

CITY OF NEWARK PLANNING COMMISSION

37101 Newark Boulevard, Newark, California 94560-3796 □ 510/578-4330 □ FAX 510/578-4265

City Administration Building
7:30 p.m.
City Council Chambers

AGENDA Tuesday, February 11, 2020

A. ROLL CALL

B. MINUTES

B.1 Approval of Minutes of the regular Planning Commission meeting of Tuesday, January 28, 2020. (MOTION)

C. WRITTEN COMMUNICATIONS

D. ORAL COMMUNICATIONS (Anyone wishing to address the Commission on any planning item not on the Agenda may take the podium and state his/her name and address clearly for the recorder.)

E. PUBLIC HEARINGS

E.1 Hearing to consider U-20-1, a Conditional Use Permit to allow Fitness 19, a physical fitness center located at 6203 Jarvis Avenue (APN: 537-521-37). Continued from January 28, 2020 meeting.

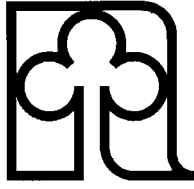
F. STAFF REPORTS

G. COMMISSION MATTERS

G.1 Report on City Council actions.

H. ADJOURNMENT

Pursuant to Government Code 54957.5: Supplemental materials distributed less than 72 hours before this meeting, to a majority of the Planning Commission, will be made available for public inspection at this meeting and at the Planning Division Counter located at 37101 Newark Boulevard, 1st Floor, during normal business hours. Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection.



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37101 Newark Boulevard, Newark, CA 94560-3796 • 510-578-4330 • FAX 510-578-4265

City Administration Building
7:30 p.m.
City Council Chambers

MINUTES

Tuesday, January 28, 2020

A. ROLL CALL

Chairperson Aguilar called the meeting to order at 7:30pm. Present were Vice Chairperson Bridges, Commissioner Fitts and Becker. Commissioner Otterstetter was absent.

B. MINUTES

B.1 Approval of Minutes of the Planning Commission meeting of January 14, 2020.

MOTION APPROVED

Commissioner Fitts moved, Vice Chairperson Bridges seconded, to approve the Minutes of the regular Planning Commission meeting on January 14, 2020. The motion passed 3 AYES, 1 ABSTENTION, 1 ABSENT.

C. WRITTEN COMMUNICATIONS

None.

D. ORAL COMMUNICATIONS

None.

E. PUBLIC HEARINGS

E.1 Consideration of a motion to continue the hearing to the Planning Commission meeting of February 11, 2020 to consider U-20-1, a Conditional Use Permit to allow Fitness 19, a physical fitness center located at 6203 Jarvis Avenue (APN: 537-521-37) – from Deputy Community Development Director Interiano . Staff is recommending continuation of this item to the February 11, 2020 meeting.

Commissioner Becker recused himself due to his involvement in discussion, evaluation, and preparing recommendations with the applicant associated with this project in his previous role as City Manager.

Deputy Community Development Director (DCDD) Interiano stated staff needs more time to gather information based on the questions from January 14, 2020 meeting. This was discussed with applicant and the adjacent property owner. All parties are in agreement of the continuance.

Chairperson Aguilar opened the public hearing.

Chairperson Aguilar closed the public hearing.

Commissioner Bridges motioned to continue the hearing to the Planning Commission meeting of February 11, 2020 to consider U-20-1, a Conditional Use Permit to allow Fitness 19, a physical fitness center located at 6203 Jarvis Ave (APN: 537-521-37), seconded by Commissioner Fitts, 3 AYES, 1 ABSENT, 1 ABSTENTION.

Commissioner Becker returned.

F. STAFF REPORTS

None.

G. COMMISSION MATTERS

G.1 Report on City Council actions.

None.

H. ADJOURNMENT

Chairperson Fitts adjourned the regular Planning Commission meeting at 7:37 p.m.

Respectfully submitted,

STEVEN TURNER
Secretary

RESOLUTION 1985

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWARK APPROVING U-20-1, A CONDITIONAL USE PERMIT TO A FITNESS GYM IN THE COMMUNITY COMMERCIAL ZONING DISTRICT AT 6203 JARVIS AVENUE. (APN: 537-521-37)

WHEREAS, Mr. Mitchell Gardner, has filed with the Planning Commission of the City of Newark an application for U-20-1, a conditional use permit, to allow for a indoor sports and recreation use, Fitness 19; and

PURSUANT to the Municipal Code Section 17.31.060, a public hearing notice was published in The Tri City Voice on December 31, 2019 and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on February 11, 2020 at the City Administration Building, 37101 Newark Boulevard, Newark, California; and

WHEREAS, pursuant to Chapter 17.35 (Use Permits), Section 17.35.060 (Required Findings), the Planning Commission hereby makes the following findings:

- A. The proposed use is allowed within the applicable zoning district and complies with all other applicable zoning district and complies with all other applicable provisions of this Ordinance and all other titles of the Municipal Code;

Response: The proposed use is allowed through the issuance of a CUP to be consistent with the existing zoning. The application for a fitness center has been evaluated and found to be consistent with the type of uses found in the Community Commercial zoning district and be compatible with the surrounding commercial uses in the shopping center. This finding can be made in the affirmative.

- B. The proposed use is consistent with the General Plan and any applicable specific plan;

Response: The proposed use is consistent with the GP Policy LU-1.1 Balance of Uses. Maintain a reasonable balance of land uses in the city so that residents can live close to where they work and satisfy their shopping, educational, personal, health, entertainment, and recreational needs close to home. Also consistent with GP Policy LU-1.6 Strengthening the Retail Base. Diversify the retail base of the city to create jobs, generate tax revenue to support City services, and enable residents and workers to find the goods and services they need without leaving Newark. This finding can be made in the affirmative

- C. The proposed use will not be adverse to the public health, safety, or general welfare of the community, nor detrimental to surrounding properties or improvements;

Response: The proposed business would not have an adverse effect to public health, safety, or general welfare of the community or surrounding properties. Automobile parking, provided in the existing parking area at the shopping center, is sufficient for the proposed use and the other nearby uses. The use would occupy a vacant commercial space in an existing shopping center that has complementary uses. Therefore, this finding can be made in the affirmative.

- D. Tax revenue generated by the development will exceed the City's cost of the service demand as a result of the development or a compelling community benefit will be provided.

Response: The proposed use will occupy an existing commercial storefront that has been vacant for approximately four years within an existing shopping center and is not expected to result in a substantial change in the shopping center's cost of service to the City. A portion of the Indoor sports and recreation use will contain a retail area, which is expected to generate sales-tax revenue. This finding can be made in the affirmative.

- E. The proposed use complies with any design or development standards applicable to the zoning district or the use in question unless waived or modified pursuant to the provisions of this Ordinance;

Response: There are no planned improvements to the exterior of the building, therefore no design or development standards apply to this application. This finding can be made in the affirmative.

- F. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and

Response: The operating characteristics of the proposed use are expected to be compatible with the existing commercial tenants and would provide additional services for the shopping center customers. This finding can be made in the affirmative.

- G. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints.

