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April 23, 2024

Via Hand Delivery and Email

Mayor and Members of the Lake Elsinore City Council
Lake Elsinore City Hall
130 S Main Street
Lake Elsinore, CA 92530

Re: Extension of Time Request for the Project relative to a Tentative Tract Map No. 37922, Conditional Use Permit No. 2019-19, and Commercial Design Review No. 2019-27 (Lake and Mountain Commercial Center)

Dear Honorable Mayor and Members of the City Council:

You previously received a letter on April 11, 2024, from Lisa Kolieb, an attorney at the Akerman law firm, on behalf of the Applicant. Please be advised that Solomon, Saltsman & Jamieson (SSJ) and the undersigned have also been retained by the Applicant on this matter. Akerman and SSJ have been and will be working together on this matter for the benefit of the Applicant.

In addition to the information provided in that April 11, 2024, letter, the Applicant would like to take this opportunity to reiterate and confirm their ongoing commitment to the promises previously made to the community, particularly with regard to providing an Urgent Care or other Health Care Facility and Postal facility within the Project. The Applicant is aware that this area of the City will particularly benefit from such services. Please note that all prospective tenants have required grading to be completed prior to considering and signing Letters of Intent (LOI), and the Applicant has been and will continue to make their best effort to get this done in the timeliest fashion.

The Applicant shall also provide a direct line of communication (email, text, phone) with designated members of the Applicant that are empowered to, and will, keep the Councilmembers apprised of status and progress of the Project, as well as timely respond to requests and suggestions. In that regard the Applicant will establish monthly or quarterly check-ins with the Councilmembers in whichever way they would like so that going forward there is no question as to what is happening, and what will happen, at the Project. Perhaps designated meeting dates and times with Councilmember Johnson (in that this Project is in her District), and all other Councilmembers who wish periodic updates on such progress would be acceptable? That will be the Applicant's responsibility to make this happen going forward.

The Applicant, therefore, reiterates its request that the Council act to continue the consideration of that Resolution to a date in the future that will allow further time for the Applicant to ascertain and address with the community and Councilmembers any concerns, and to in all respects reconsider its March 12, 2024, vote to deny the extension of time.

Please also consider, in addition to the previously stated bases for its request, the following additional reasons:

- The Applicant has expended in excess of **\$4,000,000.00** so far in furtherance of the application over the last 5 or so years¹. Approximately **\$100,000** of that **4-million-dollar** investment in the community of Lake Elsinore was *voluntarily* spent in obtaining a full **Environmental Impact Report (EIR)** that was requested, not required, by the City.
 - That voluntary EIR took approximately 1 year to complete. That EIR extensively considered and evaluated the impact of this project on the traffic and the surrounding community members. It fully considered the impact that the 2 driveways on Lake would have to the health, safety, and welfare of travelers on that roadway. Indeed, a Traffic Engineer was retained and provided support for this EIR. The administrative record reflects and confirms these statements to be accurate. It was on that administrative record, which is still valid and applicable today, that this Council voted to deny a simple extension request.
- When the application for this extension was filed with the City, city staff was actively engaged in its further review, and during the 4.5 months that the City took to even get this application for extension to hearing the staff and this applicant continued to proceed further.
 - During this time City staff confirmed that, consistent with the Lake Elsinore Municipal Code, the Project continued to be compliant with current laws, standards, and policies. Therefore, there was and is no legal basis to deny the request for extension of time to allow the Applicant to realize the benefit of the over **\$4,000,000** and over 5 years of investment and effort to bring this already approved benefit to the community.
- As with most projects, delays were experienced due to problems in the supply chain for products necessary to proceed. Ordering and finalizing equipment incurred waiting periods for everything. For instance, electrical panel (switchgear) had a waiting time of 12-15 months alone. And that was but one example. There were many others. Despite these setbacks the Applicant diligently continued to move forward. Deposits were placed on required equipment.
- Concurrently the Applicant continued to secure tenants through brokers. Many potential tenants, however, were hesitant due to economic conditions due to COVID. The Applicant continued to persevere.
- This 6.07 acre site, long vacant, consists of 7 parcels with uneven terrain which

¹ Pre-application submissions were submitted May, 2019. At that time city staff convened and conferred and expressed support for the Project. Formal Applications for approval were then submitted in 2020, and due to COVID related delays, were not approved until January 25, 2022. Thereafter the Applicant continued to work diligently to implement the approvals.

required an unusually extensive amount of grading. The site required street and signal light improvements, and converting current sewer, water, gas, power utilities to underground. A new connection with Edison entailed a waiting period exceeding eight months. A retaining wall was needed for this site and the adjoining neighbors were contacted to arrange for this.


