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May 9, 2022

Planning Commission
City of Riverside
c/o Frances Andrade
3900 Main Street
Riverside, CA 92522

FAndrade@riversideca.gov

Re: Objections to Case No. PR-2021-000897 (the "Project")
Location: 19260 Van Buren Blvd. (the "Property")
APN: 284-020-011
Applicant: Costanzo Investments, LLC (the "Applicant")
Agenda Item No. 3

Dear Members of the Planning Commission:

Community Legal Advisors Inc. represents the Orangecrest Hills Commercial Owners Association ("**Association**"), which manages and maintains the parking areas of the shopping center in which the Property is located. We are submitting this letter on behalf of the Association's Board of Directors ("**Board**") in opposition to the proposed Project to construct a 3,740 square-foot Panera's drive-thru restaurant at the Property.

As explained below, the City is seeking to impose a Condition of Approval on this Project that requires revisions to an existing covenant providing for mutual reciprocal access, parking and utilities throughout all parcels in the subject shopping center; however, such revisions can only be made with the consent of the owners of all the parcels in the shopping center. Neither the City nor the Applicant has reached out to the owners (including the Association) requesting such consent. Therefore, it would be premature for the Planning Commission to consider approving the proposed Project. Since the City does not have the authority to revise the recorded covenant without the consent of all the owners of the shopping center, we respectfully request that the Planning Commission deny the proposed Project.

Summary of City Covenant. The area where the Applicant seeks to construct a new restaurant is defined as part of the Association's Common Area pursuant to a number of recorded documents, including the Covenant and Agreement Establishing Easements for Ingress, Egress, Parking and Utilities (the "**City Covenant**"). The City specifically required that the City Covenant be recorded back in 2002 as a condition of the City's approval of Parcel Map 30369, in which the Property is located. A copy of the City Covenant is attached for your reference.

We call your attention to the following provisions of the City Covenant:

- Recital 1 of the City Covenant defines "Property" as Parcels 1 through 9 of Parcel Map 30369. The subject Property is Parcel 1 of Parcel Map 30369. Please note that the Association is the record owner of Parcel 7 of Parcel Map 30369.
- Recital 3 of the City Covenant explains that the Covenant was required by the City as a condition to the approval of Case No. PM 30369 "to assure mutual access for ingress, egress, parking and/or utilities across all parcels."

- Section 1 on the second page of the City Covenant defines “Common Area” as “all the area of Parcels 1 through 9 of the Property other than building areas.” *This means that the parking area where the Applicant seeks to construct a new drive-thru restaurant is part of the defined Common Area.*
- Section 2 of the City Covenant established “nonexclusive easements for parking, vehicular and pedestrian ingress and egress and underground utilities over, along, under and across the Common Areas of each Parcel of the Property.” *This means that easements already exist over the parking area where the Applicant seeks to construct a new drive-thru restaurant.*
- Section 3 of the City Covenant states, “No walls, fences or barriers of any kind shall be constructed, installed, erected or maintained on the Common Area, or any portion thereof, by Owner, tenant or person which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including without limitations, of pedestrians and vehicular traffic...” *The construction of a new restaurant would eliminate part of the Common Area and effectively be a barrier that would prevent or impair the exercise of the established parking easements, and impair free access and movement over such areas.*
- Section 7 establishes that “each of the provisions hereof shall operate as covenants running with the land for the benefit of the Property and each Parcel thereof and shall inure to the benefit of all Owners thereof ... and shall apply to and bind each successive Owner of each Parcel...”

In summary, the City Covenant establishes clear parking and access easements over the parking area where the Applicant seeks to construct a new building. Significantly, Section 9 of the City Covenant sets forth that it can only be amended with the written consent of all the owners: *“Subject to the prior written approval of the City and Declarant, any provision contained herein, may be terminated, modified or amended as to all of the Property or any portion thereof, upon the written consent of all the Owners of the Property.”* As noted above, the term “Property” is defined to include each of Parcels 1 through 9 of Parcel Map 30369. Therefore, to be amended, the City Covenant requires the approval of the owners of each of Parcels 1 through 9, including the Association as the owner of Parcel 7.

The City Does Not Have Authority to Amend the City Covenant Without Unanimous Consent of all Owners.

Staff’s Memorandum to the Planning Commission notes that our firm already submitted a comment letter opposing to the project pertaining to the City Covenant. In response, Staff states, “A Condition of Approval has been added requiring a revised Covenant and Agreements to be recorded with the new Parcel Map that would allow for mutual access for ingress, egress, parking and utilities. Further, the proposed Conditions of Approval state, “The applicant shall prepare and record a revised Covenant and Agreement, subject to approval of the Planning Division and City Attorney’s Office. The Covenant shall contain ... Provisions for mutual reciprocal access, parking and utilities throughout all parcels contained in the commercial center, including the newly created parcels under PM-38289.”

However, Staff’s Memorandum and proposed Conditions of Approval appear to ignore the requirements that must be met to amend or revise the City Covenant discussed above. Neither the City nor the applicant can unilaterally amend or revise the City Covenant. Section 9 of the City Covenant is very clear that each of the Owners of Parcels 1 through 9 must agree to amend the City Covenant. Likewise, to the extent that the City seeks to require a new covenant or agreement on all of the parcels in the shopping center, no such covenant can be recorded against all parcels in the shopping center without the approval of all of the owners of the 9 parcels that make up the shopping center.

The Proposed Project Relies on Parking from Neighboring Parcels, Reinforcing the Need to Obtain Consent of the Association and the Neighbors.

Next, we understand that the Applicant has requested that the City grant a mixed-use parking credit to reduce the total number of required spaces by up to 15 percent. In accordance with Riverside Municipal Code Section 19.580.060(C), this 15% reduction requires a “shared parking analysis specifying the proposed mix of uses and the operating characteristics of each use type, including hours of operation, typical capacity, and parking demand generation.” It is also important to consider that the purpose of the City’s parking ordinance includes to “ensure that parking areas are designed and operate in a compatible manner with surrounding land uses” and that parking demands “will be met without adversely affecting other nearby land uses” (RMC, § 19.580.010).

We understand that the City received a Parking Analysis Memorandum dated February 10, 2022, prepared by LSA. The entire shared parking analysis is based on the fact that the proposed Project and Property are located within an existing commercial shopping center. The use of a shared parking analysis means that the proposed Project is inherently relying on the use of parking spaces from neighboring parcels. This further calls into question the lack of authority for the City or the Applicant to unilaterally amend the City Covenant discussed above. The shared parking analysis is incomplete without consideration of the restrictions and easement rights contained in the City Covenant as well as the Operation and Easement Agreement that we previously sent the City.

Summary. The proposed Project requests a 15% parking variance based on a shared parking analysis. The Project is located within an existing shopping center with established parking and access easements. The Project would violate the terms of a number of recorded documents, including the City Covenant discussed above, because it would constitute an effective barrier over the Association-maintained parking areas, and interfere with well-established parking and access easements. As explained above, the City Covenant cannot be amended without the consent of all of the owners within the shopping center, and the City cannot impose any new type of easements over the shopping center without consent of all owners. The City’s proposed Conditions of Approval to revise the City Covenant are inappropriate, because the City and the Applicant cannot unilaterally amend the City Covenant. Accordingly, we respectfully request that the Planning Commission deny the proposed Project.

Sincerely,

COMMUNITY LEGAL ADVISORS INC.

A handwritten signature in blue ink that reads "Michael Alti".

Michael J. Alti, Esq.

Enclosure

Cc: Danielle Harper-Scott (DHarper-Scott@riversideca.gov)