to the health of the community,²⁰ as well as to the environment more generally.

The community have equally noted that the presence of the stadium has the potential to gentrify the area, increasing real estate values and rents, replacing affordable shops and restaurants with those catering for people on higher incomes, and making the area unaffordable for those who have lived and traded there for many years, many of whom are low-income. This, they say, will very likely lead to the mass displacement of one of the last remaining communities of color in Philadelphia's downtown core, pushing local people away from their homes, cultural and religious centers, educational establishments, and support networks to areas where they feel less safe, secure, and dignified. Such displacement, it is noted, will expose some community members to significant trauma and will also greatly limit the ability of members of the community to express their identity, with there being few other spaces where Asian cultures can be freely practiced in the city. In addition to facilitating the vital everyday interactions that enable people to maintain their culture and identity, the area plays host to numerous services, associations, activities, and events which allow people to express and feel connected with their cultures, and to pass these on to younger generations. Leaders of the Hoyu community, one in eight of whom live in Philadelphia, for instance, have noted that Chinatown is the only place in the United States they are able to practice their culture together, with the area hosting the Hoyu Cultural Festival each March.²¹ They have stated that losing Chinatown will place strain on their cultural identity and practices both locally and nationally.

That the development of the arena poses a threat to Chinatown and its community is not merely conjecture. There is clear precedent for the negative impact that sports stadiums, and their development, can have on communities of color in the United States. In Inglewood, California, the construction of the So-Fi Stadium, commenced in 2016 and completed in 2020, led to residents of historically Black and Latinx neighborhoods being driven from their homes due to the gentrifying impact of the arena driving up rents.²² Between 2015 and 2021 tenants living within 10 miles of the stadium saw their rents increase by an average of 22%, whilst those between 10-20 miles of the stadium saw a 12% increase.²³ Between 2016 and 2022 the average monthly rent of a one-bedroom apartment in Inglewood increased by

²⁰ For studies on the connection between traffic congestion, pollution, and health, see: Kai Zhang and Stuart Batterman, 'Air pollution and health risks due to vehicle traffic' (2013) *Sci Total Environ* 15, 307-316 and Jonathan I. Levy, Jonathan J. Buonocore, and Katherine von Stackelberg, 'Evaluation of the public health impacts of traffic congestion: a health risk assessment' (2010) *Environmental Health* 9, 65; Regarding the connection between traffic-related noise pollution and health outcomes, see European Environment Agency, 'Environmental Noise in Europe – 2020' EEA Report No. 22/2019, online at: <https://www.eea.europa.eu/publications/environmental-noise-in-europe>

²¹ Ximena Conde, 'Celebrating tradition — and a southeastern Chinese god's 1,189th birthday — in Philly' (March 31st, 2019) WHYY, online at: <https://whyy.org/articles/celebrating-tradition-and-a-southeastern-chinese-gods-1189th-birthday-in-philly/>

²² Jonny Coleman, 'The Struggle Against a Stadium's Construction Became a Battle for the Soul of Los Angeles' (September 10th, 2020) *The Appeal*, online at: <https://theappeal.org/sofi-stadium-gentrification-displacement-lennox-inglewood-tenants-union/>

²³ David Ramirez, 'Inglewood's Residents are Fleeing the Impact of SoFi Stadium' (Fall 2021) online at: <https://ascjcapstone.com/terms/fall-2021/djramire/>

\$650, almost double the average increase of a similar apartment in Los Angeles.²⁴ Businesses suffered as well. Some restaurants in the area have stated that rather than increasing their profits, the stadium has led them to lose money on game days as heavy traffic means online food orders are often cancelled due to long wait times.²⁵ Chinatowns, too, have been decimated by the construction of sports stadia. Washington DC’s Chinatown, for example, was almost entirely wiped out after a new arena was constructed in the area.²⁶ The arena, which opened in 1997, led to significant gentrification which brought “upmarket” restaurants and other businesses to the area, impacting long-standing Chinese restaurants. Rents in the area rose significantly, pricing local people out of their homes and leading to displacement.²⁷ In 1990, 2 in 3 residents of DC’s Chinatown were of Chinese heritage. By 2010, that number had decreased to 1 in 5.²⁸