- The required land dedication consists of almost 15,000 square feet, and the value of that land dedication to the City, along with the infrastructure improvements to benefit the community, equates to almost 1 million dollars to be paid by, or given by, the Applicant to the City for the benefit of the community.
- The Applicant's team was in constant contact with City staff during this time. Indeed, on June 27, 2023, a grading plan, hydrology study, and Water Quality Management Plan was submitted to the City along with a check for \$30,194.54 in city fees. At the time of acceptance of, and hearing of, the application to extend these submissions were still being processed by the City.
- As you are aware, the Planning Department recommended approval of the extension request in its staff report and drafted the necessary Resolutions to approve the extension. What is before you at Tuesday evening's Council meeting are instead Resolutions stating conclusions 180 degrees in contradiction to the City's professional staff's findings, and unsupported by the facts.
- Despite extensive research therefor, this Applicant has been unable to identify even a single example of this Council ever previously voting to deny a reasonable and appropriate request for extension. This makes sense since no project of this nature and extent in this City in this environment can truly be expected to do all that needs to be done in a mere 2 years. It is, therefore, unreasonable, arbitrary, capricious, and discriminatory to deny this extension request to this Applicant.
- In that there were no facts in the open record of the proceedings before the Council that would even remotely justify a concern on progress, we have submitted a California Public Records Act (CPRA) request to the City Clerk and the Director of Planning for all communications of all types (texts, emails, voice mails, social media, correspondence of all types) with or between City Councilmembers and others relating to this project. Those CPRA requests were served on the City via email and U.S. Mail on April 17, 2024. As of the date of this letter the Applicant has not received any response to those CPRA requests, and without that information it would be inappropriate to proceed further to sign the Resolutions of denial of the extension request. For this reason, as well as all others, the Council is respectfully requested to continue this matter to a later date to allow all information to be exposed and considered before finalizing the City's decision to deny extension and thus cause extensive economic damages to this Applicant.

As you are aware, the Project entitlements referenced above were set to expire on Jan 25, 2024. Prior to the expiration, on October 31, 2023, the Applicant timely submitted a two-year extension of time request, which was its first extension request. A full 4.5 months later, on March 12, 2024, the City improvidently and without basis in law or upon any relevant or adequate findings of fact, voted to deny the extension; and, now a Resolution has been agendized for consideration by this Council in the meeting tomorrow night, April 23, 2024 to commemorate that vote.²

Please allow me to reiterate that by arbitrarily denying the extension request, the City Council has created a precedent and environment of uncertainty for developers, which will lead developers to question the viability and constructability of projects within the City. Denying the extension of entitlements in reasonable situations such as this is unfair, unjust, unreasonable, arbitrary, capricious, and not according to law.

Very truly yours,

SOLOMON SALTSMAN & JAMIESON


STEPHEN ALLEN JAMIESON_{1ab}
Licensed in California Michigan and Wisconsin

SAJ/ab

cc:
City Council Members
Jason Simpson, City Manager
Damaris Abraham, Community Development Director
Barbara Leibold, City Attorney
David Mann, Assistant City Attorney
Peter Buffa
Greg Hann, Empire Design Group
Peter Whittingham
Lisa Kolieb, Esq./ The Akerman Law Firm
Applicant

² In denying the request, the Council failed to, and cannot now, make legally and Constitutionally compliant legal conclusions or factual findings to support the denial of the extension request.



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April 11, 2024

VIA E-MAIL AND U.S. MAIL

Mayor and Members of the Lake Elsinore City Council
Lake Elsinore City Hall
130 S Main Street
Lake Elsinore, CA 92530

Re: Extension of Time Request for Tentative Tract Map No. 37922, Conditional Use Permit No. 2019-19, and Commercial Design Review No. 2019-27 (Lake and Mountain Commercial Center)

Dear Honorable Mayor and Members of the City Council:

This firm represents the owners (the "Applicant") of the proposed Lake and Mountain Commercial Center (the "Project"). The Project entitlements referenced above were set to expire on Jan 25, 2024. Prior to the expiration, on October 31, 2023, the Applicant timely submitted a two-year extension of time request, which was the first extension request. We are writing to request that the Council vote to reconsider its March 12, 2024 vote to deny the extension of time request referenced above for the Project and then to subsequently vote to approve the Applicant's extension request.. We request these actions for the following reasons:

- The Planning Department recommended approval of the extension request and neither the Planning Department nor the Applicant had any indication that a denial was likely; as a result, neither the Applicant nor the Planning Department was able to adequately respond to concerns that came up at the hearing.
- In denying the request, the Council failed to, and cannot, make legally adequate Code compliant statements or findings to support the denial of the extension request.
- The Project's entitlements have already been approved and, despite delays, the Applicant has been diligently moving forward with all submittals necessary to construct and operate the Project with reasonable reliance on its extension request being approved; the Applicant has expended significant resources in the form of time, effort and money (approximately \$4,000,000.00 so far) in furtherance of the application, which will be lost, and thus denying the extension request is unjust. This request for extension of time is not legally an

opportunity to simply reconsider and deny the Project itself. Yet that is clearly what has occurred here.