Response: The proposed business is physically suitable for the type, density, and intensity of use being proposed, in that it would occupy an existing vacant space in the Sprouts center that is accessible, is served by utilities and without physical constraints. This finding can be made in the affirmative.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby approves

this application with the following conditions:

1. Fitness 19 shall require its employees to park in the rear sides (area #1, 22 & 23) as shown in Abrams Associates parking analysis) of the building.
2. A Sign Permit will be required for any future sign on the exterior of the building.
3. The site and its improvements shall be maintained in a neat and presentable condition, to the satisfaction of the Community Development Director. This shall include, but not be limited to, repainting surfaces damaged by graffiti and site clean-up. Graffiti removal/repainting and site clean-up shall occur on a continuing, as needed basis. Any vehicle or portable building brought on the site shall remain graffiti free.
4. Construction equipment, including compressors, generators and mobile equipment shall be fitted with heavy-duty mufflers designed to reduce noise impacts.
5. Planning inspection is required prior to occupancy.
6. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission and City Council review and, if so decided, said changes shall be submitted for the Commission's and Council's review and decision. The applicant shall pay the prevailing fee for each additional separate submittal of project exhibits requiring Planning Commission and/or City Council review and approval.
7. If any condition of this conditional use permit be declared invalid or unenforceable by a court of competent jurisdiction, this conditional use permit shall terminate and be of no force and effect, at the election of the City Council on motion.
8. The applicant hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.
9. In the event that any person should bring an action to attack, set aside, void or annul the City's approval of this project, the applicant shall defend, indemnify and hold harmless the City and/or its agents, officers and employees from any claim, action, or proceeding against the City and/or its agents, officers and employees with counsel selected by the applicant (which shall be the same counsel used by applicant) and reasonably approved by the City. Applicant's obligation to defend, indemnify and hold harmless the City and/or its agents, officers and employees shall be subject to the City's compliance with Government Code Section 66474.9.
10. The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other exactions. The applicant is hereby further notified that the 90-day approval period in which the applicant may protest these fees, dedications, reservations and other exactions, pursuant to Government Code Section 66020(a), has begun. If the applicant fails to file a protest within

this 90-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

The Commission thereby makes the findings prescribed in Newark Municipal Code Section 17.35.060, and directs the Resolution be mailed to the applicant and filed with the City Clerk.

This Resolution was introduced at the Planning Commission's February 11, 2020 meeting by _____, seconded by _____, and passed as follows:

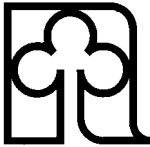
AYES:

NOES:

ABSENT:

STEVEN TURNER, Secretary

WILLIAM FITTS, Chairperson



E. 1 Hearing to consider U-20-1, a Conditional Use Permit to allow Fitness 19, a physical fitness center located at 6203 Jarvis Avenue (APN: 537-521-37). The property is zoned Community Commercial – from Deputy Community Development Director Interiano. (RESOLUTION)

Background/Discussion – The City has received an application for a Conditional Use Permit (CUP) to allow a physical fitness center located at 6203 Jarvis Avenue (the “Project”), a vacant suite located adjacent to Sprouts market. The property is zoned Community Commercial (CC) and according to the Zoning Ordinance, a physical fitness center falls under the use category of “Indoor sports and recreation” which requires approval of a CUP in order to operate at this location.

Fitness 19 is a physical fitness center/health club, which offers free-weights and cardio and strength equipment. In addition, they offer classes such as aerobics, Zumba, yoga, and mat pilates. Fitness 19 has over 100 locations nationally. The proposed location in Newark would employ approximately 35-40 employees, most being part-time with 5-6 full-time staff.

Fitness 19 would be located in the Sprouts shopping center, which was formerly the Raley’s shopping center. The proposed physical fitness center would use all (27,508 sq.ft.) of the remaining vacant space (adjacent to Sprouts) used by the former Raley’s store which vacated the building in August of 2015. The vacant space is roughly half of the main anchor building in the shopping center, which is located in a prominent shopping area of the City known as “Four Corners”.

In regards to the specific zoning standards, the proposed use is consistent with the site development regulations of the CC zone district. The proposed use would not result in any exterior building modifications, with the exception of a future sign, which has not been determined at this time. In general, interior modifications as shown on the floor plans include the main gym area, exercise rooms, small retail area and reception area. Staff originally had concerns regarding the parking demands of the proposed use in conjunction with all other uses within the shopping center, which led to a parking analysis being required. The applicant provided a parking analysis prepared by Abrams Associates on June 21, 2019, which evaluated all existing businesses in conjunction with the proposed fitness center use. Abrams Associates opinion, based on the analysis, is that there is sufficient parking to support the addition of the proposed use. It should be noted that the parking demands for a physical fitness center are much higher than the Sprouts retail center and that although staff would concur that there appears to be sufficient parking, some parking areas located on the north-west and south of the subject building are often available but are not convenient, readily visible, or quick to access. Based on the results of the study, staff would suggest a condition be required for Fitness 19 employees to park on those least-accessible parking spaces.

The property owners attorney, Bowles & Verna, have submitted two letters in support and justification for approving the Fitness 19 application. Also, the neighboring business owner, Matt Morales of Anytime Fitness, has submitted a petition that recommends denial of the Fitness 19

application. Staff has reviewed both letters and taken them into consideration in making our recommendations and has attached copies of these letters for the Planning Commission's consideration as well.

Ultimately, staff believes the proposed business is complimentary to the shopping center and complies with the CUP findings described below and therefore recommends approval.

Update from January 14, 2020 Planning Commission Meeting

As part of the January 14th meeting, the Commission requested staff follow up with the applicant to address the following questions/comments:

- In regards to the parking analysis provided by Abrams and Associates, assess the “time at location” for patrons of the proposed Fitness 19 and peak hours of the Sprouts shopping center.
Staff Response: The applicant is expected to address these parking concerns at the meeting. In addition, staff is conducting an independent review of the parking study that will be made available as part of staff's presentation.
- Input from Sprouts regarding the proposed Fitness 19.
Staff Response: The applicant has provided correspondence from Sprouts that indicates they have no objection to the application for a fitness use.
- Any additional correspondence from surrounding business or property owners.
Staff Response: Included with staff report, we have included the letter that was handed out at the meeting by the adjacent property owner's attorney, Nossaman LLP, dated January 14, 2020. The letter raised three points relating to CEQA, parking, and CC&R's. As staff discussed at the meeting, we believe the project is exempt per CEQA Section 15301, the parking analysis concerns have been addressed above and the approval needed by the CC&R's regarding a fitness use is between the two properties owners and not under review by the City. In addition, staff is expecting Mr. Long Nguyen to submit their own parking analysis and additional letters in opposition from business owners before the meeting.
- Recommend the applicant and the adjacent property owner, Mr. Long Nguyen, discuss the requirements of the CC&R's regarding permission to place a recreation use adjacent to the Sprouts store.
Staff Response: The requirements of the CC&R's are a private matter between the two parties and shall have no impact on staff recommendation. Having said that, there has been no further communication between the two parties on this matter as far as staff is aware.
- Is there a history of criminal activity at the proposed located due to the store being vacant?
Staff Response: In reviewing the police records for the last five years, there are no instance of burglary at the location.

Required Findings

- A. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Ordinance and all other titles of the Municipal Code;
Response: The proposed use is allowed through the issuance of a CUP to be consistent with the existing zoning. The application for a fitness center has been evaluated and found to be consistent with the type of uses found in the Community Commercial zoning district and be compatible with the surrounding commercial uses in the shopping center. This finding can be made in the

affirmative.

