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October 23, 2017

File No. GASCON

City Clerk
City of Desert Hot Springs
65-950 Pierson Blvd.
Desert Hot Springs, CA 92240

Re: *Appeal of Planning Commission Denial of Extension of Time for Tentative Tract Map 33746*

To Whom It May Concern:

On behalf of D&A Semi-Annual Mortgage Fund III, LLP (the "Owner") and Mr. Neil Gascon (the "Owner's Representative") the purpose of this letter is to formally appeal the City of Desert Hot Spring's (the "City") Planning Commission (the "Commission") denial of a time extension request of Owner's Tentative Tract Map No. 33746 (the "Project"). The Commission considered the Project at its October 10, 2017 meeting and voted 3-1-1 to deny the Project.

This appeal is timely filed in accordance with the City's Municipal Code 17.104.090 (action of the Commission may be filed to the City Council) and 17.104.100 (appeal must be filed within fifteen (15) days of the Commission's decision).

The Owner and Owner's Representative file this appeal for the following reasons and on the following grounds:

1. The Commission has not and cannot make a finding that the Project poses a direct or indirect threat, issue or concern with respect to the public health, safety and welfare specifically or generally;
2. The Commission's decision is both arbitrary and unjustified as the Project complies with all applicable City General Plan, Specific Plan, Zoning and Code requirements, and Owner has accepted all conditions imposed on the Project by staff;
3. The Project remains unchanged from its original approval and the Owner does not propose any additions or alterations to the Project;

4. The Commission's stated personal perceptions, biases and preferences against small lot products and market rate projects are unfounded and are neither justified nor appropriate in its consideration and debate of the Project. Personal preferences have no legal place in consideration of any project;
5. The Commission's reliance on the mandatory map extensions afforded the Project under the applicable sections of the California Government Code to say that the Project has been approved for too long is misplaced.

The mandatory extensions were provided in acknowledgement of the recent economic downturn that created lingering impacts on the feasibility of many development projects. While development in California is slowly coming back to life, developers still need time to review, process and finalize project entitlements and maps;

6. On September 29, 2017, Governor Brown signed fifteen (15)¹ separate bills to address the critical shortage of housing stock in all areas of California. While some of the bills addressed the need for more affordable housing, others addressed the need for more housing in general and at all levels of affordability including:
 - a. SB166 – Requires local government to have development sites identified, at all times, for all unmet housing needs;
 - b. SB167/AB678 – Strengthens the Housing Accountability Act which seeks to prevent communities from killing housing projects;
 - c. AB72 – Gives the state housing officials new authority to report violations for non-compliance with housing plans or state laws;
 - d. AB879 – Changes the housing element law to require cities and counties to address and, where legally possible, remove hurdles to housing production;
 - e. AB1515 – Makes it more difficult for cities and counties to vote down housing projects that meet existing zoning and other land use regulations by adding language to the Housing Accountability Act; and
 - f. AB1397 – Requirement for cities and counties to zone land that can realistically support housing development. Residential parcels must have sufficient access to infrastructure including water, sewer and utilities.

¹ While the effective date for these bills is January 1, 2018, the purpose, intent and discussion which gave rise to their passage cannot be ignored.

For the reasons stated, we respectfully request the City Council overturn the Commission's decision and allow the Project its available time extension. The Owner and Owner's Representative remain committed to the Project and working with the City to bring a new selection of housing options to the City of Desert Hot Springs.

Sincerely yours,



Kelly Alhadeff-Black of
LEWIS BRISBOIS BISGAARD & SMITH LLP

KAB

cc: Mr. Scott Tascher, Senior Planner and Acting Planning Manager
Mr. Daniel Porras, Community Development Director
Mr. Neil Gascon