In addition, by denying the extension request, the City Council has created a precedent of uncertainty for developers, which will lead developers to question the viability and constructability of projects within the City. Particularly given the delays faced by many developers as a result of and subsequent to the COVID-19 pandemic, many projects throughout the state are facing delays and are not able to obtain building permits within 2 years of obtaining entitlements. Denying the extension of entitlements in reasonable situations such as this is unjust and unreasonable and creates a dangerous precedent.

THE PLANNING DEPARTMENT RECOMMENDED APPROVAL OF THE EXTENSION REQUEST AND APPLICANTS HAD THE REASONABLE EXPECTATION THAT THE EXTENSION REQUEST WOULD BE APPROVED.

As you are aware, the Planning Department recommended approval of the extension request in its staff report and drafted the necessary resolutions to approve the extension. While such extension requests are technically considered discretionary, it is extremely rare for this Council to deny such requests. Similar extension requests have been granted by the City for similar projects and in fact, we are not aware of a single project where the City has denied an extension. Accordingly, applicants have the reasonable expectation that extension requests will be granted by the City, unless circumstances have substantially changed since initial approval or if no progress has been made on the Project. According to the Lake Elsinore Municipal Code, the City Council was meant to approve the extension as long as the Project "complies with current laws, standards and policies." Here, the Applicant reasonably relied on precedent for approval of similar extension requests, since it had been diligently been processing the Project approvals with the City, and since the Project "complies with current laws, standards and policies."

Our clients were shocked at the Council's denial of their extension request. Had the Applicant or Planning Department been aware of the possibility that the Project entitlements would not be extended, they would have addressed any applicable concerns, as well as the delays that it faced, at the March 12th meeting. The Applicant had been diligently working on the Project since approval of the entitlements in 2022, expending significant sums of money in furtherance of the Project and submitting the necessary documentation to the City to obtain approval for construction of the Project. While the Applicant had experienced some delays, the Applicant had a reasonable expectation that their extension request would be approved. The Applicant has full intentions to construct and operate the Project.

AT THE HEARING, THE LEGALLY REQUIRED STATEMENTS OR FINDINGS WERE NOT MADE TO SUPPORT THE DENIAL, AND NO SUCH FACTUAL FINDINGS CAN BE MADE TO SUPPORT RESOLUTIONS OF DENIAL.

The legal standard for denial of the requests at issue here are solely whether the Project no longer complied "with current laws, standards and policies." Any other bases of denial is wholly reflective of impermissible bias, an abuse of discretion, and results in an unfair hearing. Yet, at the hearing, neither Planning staff nor any of the Councilmembers made any statements or findings to indicate that the Project no longer complied with current laws, standards and policies as would have been required to deny the extension. Nothing has changed in the Project that would make it so that it no longer complies "with the goals and objectives of the General Plan and the Zoning District in which the Project is located." Nor did the design change since the City approved it and agreed that it "complies with the design directives contained in the General Plan and all other applicable provisions of the Municipal Code.

According to the Lake Elsinore Municipal Code, the City Council was meant to approve the extension as long as the Project "complies with current laws, standards and policies." At the hearing, neither Planning staff nor any of the Councilmembers made any statements or findings to indicate that the Project no longer complies with current laws, standards and policies as would have been required to deny the extension.

THE APPLICANT HAS BEEN DILIGENTLY WORKING WITH THE CITY AND NEIGHBORS TO OBTAIN ALL NECESSARY APPROVALS TO CONSTRUCT AND OPERATE THE PROJECT, BUT HAS EXPERIENCED DELAYS.

By way of background, the Project site consists of an approximately 6.07-acre undeveloped area and is located at the northwest corner of Mountain Street and Lake Street (APNs: 389-030-012, 013, 014, 015, 016, 017, and 018). Before this site was purchased, a formal pre-application was submitted to the city on May 17, 2019. During this process, all city departments convened and conferred, following which they expressed their support for the Project. Additionally, they noted that the corner had remained vacant for a long time and that development was warranted in this particular corner. Upon receiving these comments, the Applicant proceeded to close escrow based on its good faith trust with the City.