- B. The proposed use is consistent with the General Plan and any applicable specific plan;
Response: The proposed use is consistent with the GP Policy LU-1.1 Balance of Uses. Maintain a reasonable balance of land uses in the city so that residents can live close to where they work and satisfy their shopping, educational, personal, health, entertainment, and recreational needs close to home. Also consistent with GP Policy LU-1.6 Strengthening the Retail Base. Diversify the retail base of the city to create jobs, generate tax revenue to support City services, and enable residents and workers to find the goods and services they need without leaving Newark. This finding can be made in the affirmative.
- C. The proposed use will not be adverse to the public health, safety, or general welfare of the community, nor detrimental to surrounding properties or improvements;
Response: The proposed business would not have an adverse effect to public health, safety, or general welfare of the community or surrounding properties. Automobile parking, provided in the existing parking area at the shopping center, is sufficient for the proposed use and the other nearby uses. The use would occupy a vacant commercial space in an existing shopping center that has complementary uses. Therefore, this finding can be made in the affirmative.
- D. Tax revenue generated by the development will exceed the City's cost of the service demand as a result of the development or a compelling community benefit will be provided;
Response: The proposed use will occupy an existing commercial storefront that has been vacant for approximately four years within an existing shopping center and is not expected to result in a substantial change in the shopping center's cost of service to the City. A portion of the Indoor sports and recreation use will contain a retail area, which is expected to generate sales-tax revenue. This finding can be made in the affirmative.
- E. The proposed use complies with any design or development standards applicable to the zoning district or the use in question unless waived or modified pursuant to the provisions of this Ordinance;
Response: There are no planned improvements to the exterior of the building, therefore no design or development standards apply to this application. This finding can be made in the affirmative.
- F. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity;
Response: The operating characteristics of the proposed use are expected to be compatible with the existing commercial tenants and would provide additional services for the shopping center customers. This finding can be made in the affirmative.
- G. The site is physically suitable for the type, density and intensity of use being proposed, including access, utilities, and the absence of physical constraints.
Response: The proposed is physically suitable for the type, density, and intensity of use being proposed, in that it would occupy an existing vacant space in the existing Sprouts center that is accessible, is served by utilities, and is without physical constraints. This finding can be made in the affirmative.

CEQA- This project is exempt from CEQA per 15301 Existing Facilities in that the proposed use is would be located in an existing building where only minor alterations are proposed.

Action – It is recommended that the Planning Commission approve the Condition Use Permit (U-20-1) as requested by the project applicant, based upon the findings in the draft resolution in Attachment 1, subject to conditions of approval.

Attachment

1. Draft Resolution
2. Fitness 19 Site Plan & Supplemental Information (December 27, 2019)
3. Abrams Associates Parking Analysis
4. Correspondence in Support from Applicant Attorney, Bowles & Verna
 - December 5, 2019
 - January 3, 2020
 - February 4, 2020
5. Correspondence in Opposition from Matt Morales, October 5, 2019
6. Correspondence in Opposition from VN Investment Group LLC's attorney, Nossaman LLP, dated January 14, 2020.
7. Petition from Surrounding Business Owners, dated January 27-28, 2020



1 **Front Elevation**



2 **Site Plan**

PROPOSED FITNESS 19 LOCATION

FITNESS 19

Where You Can Afford To Get Fit!

SHEET INDEX

- A-100 COVER SHEET
- A-101 PROPOSED FLOOR PLAN
- A-102 SITE PLAN

APPLICANT/OWNER:

6203 JARVIS, LLC
 DELAWARE CORPORATION
 6203 JARVIS AVE
 NEWARK, CA 94560

TENANT:

BOB RODGER
 MITCHELL GARDNER (AGENT)
 FITNESS 19
 2700 COLORADO BLVD #254
 LOS ANGELES, CA 90041
 231.507.2529

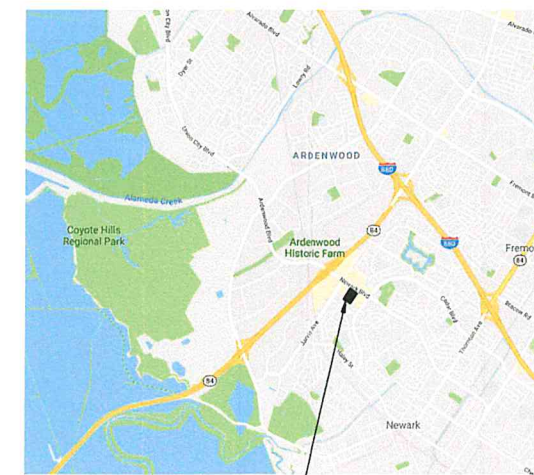
ASSESSORS PARCEL NO

53752137

CODE/PERMIT ANALYSIS

JURISDICTION: CITY OF NEWARK
 CODE: 2018 CALIFORNIA BUILDING CODE
 OCCUPANCY TYPE: A-3
 CONSTRUCTION TYPE: TYPE III-B, SPRINKLERED
 FIRE SPRINKLERS: YES NFPA 13
 FLOOR AREA HEALTH CLUB (A3): 27,508 SF
 ZONING: SC

PROJECT VICINITY MAP (N.T.S.)



FITNESS 19
 CONDITIONAL USE PERMIT APP.
 6203 Jarvis Ave
 Newark, CA 94560

PROJECT NO. CA-418 NEWARK
ARCHITECT



g2 design/build inc.
 mitchell wade gardner, architect/owner
 linda vista ave
 fremont ca 94538
 214.400.6388