With many more examples available, the impact of urban sports stadium developments on communities of color in the United States has led one sportswriter to described them as “strategic hamlets of gentrification and displacement” and “cathedrals to economic and racial apartheid.”²⁹

Community members are experts on life in Chinatown and on the well-being of themselves and their community. They have lived through numerous similar threats to their existence and have already experienced the impacts of development. Consequently, they deeply understand the implications that the 76 Place arena development will have on their lives and livelihoods and their expertise and perspectives must be afforded the weight they deserve. The community’s concerns are also supported by research which indicates that the economic benefits stadiums bring to cities rarely meets expectations and the “urban regeneration benefits of stadiums—while real—may not be large enough to justify the costs of gentrification and displacement.”³⁰ This risks associated with sports facility construction have also been highlighted by the United Nations Special Rapporteur on the right to housing, who noted, in the context of development for sporting mega-events, that

²⁴ Jack Flemming, ‘a crisis for renters’: Football sent Inglewood home prices and rents skyrocketing’ (February 9th, 2022) Los Angeles Times, online at: <https://www.latimes.com/business/story/2022-02-09/super-bowl-2022-inglewood-home-prices-rents-increase>

²⁵ David Ramirez, ‘Inglewood’s Residents are Fleeing the Impact of SoFi Stadium’ (Fall 2021) online at: <https://ascjcapstone.com/terms/fall-2021/djramire/>.

²⁶ The arena was originally known as the MCI Center, however it has since been renamed to the Capital One Arena. It is home to the Washington Capitals, the Washington Wizards, and the Georgetown University Men’s Basketball team. See, Shaobin Zheng, ‘The Rise and Fall of DC’s Chinatown’ (December 29th, 2017) AHA Today, online at:

<https://www.historians.org/research-and-publications/perspectives-on-history/december-2017/the-rise-and-fall-of-dcs-chinatown>; Yanan Wang, ‘D.C.’s Chinatown only has 300 Chinese Americans left, and they’re fighting to stay.’ (July 18th, 2015) The Washington Post, online at: https://www.washingtonpost.com/lifestyle/style/dcs-chinatown-has-only-300-chinese-americans-left--and-fighting-to-stay/2015/07/16/86d54e84-2191-11e5-bf41-c23f5d3face1_story.html

²⁷ Kristin Hunt, ‘With 76ers new stadium, is Philly’s Chinatown destined for same fate as Washington, D.C. neighborhood?’ (January 12th, 2023) Philly Voice, online at: <https://www.phillyvoice.com/76er-stadium-chinatown-washington-dc-philadelphia-capitol-one-arena/>

²⁸ Seth Kaplan, ‘After the arena came, the Asian population of Washington’s Chinatown shrank’ (March 23rd, 2023) CBS News, online at: <https://www.cbsnews.com/philadelphia/news/sixers-arena-philadelphia-chinatown-market-east-washington-dc/>

²⁹ Dave Zirin, ‘Apartheid Games: Baltimore Urban America, and Camden Yards’ (April 28th, 2015) The Nation, online at: <https://www.thenation.com/article/archive/apartheid-games-baltimore-urban-america-and-camden-yards/>

³⁰ John Lauer, Stadiums, Gentrification, and Displacement: A Comparative Overview of U.S. Cities in Timothy Kellison (ed.) Sports Stadiums and Environmental Justice (Routledge, Abingdon, 2023) 28

the gentrifying impacts these developments can lead to the “de facto expulsion” of residents from their local area.³¹

76 Devcorp and the 76ers have, however, refuted the suggestion that 76 Place will harm the local area and community, stating instead that the arena will revitalize the area, bringing many people in each week which will be good for local businesses. They have stated the plans will create large numbers of jobs and have vowed to provide particular support and assistance to Black-owned businesses. 76 Devcorp have also noted that many unions and industry bodies are in support of the stadium development, given the number of jobs that will be created because of it. Additionally, 76 Devcorp have suggested the proposals will actively protect Chinatown,³² supporting the local area and businesses through a legally binding community benefits agreement that would see them provide the surrounding neighborhoods, including Chinatown, with \$50m in support over 30 years.³³ Whilst there is a current lack of clarity over what this money would be utilized for, Mr. Adelman, it has been reported, has suggested it could include money for public safety, small businesses, and affordable housing.³⁴