A formal application was submitted in 2020, and due to COVID-related delays, the final entitlements for the Project were approved on January 25th, 2022. After the entitlements were approved, the Applicant needed to obtain quotes and bids to develop construction drawings and to bid out the Project. However, due to delays caused by the pandemic as well as significant price increases for services, equipment and materials, the Applicant experienced delays in finalizing its project plans and submitting all necessary documentation to the City. For instance, electrical panels (switchgear) had a waiting time of 12-15 months, while underground fuel tanks had a waiting period of 15 months. In addition, after each submittal to the City, the Applicant must wait for the submittal to be reviewed by the City, which impacts the timeline. Despite

these setbacks, the Applicant kept on moving forward. They put down deposits on the required equipment and kept on working diligently. They even signed a contract with the 76 Fuel Company for the gas station approved as part of the Project. In addition, efforts were also made to secure tenants through brokers. However, many tenants were hesitant due to economic conditions at the time affected by the pandemic.

Furthermore, this 6.07 acre site consists of 7 parcels with uneven terrain which required an unusual amount of grading. This site requires street and signal light improvement, and converting current sewer, water, gas, power utilities to underground. A new connection with Edison entailed a waiting period exceeding eight months. These factors collectively contributed to the complexities surrounding this Project. A retaining wall was also needed for this site and the adjoining neighbors were contacted to arrange for this.

At no point did the City indicate that there was any issue with the timeline related to processing the Project. The Applicant was diligently continuing working on the development of the Project given its complexities. Both the Architect (Gregory Hann with Empire Design Group) and Civil engineer were in constant communication with the City while they worked on addressing comments and concerns by the Planning Department. On June 27, 2023, a grading plan, hydrology study, and Water Quality Management Plan was submitted along with a check for \$30,195.54 for city processing fees. Both the architect and civil engineer have been working on concluding addressing comments and concerns by the City Planning Department.

The Applicant has invested a significant amount of time and money in furtherance of the development of this Project. The expenses amount to approximately \$4 million thus far, encompassing both acquisition and development costs, including professional fees. From the pre-application phase to the present, the Applicant has diligently met every requirement set forth by the city, paid all required fees and has continued to move forward with the development of the Project. It's worth noting that all other cities provide such extensions especially due to COVID delay.

Some comments indicate that there is confusion regarding the Applicant and its intention to operate the Project. The Applicant is a local business owner and plans to develop and operate the Project. The Applicant already operates similar developments in nearby jurisdictions and is an upstanding member of the community, as evidenced through the letter written by The National Exchange Club of Tustin, attached hereto as Exhibit A.

Comments made at the hearing indicate that there was disappointment regarding the lack of outreach by the Applicant within the community. In addition to meetings with individual community members, the Applicant attended several public community meetings, including one on July 29, 2021 at the Alberhill Ranch Community Clubhouse and others leading up to the January 2022 hearing, to discuss the Project. As a result of those meetings, additional conditions of approval were added to the Project approvals to address security and maintenance concerns. No additional outreach was required as part of the 2022 Project approvals. To the extent that

community members have questions or concerns about the Project, the Applicant would be happy to meet with them individually or set up a group meeting. Notwithstanding the Applicant's desire to continue to meet with the community now, those concerns about what did or did not happen in 2021 and 2022 is not a legally permissible basis to now deny this request for extension in 2024.

The Applicant respectfully contends that the denial of the extension by the City Council members, without a legally permissible basis, and despite full endorsement from the City Staff, is unjust and should be reconsidered.

Sincerely,



Lisa Kolieb
Partner

cc: Jason Simpson, City Manager
Damaris Abraham, Community Development Director
Barbara Leibold, City Attorney
David Mann, Assistant City Attorney
Applicant
Stephen Allen Jamieson, Esq./Solomon, Saltsman & Jamieson
Peter Buffa
Greg Hann, Empire Design Group

EXHIBIT A



April 07,2024

To Whom It May Concern:

My name is Mrs. Randi Bernstein. I am the wife of former two- time Mayor Dr. Allan Bernstein of the city of Tustin, California. I am also the President for the last ten years of The Exchange Club of Tustin, 501C3 nonprofit. I am writing to offer a glowing reference for Didar “Danny” Singh as a local business owner (Tustin Field Gas and Food) in Tustin, a philanthropist and citizen. Didar is a well known and well liked local merchant. He has also supported our club each year for financial donations to help homeless veterans and homeless children in this community. Since 2015, he has been a devoted donor to our veterans and any other project we undertook.

Danny is an asset to any project he is part of. We would endorse his involvement in any endeavor. He would be an asset to any community he is involved with.

Please do not hesitate to contact me with any questions you may have.

Randi Bernstein, President
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