ENGINEER

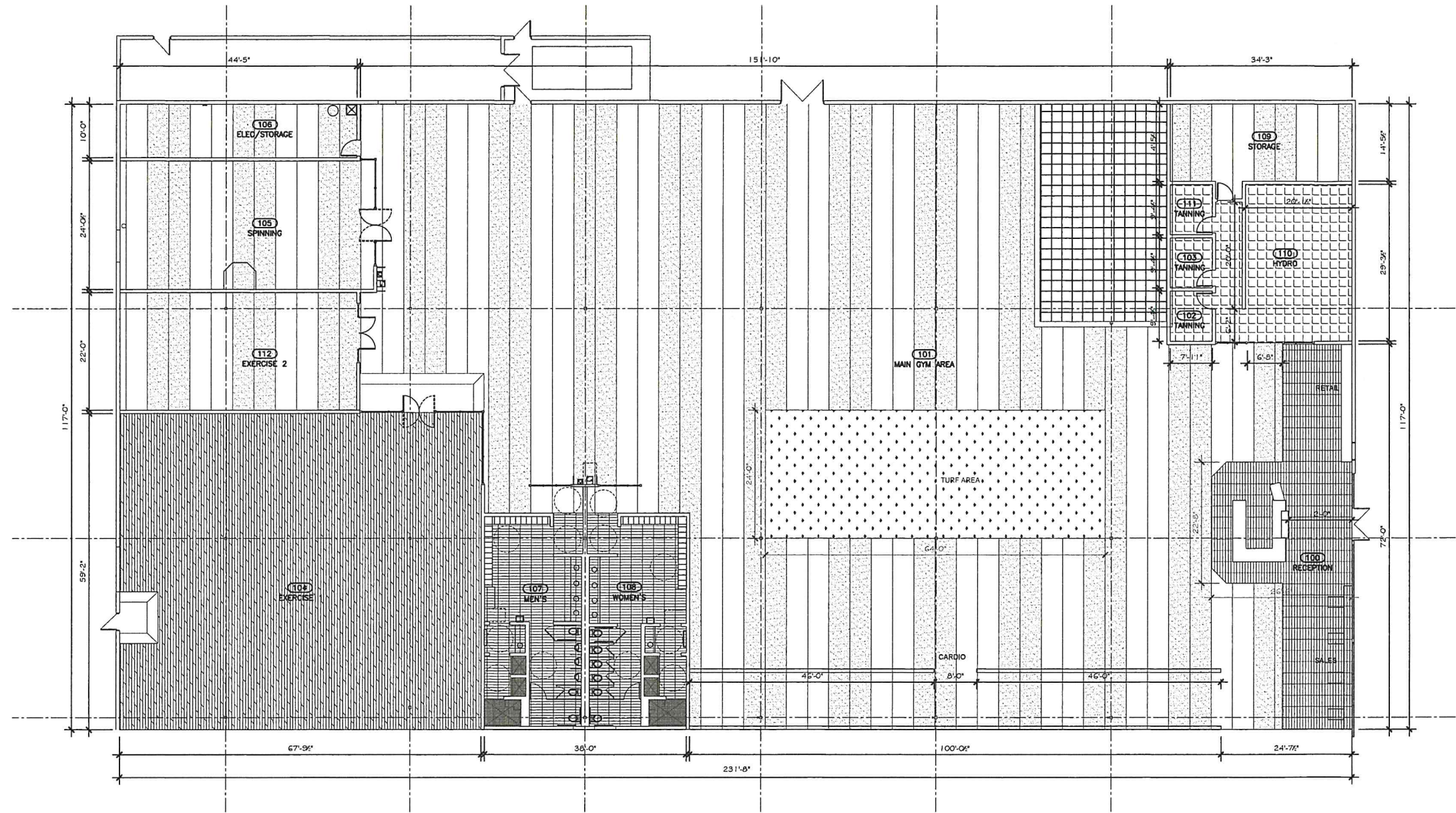
NOTES

NO.	DESCRIPTION	DATE
	INITIAL SUBMITTAL	07.22.19

ISSUED
TITLE
COVER SHEET

DRAWING NO.

A-100



Proposed Finish Floor Plan
 3/32" = 1'-0"

FITNESS 19
 CONDITIONAL USE PERMIT APP.
 6203 Jarvis Ave
 Newark, CA 94560

PROJECT NO. CA-418 NEWARK
 ARCHITECT



g2 design/build inc.
 mitchell wade gardner, architect/floorner
 10000 Wilshire Blvd, Suite 1000
 Beverly Hills, CA 90210
 213.400.5358

ENGINEER

NOTES

INITIAL SUBMITTAL	07.22.19

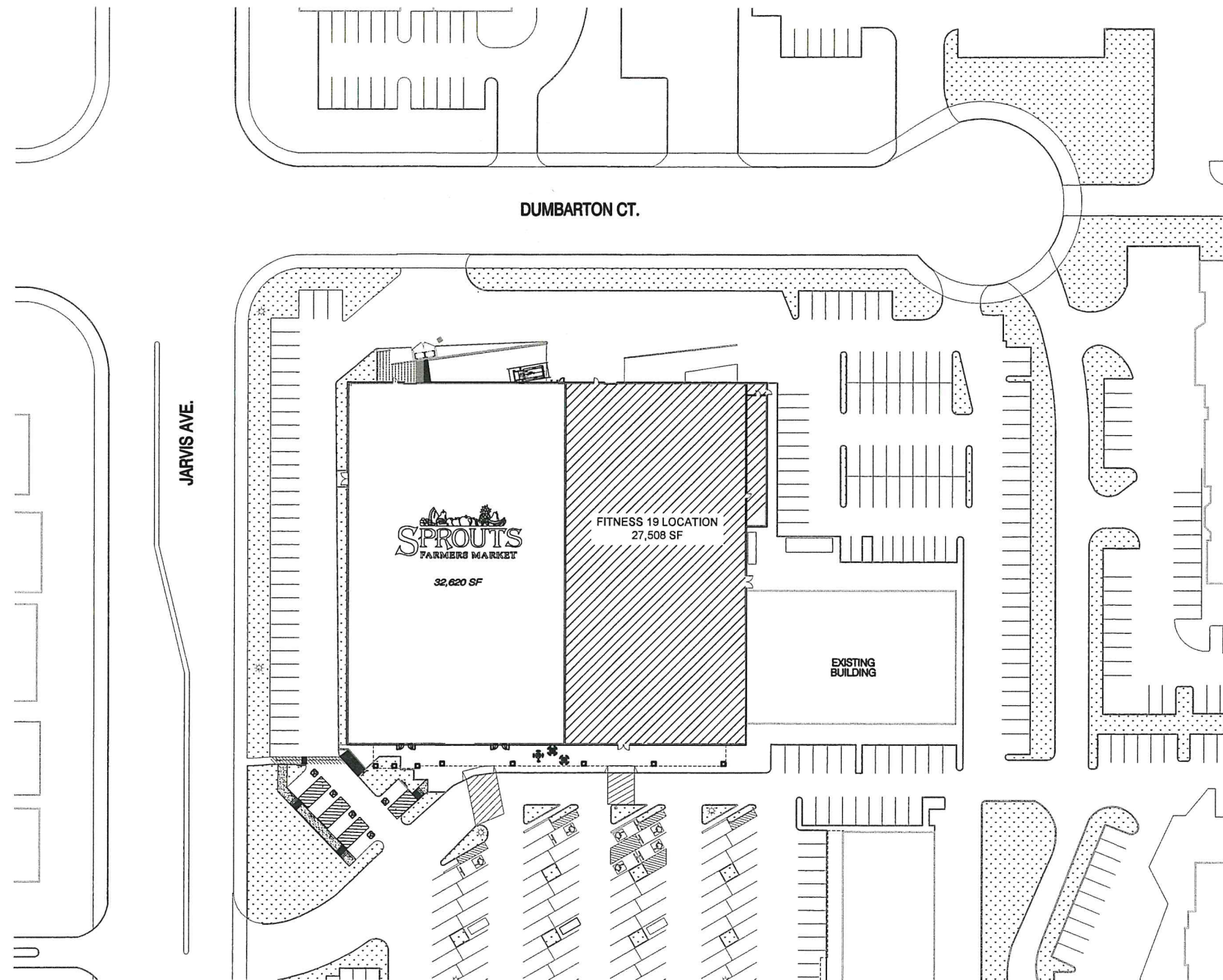
NO.	DESCRIPTION	DATE

ISSUED

TITLE
PROPOSED FLOOR PLAN

DRAWING NO.

A-101



 **Site Plan**
NTS

FITNESS 19
CONDITIONAL USE PERMIT APP.
6203 Jarvis Ave
Newark, CA 94560

PROJECT NO. CA-418 NEWARK

ARCHITECT



g2 design/build inc.
mitchell wade gardner, architect/owner
150 linda vista ave
pasadena, ca 91105
619-400-0328

ENGINEER

NOTES

INITIAL SUBMITTAL 07.22.19

NO.	DESCRIPTION	DATE

ISSUED

TITLE

**SITE
PLAN**

DRAWING NO.

A-102



27 December 2019

Art Interiano
Deputy Community Development Director
City of Newark
37101 Newark Blvd.
Newark, CA 94560

Supplemental Information in Support of Fitness 19 CUP Application

Provided herein is supplemental information regarding the Fitness 19 CUP Application located at 6203 Jarvis Avenue, which is now tentatively set for hearing by the Newark Planning Commission on January 14, 2020. We respectfully request that this information be included in the Staff Report, and ultimately, that our letter and attachments be provided to all members of the Planning Commission.

History of Land Use Approvals

Over the last 10 years working with Fitness 19, G2 Design Build Inc has processed 17 Land Use Applications/Discretionary Entitlements in California alone. Of these 17 applications, all were backed up by a positive staff report recommending approval, and all were approved at the planning commission without a single dissenting vote. The list of Fitness 19 cities is as follows: Covina, Oxnard, Rancho Cucamonga, Moreno Valley, Riverside, Dublin, Chatsworth and Eagle Rock in Los Angeles, Perris, Thousand Oaks, Claremont, Santa Barbara, Oakland, Hemet, Daly City, San Ramon, and Oceanside.

In these other cities much of the discussion at the various planning commissions pertained to bringing an active, lively, and destination-oriented tenant to the community and, specifically, to the retail centers where Fitness 19 has been a welcome addition. We would like to provide some additional perspective and information to the City of Newark on this subject.