Although it is essential that developers look to ensure positive outcomes for existing and future communities, community members have rejected the suggested benefits put forward by 76 Devcorp. They note that the assertions made by 76 Devcorp fail to address the environmental impacts they will face as a result of the development, and equally do not address how businesses are supposed to survive the 6-year construction period before the purported benefits of increased foot traffic come to fruition. Furthermore, they have strongly rejected the community benefits agreement proposition, noting that \$50m over 30 years equates to just \$1.6m per year for the entire community, as well as others surrounding the stadium, a figure that they say would not come close to making up for the harm that will be caused to them. Similarly, whilst the creation of business and employment opportunities is, of course, important, this should and must be done without engaging in projects that risk harming a racialized community.

Protecting Chinatown for Current and Future Generations

It is clear that 76 Place poses a serious risk to Philadelphia’s Chinatown, putting the health and well-being of the community in jeopardy, likely leading to significant levels of displacement due to gentrification, and threatening livelihoods and cultural lives. Any potential positive effects that might be derived from the arena development can never justify these outcomes.

³¹ United Nations Special Rapporteur on the right to adequate housing, Report on the Right to Adequate Housing in the context of Mega Events (December 18th, 2009) UN Doc A/HRC/13/20, para 19

³² David Gould and Greg Reaves, ‘New Sixers Arena Will Benefit All Philadelphians’ (September 14th, 2022) The Philadelphia Enquirer, online at: <https://www.inquirer.com/opinion/commentary/sixers-arena-philadelphia-fashion-district-chinatown-20220914.html>

³³ Aaron Moselle, ‘New details emerge about Sixers’ proposal for new arena’ (November 18th, 2022) WHYY, online at: <https://whyy.org/articles/new-details-emerge-about-sixers-proposal-for-new-arena/>

³⁴ Aaron Moselle, ‘New details emerge about Sixers’ proposal for new arena’ (November 18th, 2022) WHYY, online at: <https://whyy.org/articles/new-details-emerge-about-sixers-proposal-for-new-arena/>

Chinatown is a vital community. It is an essential part of the fabric of Philadelphia. It must be protected for both current and future generations. As noted above, those who know best how to protect Chinatown are the community themselves. They have been its guardians for generations and understand the social, economic, and cultural intricacies of the neighborhood. They also wholly understand the implications of its destruction. The community's voices must be listened to, and their concerns taken seriously.

Without wishing to prejudice the accuracy of the information set out above, we are deeply concerned that the proposed arena development plans, and the process by which these plans are being implemented, may be inconsistent with international human rights law. The 76 Place development project engages numerous human rights, including the right to adequate housing, the right to participate in cultural life, and the right to a healthy environment. We call upon you to give due consideration to the human rights of the Chinatown community and take urgent action to avoid interfering with the enjoyment of those rights.

As per General Comment No. 24 of the Committee of Economic, Social and Cultural Rights, business entities have human rights responsibilities under international human rights law, in particular to avoid interfering with the enjoyment of human rights.³⁵ Authoritative documents have established well-accepted norms relating to the behaviour of private actors with regards human rights. The United Nations Guiding Principles on Business and Human Rights,³⁶ for example, have been endorsed by the UN Human Rights Council and represent the global standard for all States and companies to prevent, mitigate, and address negative impacts on human rights caused by business activities. Under the UN Guiding Principles, businesses are required to, inter alia: "avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur" and must also "seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts" (Guiding Principle 13). Similarly, the Guiding Principles call on all corporate actors to undertake human rights due process in all their activities to ensure that these respect and fulfill human rights. In undertaking human rights due process, the UN Guiding Principles require businesses to engage in meaningful consultation with affected groups and other relevant stakeholders (Principle 17) and to conduct human rights impact assessments (Principle 19).

In the realization of human rights, particular care and attention must be afforded to certain groups who more commonly experience discrimination and negative impacts in the enjoyment of their rights. This includes members of racialized communities, who are protected by the Convention on the Elimination of All Forms of Racial Discrimination (CERD). CERD was ratified by the government of the United States on October 21st, 1994. Under CERD, States must ensure they eliminate racial discrimination in all areas, including

³⁵ United Nations Committee on Economic, Social, and Cultural Rights, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, UN Doc E/C.12/GC/24

³⁶ Guiding Principles on Business and Human Rights (2011) UN, available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

in relation to the right to housing (Art 5.e(iii)) and the right to equal participation in cultural activities (Art.5.e(vi)).

