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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 years<sup>1</sup>. 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

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<sup>1</sup> 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.<sup>2</sup>

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<sub>1ab</sub>  
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

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<sup>2</sup> 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.