Fitness 19 and Tax Generation

Over a period of three weeks – we shut it down a few days before the prior December 10 hearing date – Fitness 19 posted an online poll asking Facebook users within a five mile radius of the Four Corners shopping center if they would like to see a new Fitness 19 in Newark. In only three weeks we collected over 400 names. The input received confirmed two things we already believed to be true:

- 1) Residents of Newark would love to see a high quality, family-friendly, affordable exercise offering like Fitness 19 in Newark; and
- 2) We also saw strong positive responses from residents in Fremont and Union City.

In addition to providing contact information, Facebook users had the ability to share their enthusiastic comments on bringing Fitness 19 to Newark. Here are examples from several people. J Farinacci: "I would leave Bay Club and join Fitness 19 instead." M. Cortes: "Yes, please open a fitness 19 in Newark CA." J. Piple: "Yes please." V. Prasad: "Newark please." R. Zamora: "Please pleas (sic) good for everybody." From the hundreds of responses, we saw particularly strong confirmation that Union City is under-served by fitness; and that the proximity of a new Fitness 19 gym to Highways 84 and 880 will attract commuters on the way to and from work.

We think it also important to put an end to the false narrative that Fitness 19 will not generate sales tax for the City of Newark. First, Fitness 19 does in fact sell taxable items. We have "ready-to-drink" energy drinks for before workout and protein drinks for after workout. We sell many varieties and brands of healthy snacks that members often purchase on the way in or out. We sell supplements in the form of powders and vitamins as well as apparel. We sell retail items that gym goers may need like gloves, heart rate monitors, headphones, etc. Lastly, our tanning facility charges sales tax for those members who want to use the service.

When the Fitness 19 CUP Application is approved and the club is opened, hundreds of visitors per day, many of them commuters from nearby communities, will visit the Four Corners shopping center ONLY because Fitness 19 is a tenant. The benefit of having Fitness 19 in the shopping center to other retail and restaurant tenants in the shopping center, and to the City of Newark, should not be ignored or discounted. With a 28,000 square foot vacancy you get nothing. With Fitness 19 you get hundreds of thousands of new and unique visits to the Four Corners center annually, with positive direct and indirect economic and sales tax benefits to Newark. Approval of the Fitness 19 application will bring real value to the City.

Retail in the News

Provided below are links to various news articles from The Wall Street Journal to the Chicago Tribune that identify the trends in Retail as related to Fitness uses. We have included the headline and small blurb for reference.

<https://www.google.com/amp/s/www.cnbc.com/amp/2018/02/01/malls-hope-to-get-back-in-shape-by-adding-gyms.html>

REAL ESTATE

Malls hope to get back in shape by adding gyms

PUBLISHED THU, FEB 1 2018 10:53 AM EST UPDATED THU, FEB 1 2018 7:16 PM EST

KEY POINTS

- Malls are turning to health clubs to help boost foot traffic.
- The number of gym leases in malls has doubled in the last five years.
- Apparel has dropped from 70 percent of the mall space to close to 40 percent.



WATCH NOW

VIDEO 01:28

Malls hope to get back in shape by adding gyms

The fitness industry is booming. The mall business is not. Put a gym in a mall, and boom, you suddenly have a busier mall. Anything to get foot traffic, even if they're sweaty feet.

<https://www.brookfieldpropertiesretail.com/about-us/news/fitness-is-revolutionizing-the-shopping-center.html>

<https://www.google.com/amp/s/www.wsj.com/amp/articles/malls-never-wanted-gyms-now-they-court-them-1511697600>

- HEALTH
- FITNESS

Malls Never Wanted Gyms. Now They Court Them

Retailer woes, fitness industry boom turn former pariahs into anchor tenants

Todd Mullins and his wife, Julie, started going to a shopping center 15 minutes from their Palm Beach Gardens, Fla., home about a year ago—after they joined a gym inside of it. They work out at the Orangetheory Fitness there three to four times a week, and at least half the time visit a nearby juice shop, restaurant or Trader Joe’s, he says.

“There would be no other reason to go to that mall,” says Mr. Mullins, a senior pastor at a local church.

...

TO READ THE FULL STORY

<https://www.metrocommercial.com/news/the-growing-popularity-of-fitness-tenants-in-shopping-centers/>

Health and wellness are not just trends, they are a way of life for most people today, especially millennials who are highly influenced by how they appear in photos and social media. With society’s growing emphasis on healthy living and self-care, more people are getting themselves to the gym to exercise so that they look and feel their best. In fact, according to the International

Health, Racquet, and Sportsclub Association, the number of health club members grew [by 33.6 percent](#) from 2008 to 2017. People are more health-conscious than ever before, making fitness tenants large and small a staple at every community shopping center.

The rise in popularity of fitness tenants at shopping centers

An increasing number of fitness tenants are popping up at shopping centers as consumers value having everything in one place. As a result, there are fewer freestanding gyms and stand-alone fitness studios. Rather, fitness tenants are moving into shopping centers alongside grocery, office, medical, fast-casual restaurants, and other traditional and non-traditional retail tenants to capitalize on the existing customer base and foot traffic.

Before or after working out, people are more likely to grab a quick bite to eat, shop for groceries, or pick up their dry cleaning from a neighboring business. Overall, the addition of a fitness tenant is a smart move for brokers and landlords when leasing a shopping center.

<https://www.google.com/amp/s/www.chicagotribune.com/business/ct-biz-malls-bringing-in-gyms-0610-story.html%3foutputType=amp>

Rooftop pools, UFC gyms and cycling studios: Fitness centers filling retail void at Chicago-area malls

By LAUREN ZUMBACH

CHICAGO TRIBUNE |

JUN 08, 2018 | 2:51 PM

Mallgoers walk past an ad for fitness-related businesses at the Yorktown Center shopping mall, June 5, 2018, in Lombard. (John J. Kim / Chicago Tribune)

While mall walkers strolled Yorktown Center's quiet corridors before most shops opened Monday morning, a handful of visitors in search of a tougher workout strode straight from their cars to the fitness studios along the Lombard mall's western side.

Shopping centers used to shun gyms and workout studios, believing clients would clog parking lots without patronizing shops post-workout. But consumers' changing shopping habits left some mall-based chains foundering, from department stores like Carson's, which is in the process of shutting down all its stores, to smaller shops like Gymboree and Rue 21, which announced hundreds of closures last year. That's pushed mall operators to turn the empty stores they've left into places for customers to do more than just shop.

Increasingly, that can mean sweating through a workout. Consumers are growing more health-conscious, so "it's the perfect storm," said Jason Press, vice president at real estate firm JLL.

The trend isn't new — Chicago-based mall operator GGP says it has been working with fitness tenants for more than a decade — but it is growing. The amount of space leased by fitness centers and gyms in malls and upscale open-air shopping centers grew about 69 percent nationwide over the past five years, according to data firm CoStar Group, and the number of leases has nearly doubled.

The Eagle Rock Case Study

Fitness 19 currently operates a successful health club inside the Eagle Rock Plaza. (Eagle Rock is part of the City of Los Angeles located between Glendale and Pasadena.) This is a fully enclosed typical “mall” property originally constructed in 1974. Fitness 19 does not have its own exterior entrance, and shoppers and customers must enter through the main mall; we are truly occupying 23,000 square feet of space meant for retailers.

Prior to the Fitness 19 tenancy the space was split into 4-5 different shop spaces. NONE of those tenants had executed leases with more than a one-year term; most were renting on a month-to-month basis. The mall had no long term offers from regional or national retailers and had been forced to settle for substantial vacancies and short term or transient, low value tenants. Furthermore, even when spaces were occupied the stores generated very little in the way of visitors bringing no benefits to their co-tenants.