The human right to adequate housing is established in law under Article 11.1 of the International Covenant on Economic, Social and Cultural Rights, signed by the United States on October 5th, 1977. Under General Comment No. 4 of the Committee on Economic, Social and Cultural Rights, the right to adequate housing does not simply mean having a roof over one's head, but rather requires that all people have a home which provides them with peace, security, and dignity. For housing to meet human rights standards, it must, amongst other things, be affordable, well located, and ensure tenants have adequate security of tenure. In the context of international human rights law, affordability means that the cost of your housing must not be so high as to prevent the attainment of other human rights. Housing being well located requires it to be near necessary services and opportunities, and away from threats to human health and well-being. Security of tenure requires residents to be protected from displacement, eviction, and harassment.³⁷

The right to participate in cultural life is a widely recognized human right. It is included at Article 27 of the Universal Declaration of Human Rights and Article 15.1 of the International Covenant on Economic, Social and Cultural Rights. In its General Comment No. 21, the Committee on Economic, Social and Cultural Rights notes that to enable everyone to take part in cultural life, certain conditions must be met. These conditions include: 'availability', meaning cultural goods and centers must be open for all to enjoy; 'accessibility', meaning cultural centers must be within physical and financial reach for all, particularly for older persons, persons with disabilities, and people on low incomes; and 'acceptability', meaning cultural life should be formulated in a way that is acceptable to the community involved.³⁸ The Committee notes that whilst the duty to realize the right to participate in cultural life falls on States, businesses also have a responsibility to act in accordance with the right and to bring about its enjoyment.³⁹ The right to participate in cultural life has also been set out in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the UN General Assembly in 1991. Article 2 of the Declaration notes that national or ethnic, religious, and linguistic minorities should be able to "enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination."⁴⁰

Whilst we do not suggest that the 76ers or 76 Devcorp intend to discriminate against any individual or group in relation to the enjoyment of these or other human rights, indirect and

³⁷ See, Committee on Economic, Social and Cultural Rights, General Comment No 4 (The Right to Housing), 13th December 1991, UN Doc E/1991/23, para. 8

³⁸ See, Committee on Economic, Social and Cultural Rights, General Comment No 21 (The Right to Take Part in Cultural Life), 21st December 2009, UN Doc E/C.12.GC21, para. 16

³⁹ Committee on Economic, Social and Cultural Rights, General Comment No 21 (The Right to Take Part in Cultural Life), 21st December 2009, UN Doc E/C.12.GC21, para. 73

⁴⁰ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 2

unintentional discrimination are covered by CERD.⁴¹ In this regard, the Committee on the Elimination of Racial Discrimination has noted that when it is seeking to determine whether a particular action breaches the Convention, it will assess “whether that action has an unjustifiable disparate impact upon a group distinguished by race, color, descent, or national or ethnic origin.”⁴² It is, therefore, the discriminatory effect of the action that matters, rather than the intent behind it. From the information we have obtained, the development of 76 Place will impact the enjoyment of both the right to housing and the right to participate in cultural life in a way which particularly and disproportionately affects people of Asian heritage. This, we suggest, is unjustifiable on the basis that the need to protect the rights of the community outweighs the need for a new basketball arena, because the development could be located in an alternative area which does not impact a racialized community, and because the team could remain in its existing arena which has recently undergone significant upgrading. Consequently, the current development plans for 76 Place may be inconsistent with your human rights responsibilities under both CERD and the ICESCR.

Furthermore, as is noted above, the arena development plans also pose potential negative environmental impacts. In this regard, we draw your attention to the right to a healthy environment, which has been recognized as a standalone human right by the UN Human Rights Council and the UN General Assembly.⁴³ The General Assembly Resolution recognizing the right to a healthy environment calls upon business entities, amongst others, to implement policies “to scale up efforts to ensure a clean, healthy and sustainable environment for all.”⁴⁴ Given construction and the built environment account for a significant proportion of global greenhouse gas emissions,⁴⁵ it is clear that to protect the right to a healthy environment all unnecessary new construction activity should be halted. As the 76ers have an existing and recently renovated arena, we question whether it is necessary to undertake a major construction project that will generate significant operational and embodied carbon emissions, and potentially contribute to increased air pollution resulting from traffic congestion. Whilst it is commonly suggested the operational life of a basketball arena is 30-40 years,⁴⁶ this is based purely on economics and profitability, rather than operational usability. Around the world, many operational sports

⁴¹ Article 1 of the CERD defines “racial discrimination” as:

“any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” Commentary on this Article notes that the term “purpose or effect”, “refers to the nature of the violation not being dependent on whether the action was taken with discriminatory purpose or rather, unintentionally created a discriminatory impact or effect”, see, Gay McDougall, ‘The International Covenant on the Elimination of All Forms of Racial Discrimination’ (2021) UN, online at: https://legal.un.org/avl/pdf/ha/cerd/cerd_e.pdf, page 3

⁴² Committee on the Elimination of Racial Discrimination, General recommendation XIV on article 1, paragraph 1, of the Convention (1993), para 2

⁴³ see, UN General Assembly Resolution No. A/76/L.75 (26th July 2022) and UN Human Rights Council Resolution No. A/HRC/RES/48/13 (8th October 2021)

⁴⁴ UN General Assembly Resolution No. A/76/L.75 (26th July 2022)

⁴⁵ The buildings and construction sector generates 38% of total global carbon emissions. See, <https://www.cic.org.uk/policy-and-public-affairs/climate-change>; See also, ‘Pippa Neill, ‘Construction industry accounts for 38% of Co2 emissions’ (December 16th, 2020) The Environment Journal, online at: <https://environmentjournal.online/features/emissions-from-the-construction-industry-reach-highest-levels/>

⁴⁶ Aliya Uteuova, ‘This Chinatown is divided by a freeway. A bold project could reunify the community’ (May 5th, 2023) The Guardian, online at: <https://www.theguardian.com/us-news/2023/may/05/a-freeway-tore-through-this-chinatown-decades-ago-now-a-new-threat-looms>

stadiums have stood on the same site for close to, or over, one hundred years, receiving renovations and upgrading in situ where necessary.⁴⁷ Environmentally, we cannot sustain building brand new arenas every few decades and doing so is in stark contrast to the responsibility of businesses and States to realize the right to a healthy environment.

In addition to the potential inconsistency of the arena plans with the rights set out above, we also note with concern that despite the potential impacts the 76 Place development may have on the human rights of the community, they note they have not been afforded with the opportunity to meaningfully participate or engage with the plans. The principle of meaningful engagement is a central facet of international human rights law. It requires that whenever a development proposal is likely to impact a local community, they be able to participate in the decision-making process in an equitable and meaningful way from the very beginning. Meaningful engagement with impacted communities requires that they be provided with any information and resources they require to make an informed decision regarding a particular project. Information must be provided in a format that is accessible to the community, including being translated into any languages required. For engagement and participation to be meaningful, the community must be recognized as the experts on their own lives and communities, and their views be afforded due weight. Where the community disagrees with all or part of a development proposal these views should be taken into account and used to amend the proposal. Community members must be allowed to be active participants all the way through the development project, including in accountability and monitoring processes surrounding it. Without the support of all members of the community, no development plans should proceed in their proposed or existing form.

We note again our significant concern regarding the 76 Place arena plan and the disproportionate impact it will have on the lives, livelihoods, and cultural practices of the Asian American community who rely on Philadelphia's Chinatown. We call upon you to immediately halt the plans, to actively and equitably engage with the community, and to prioritize the realization of their human rights in all of your activities.

We remain at your disposal should you wish to discuss this matter further and look forward to hearing from you with regards to our concerns. We intend to publish this letter publicly on August 28th, 2023. Should we hear from you before this date we will publish both our letter and your response together upon receipt. If your response reaches us on or after August 28th, 2023, we will publish your response on the date of receipt.

Yours faithfully,

The Shift

⁴⁷ Examples include: Liverpool Football Club (UK) stadium Anfield, which was first built in 1884, Chelsea Football Club (UK) stadium Stamford Bridge, which was first built in 1877, and AC and Inter Milan (Italy) stadium San Siro, which first opened in 1926.

Leilani Farha

Per Leilani Farha, Global Director

Sam Freeman

Per Sam Freeman, Director of Legal Research and Advocacy