Fitness 19 applied for and received entitlements including a zoning variance for the space and opened in May 2018. The positive impacts on the Eagle Rock Plaza since opening have been clear. Fitness 19 has attracted thousands of new members, hundreds of prospective new members each month, and hundreds of member workouts each day. The mall is receiving more in rent from a long-term tenant than previously received from multiple smaller and less appealing retailers. Most significantly, foot traffic and customer visits to the Eagle Rock Plaza, and resulting sales and tax revenues, are up substantially because Fitness 19 chose to invest. Mall management and our co-tenants have also expressed appreciation for all the foot traffic and attention the gym has brought to the mall. It is important to note that, due to the overwhelming success in the mall, a second application to expand the gym has been processed with great support from the mall owner and the Eagle Rock Neighborhood Council.

Fitness 19 Design and Construction

With each new Fitness 19, we take a thoughtful approach in designing the health club experience. We strive to create a casual elegance and spa-like feel while maintaining the undeniable characteristics of a full-fledged fitness center. Durable, high quality materials are set against the open ceiling with the industrial look of exposed ducting and electrical conduits. The clubs have a clean, yet comfortable feel designed to encourage all members of the community to feel welcome. We have always believed that the member is at the core of our success. We draw our inspiration from the customer: What do they want from an exercise perspective? How do they want to feel when they are inside the gym? We believe this strategy and thoughtfulness have been one of the great contributing factors to Fitness 19’s success. Provided below are photos of recently finished facilities highlighting our joint commitments to exercise and member experience.

Fitness 19 Dublin Lobby Area



Fitness 19 Dublin – Cycle Room



Fitness 19 Dublin – Cardio Area



Fitness 19 – Typical Locker Room



Fitness 19 Dublin - Bridge



Fitness 19 Covina – Group Classroom Entrances



Conclusion

We would like to thank the Planning Commission, and City staff, for your consideration of this information. The Fitness 19 project is a great fit for Newark, and we ask that our CUP Application be approved. Please don't hesitate to contact us if there are any questions. Thank you.

Sincerely yours,

Mitchell Gardner
g2 Design Build Inc.

Bob Rodger
Fitness 19



Parking Review
6203 Jarvis Avenue
City of Newark

Prepared by:
Abrams Associates
1875 Olympic Boulevard, Suite 210
Walnut Creek CA 94596

6203 Jarvis Avenue

City of Newark

PARKING STUDY

1) INTRODUCTION

The purpose of this report is to analyze the parking conditions and the current parking regulations for the shopping center at 6203 Jarvis Avenue that was formerly known as the Raleys Shopping Center. The building that includes Sprouts Market has an adjacent 28,242 square foot attached building that is currently occupied by Anytime Fitness, The Genius Kids Club, and some small offices. The entire 28,242 square foot space is proposed to be leased to Fitness 19 who would run a fitness center with a variety of exercise equipment, cardio machines, free weights. The study is intended to analyze the parking shared by the various users of the shopping center and provide a review of the potential effects on parking that might result from Fitness 19 being added to the center. **Figure 1** shows the parking survey areas and the subareas that were designated to present the parking supply and demand for various areas.

2) PARKING ANALYSIS

The City strives to provide adequate parking for all shopping center patrons while also still encouraging the use of alternative modes of transportation. Most Cities try to maintain a balance between providing all of the parking necessary to meet the needs of various land uses while also promoting alternatives to automobiles that reduce parking demand (e.g., increased use of transit, ridesharing, cycling, and walking). For this study the first step was to analyze the current parking demand generated by the shopping center the area and document the existing supply.



FIGURE 1 | PARKING SURVEY AREA INDEX

PARKING REVIEW

6203 Jarvis Avenue

City of Newark

2.1 Existing Parking Supply

For the purposes of this study the parking in the shopping center was divided into four separate areas: 1) Sprouts front parking area which is the portion of the parking lot in front of Sprouts that is included in the “*maintenance area*” for that building, 2) Sprouts side parking area which is southeast of the building and is also part of the “*maintenance area*” for that building, 3) the southwest back corner of the parking lot which includes about 11 spaces that are part of the Sprout’s building parking “*maintenance area*” and 4) the remainder of the parking lot, outside the Sprouts Parking Area. The number of parking spaces in each area is shown in **Table 1**. There may be some minor discrepancies with the plans but based on our field review the survey area currently has a total of 631 parking spaces.

Table 1
6203 Jarvis Avenue Shopping Center
Number of Parking Spaces

<u>Location</u>	<u>Totals</u>
Sprouts Front Area	235
Sprouts SE Side Lot	42
SW Back Corner Lot	106
Remainder of Lot	248
Total	631

2.2 Parking Occupancy Surveys

The parking survey involved a survey of the number and types of spaces, and counts of the parking occupancy on both weekdays and weekends. In addition to extensive field observations, parking surveys were conducted on three different days, two weekdays and one Saturday. The parking occupancy surveys were conducted on Friday May 18, 2018, Saturday May 19, 2018, and Friday June 14, 2019. The surveys of parking occupancy were conducted at one-hour intervals for the time periods of 2-3 PM, 2-4 PM 4-5 PM, 5-6 PM, and 6-7 PM. The data sheets showing the complete survey results for the survey day with the highest occupancy (Friday May 18, 2018) are attached to this report. These data sheets show the number of vehicles parked in each part of the study area during each time period.

The study area and an index of the parking areas that are used to identify each area in the data tables are shown on **Figure 1**. **Figure 2** shows an inventory of the parking in the area with the



LEGEND	
Parking Capacity	Standard Spaces: 23 Other Types: 48 48 48
	Standard Parking Spaces
	Short Term Parking (15 mins)
	Disabled Parking
	Compact Spaces

FIGURE 2 | PARKING CAPACITY BY SECTION AND DESIGNATION
 PARKING REVIEW
6203 Jarvis Avenue
 City of Newark

number of spaces in each row of parking. **Figure 3** presents the peak capacity recorded in the four different study areas of the parking lot during the worst case conditions recorded during any of the surveys (from 6:00 to 7:00 PM on Friday May 18, 2018). As seen in **Figure 3**, the overall parking lot was never more than 50% occupied during any of the surveys although the northern portion of the lot near the restaurants was recorded to be 68% occupied during the peak period. However, during the same peak period the parking area in front of Sprouts was only 55% occupied and the parking lot on the southeast side of the Sprout's building was only 33% occupied.

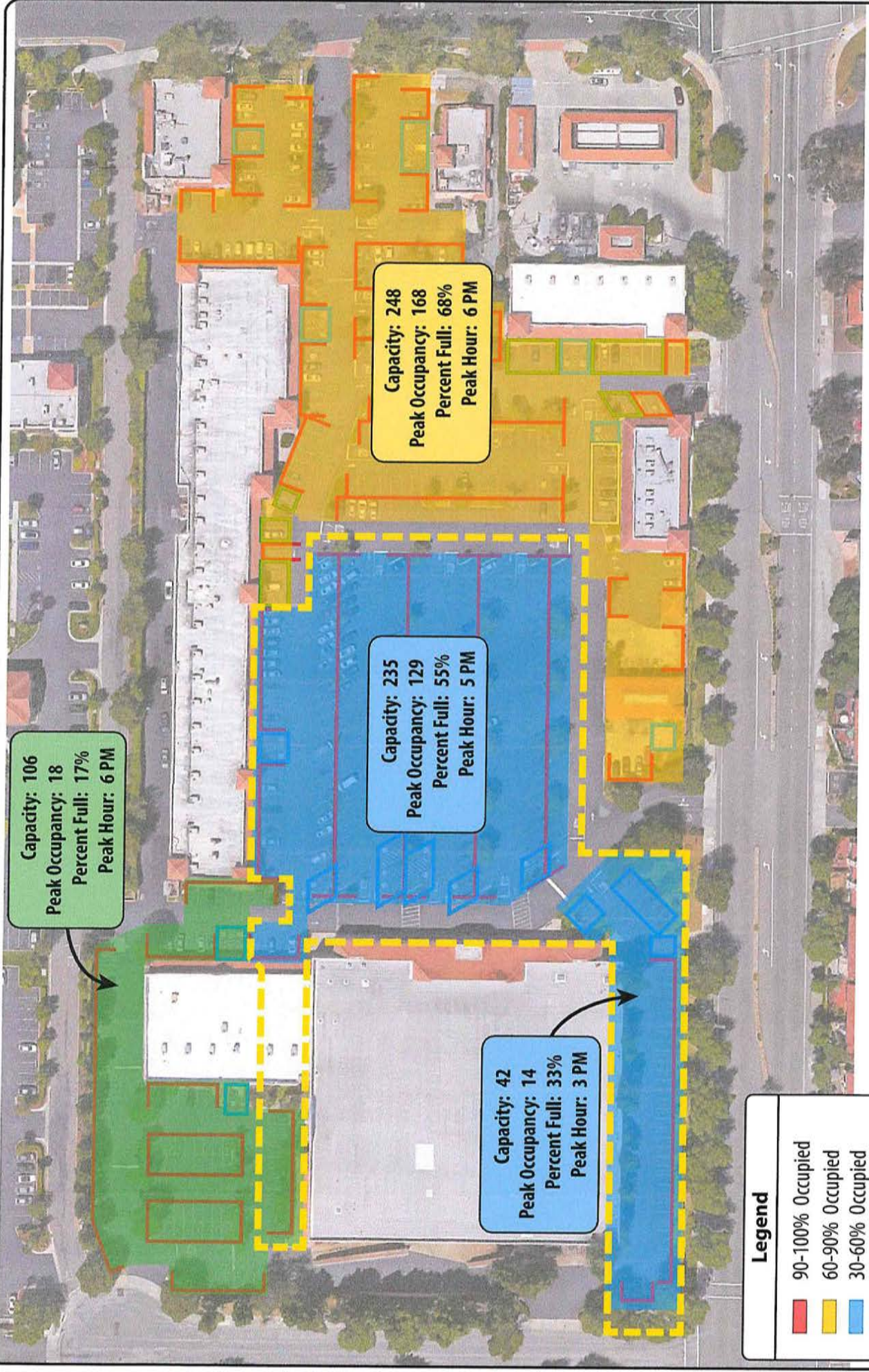
Parking Survey Summary

The results from the highest period of occupancy recorded the day with the highest occupancy levels are presented in **Tables 1 through 4**. As noted on these tables, there are 631 parking spaces in the shopping center. Of these, 343 are located within the Sprout's building parking maintenance area.

The highest occupancy levels recorded during the surveys on the peak Friday are presented in **Table 1**. The survey results indicated that for the overall shopping center a maximum of 315 of the 631 existing parking spaces were occupied at 6:00 PM. This equates to an occupancy rate of 50%. The highest occupancy recorded for the Sprouts Parking Maintenance Area was 49%. Please note the parking area in the back corner of was never observed to be more than about 20% occupied, with a minimum of about 90 parking spaces available in this area during each of the parking surveys.

2.3 Parking Demand

This section discusses the City of Newark's zoning and estimated parking demand for the project. Section 17.13.0505 of the Newark Municipal Code specifies that for all uses in the commercial use classification parking shall be at three spaces per 1,000 square feet. For the overall shopping center (129,764 square feet) the 631 spaces provided equates to a ratio of 4.86 spaces per 1,000 square feet. Please note there is an area associated with the Sprouts Building identified as the parking "maintenance" area in the CCR's for the shopping center. For the Sprout's building (60,862 square feet) the 288 spaces provided within the parking "maintenance" area for this building equates to a ratio of 4.73 spaces per 1,000 square feet. The following is a summary of the potential parking demand from the project.



Capacity: 106
 Peak Occupancy: 18
 Percent Full: 17%
 Peak Hour: 6 PM

Capacity: 235
 Peak Occupancy: 129
 Percent Full: 55%
 Peak Hour: 5 PM

Capacity: 248
 Peak Occupancy: 168
 Percent Full: 68%
 Peak Hour: 6 PM

Capacity: 42
 Peak Occupancy: 14
 Percent Full: 33%
 Peak Hour: 3 PM

Legend	
	90-100% Occupied
	60-90% Occupied
	30-60% Occupied
	0-30% Occupied

FIGURE 3 | PARKING SURVEY SUMMARY
 PARKING REVIEW
6203 Jarvis Avenue
 City of Newark

Parking Demand Based on ITE Parking Generation Rates - To provide additional information on parking demand, **Table 2** provides a summary of the parking demand results using the average ITE parking generation rates for the shopping center taken from the 5th Edition of the ITE Parking Generation Manual. As shown in **Table 2**, the unadjusted average peak parking demand that would be generated by the entire shopping center would be forecast to be for approximately 358 parking spaces based on the ITE data. As shown in **Table 3**, the unadjusted average peak parking demand that would be generated by the Sprouts portion of the shopping center would be forecast to be for approximately 168 parking spaces based on the ITE data. With the addition of Fitness 19 the peak parking demand of the shopping center is forecast to increase by about 58 spaces.

Table 2
Off-Street Parking Calculations For The Entire Shopping Center Using Parking Data from the Institute of Transportation Engineers

Component	Data Source	Land Use	Size		Parking Rate	Peak Demand
Overall Shopping Center	ITE Parking Demand Rates	Shopping Center	129,764	sq. ft.	2.76	358

Table 3
Off-Street Parking Calculations for The Sprouts Parking Maintenance Area Using Parking Data from the Institute of Transportation Engineers

Component	Data Source	Land Use	Size		Parking Rate	Peak Demand
<i>Sprout's Maintenance Area</i>	<i>ITE Parking Demand Rates</i>	<i>Shopping Center</i>	<i>60,862</i>	<i>sq. ft.</i>	<i>2.76</i>	<i>168</i>
Sprout's Farmer's Market	ITE Parking Demand Rates	Shopping Center	32,620	sq. ft.	2.76	90
Fitness 19	ITE Parking Demand Rates	Health/Fitness Club	28,242	sq. ft.	4.73	134
<i>Sprout's Maintenance Area With Fitness 19</i>			<i>60,862</i>	<i>sq. ft.</i>		<i>224</i>
Net Increase in Forecast Demand with Fitness 19						56 vehicles

3) CONCLUSIONS

The 631 parking spaces in the survey area are generally no more than about 50% occupied at any time. Based on the parking occupancy surveys and the review of parking demand associated with the proposed Fitness 19 facility, it is our conclusion that there is more than sufficient parking in the overall shopping center to accommodate the potential for an increase parking demand from Fitness 19. The increase in parking demand from Fitness 19 is forecast to be for approximately 56 vehicles and our surveys indicated that there are always a minimum of about 300 parking spaces available in the center, even during the highest periods of parking occupancy in the evening. However, it must be acknowledged that a lot of this available parking is not necessarily located the most convenient areas of the parking lot.

The parking in the northern part of the shopping center can sometimes be frustrating for customers as the available parking referred to above is usually found farther away from the restaurants. It is important to note that parking in an area is generally perceived to be full at somewhat less than its capacity. As a result, it is likely the public's perception that the parking closest to the restaurants is often relatively full in the evening. The surveys show that even when this part of the lot is relatively full, the overall shopping center still has more than adequate parking. However, it must be acknowledged that some of parts of shopping center parking lot are not necessarily conveniently located for the restaurants.

TABLE 1
Summary of (5/18/2018) Survey

Sprouts' Parking Maintenance Area						
	Capacity	3:00 PM	4:00 PM	5:00 PM	6:00 PM	7:00 PM
Total	288	129	129	141	129	134
Disabled	17	10	7	3	5	1
Standard	271	119	122	138	124	133
Standard Only %		44%	45%	51%	46%	49%
Total %		45%	45%	49%	45%	47%

Remainder of Parking Lot						
	Capacity	3:00 PM	4:00 PM	5:00 PM	6:00 PM	7:00 PM
Total	343	152	143	172	186	166
Disabled	12	1	2	5	3	3
Short Term(G)	22	11	8	19	19	11
Standard(S) + Compact (C)	302	138	129	142	160	146
G + S + C	331	151	141	167	183	163
Standard Only %		46%	43%	47%	53%	48%
G + S + C %		46%	43%	50%	55%	49%
Total %		44%	42%	50%	54%	48%

Total Area						
	Capacity	3:00 PM	4:00 PM	5:00 PM	6:00 PM	7:00 PM
Total	631	281	272	313	315	300
Total %		45%	43%	50%	50%	48%
Standard Spaces	573	257	251	280	284	279
Standard Spaces %		45%	44%	49%	50%	49%

Table 2
Sprouts' Parking Maintenance Area

ID	Capacity Type	3:00 PM	4:00 PM	5:00 PM	6:00 PM	7:00 PM
1	11	0	1	0	0	0
2	5	5	1	5	4	5
3	11	3	5	9	8	11
4	2 H	0	1	0	0	0
5	12	12	10	12	11	12
6	26	18	21	26	26	26
7	1 H	0	0	0	0	0
8	28	8	12	13	9	14
9	23	5	6	8	8	9
10	3 H	1	0	0	1	0
11	22	9	5	7	4	7
12	2 H	2	0	1	0	0
13	25	5	9	9	12	12
14	1 H	1	1	0	1	0
15	26	18	18	13	14	9
16	23	13	12	13	13	7
17	1 H	1	0	1	1	0
18	24	14	14	12	10	10
19	1 H	1	1	0	0	0
20	5 H	3	3	0	1	1
21	1 H	1	1	1	1	0
22	32	8	8	10	5	10
23	3	1	0	1	0	1
Total	288	129	129	141	129	134
Disabled	17	10	7	3	5	1
Standard	271	119	122	138	124	133
Total % Occupancy		45%	45%	49%	45%	47%

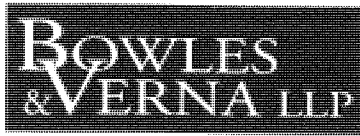
TABLE 3
Remainder of Parking Lot

ID	Capacity	Type	3:00 PM	4:00 PM	5:00 PM	6:00 PM	7:00 PM
1	7		0	0	0	0	0
2	16		0	0	0	0	0
3	18		0	0	0	2	1
4	7		2	2	1	2	0
5	1	H	1	0	1	0	0
6	29		4	5	0	0	0
7	6		2	2	2	5	2
8	2	H	0	1	0	0	0
9	9		1	1	2	9	6
10	4	G	1	3	3	4	4
11	2		1	2	1	2	2
12	2	G	2	2	2	2	2
13	2	G	1	1	1	2	1
14	7		6	5	7	7	7
15	7		2	7	7	7	7
16	2	H	0	1	2	1	1
17	6		4	6	6	5	5
18	11		11	10	11	11	11
19	22		11	11	13	8	9
20	21		11	12	11	16	12
21	20		12	12	14	9	9
22	19		15	12	12	16	13
23	9		1	0	5	2	7
24	9		6	1	5	6	6
25	16		8	7	14	12	16
26	3		3	2	1	1	1
27	5		5	5	4	4	4
28	1	H	0	0	0	0	1
29	4		4	4	4	4	4
30	10		9	9	10	10	9
31	11		8	5	2	8	8
32	3		2	1	1	0	1
33	2	H	0	0	0	0	0
34	2		1	1	1	1	1
35	5		2	1	1	5	0
36	5	G	3	0	4	3	0
37	2	H	0	0	1	0	0
38	7	G	3	2	7	6	3
39	2		1	1	1	1	1
40	2		2	1	2	2	1
41	2	G	1	0	2	2	1
42	1	H	0	0	1	1	1
43	7	C	2	4	6	4	6
44	3		1	1	1	2	2
45	3		1	1	1	1	1
46	4		0	0	0	1	0
47	4		2	2	2	1	0
48	1	H	0	0	0	1	0
Total	343		152	143	172	186	166
Disabled	12		1	2	5	3	3
Short Term(G)	22		11	8	19	19	11
Compact (C)	7		2	4	6	4	6
Standard (S)	302		138	129	142	160	146
G + C + S	331		151	141	167	183	163
Total % Occupancy			44%	42%	50%	54%	48%

TABLE 4
Summary by Parking Area

Section	Capacity	3:00 PM	4:00 PM	5:00 PM	6:00 PM	7:00 PM
Sprouts Front Area	235	115	115	129	122	122
Sprouts SE Side Lot	42	14	13	12	7	12
SW Back Corner	106	10	12	6	18	9
Remainder of Lot	248	142	132	166	168	157

Section	Capacity	3:00 PM	4:00 PM	5:00 PM	6:00 PM	7:00 PM
Sprouts Front Area	235	49%	49%	55%	52%	52%
Sprouts SE Side Lot	42	33%	31%	29%	17%	29%
SW Back Corner	106	9%	11%	6%	17%	8%
Remainder of Lot	248	57%	53%	67%	68%	63%



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December 5, 2019

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**Re: Sprouts Center – Fitness 19 Conditional Use Permit Application
6203 Jarvis Avenue, Newark**

Gentlepersons:

The Newark Planning Commission will be hearing the application of Fitness 19 for a conditional use permit (“CUP”) to operate a health and fitness facility in the currently vacant property located at 6203 Jarvis Avenue in the Four Corners shopping center in Newark. The property is owned by 6203 Jarvis, LLC, a family limited liability company owned by our clients, Steven and Vickie Mavromihalis, and Dean and Xenia Kuvelis.

We write to request that the City approve the Fitness 19 application, and to bring to your attention certain other factual circumstances and legal claims which may arise if that CUP application is denied.

The Four Corners development is now commonly referred to as the “Sprouts Center” inasmuch as our clients were successful, at the City’s request, in procuring Sprouts Farmers Market to open a new store in Newark in July 2017 occupying approximately one-half of the 60,000 square feet formerly occupied by Raley’s Market at 6399 Jarvis Avenue.

By way of history, Raley’s vacated the Four Corners in September 2015. Thereafter our clients retained highly effective commercial real estate brokers to seek to locate retail tenants pursuant to the City Manager’s request. From the outset of the broker’s efforts there was strong interest in the Raley’s space from potential health and fitness clubs. Our clients were informed by Assistant City Manager, Terrence Grindall, that the City’s top priority was to have that space



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filled by a “top-notch grocer.” In agreeing to address that City priority, our clients received assurances that if they were successful in attracting a grocer to the Four Corners, they could count on support of the City Manager’s office to fill the remainder of the vacant space with a health and fitness use. Illustrative of these assurances is a June 2, 2016 e-mail written by Assistant City Manager Grindall to Steve Mavromihalis after Sprouts had expressed interest in the Four Corners location:

“Steven, I just wanted to check in and see if all was well with the Sprout’s to Newark deal. If you are going to bring the Gym – I’d like to get that teed up!”

Based on the assurances from the City Manager’s Office, our clients went ahead and executed the Sprouts lease and invested millions of dollars in tenant improvements, including a demising wall necessary to enclose the new Sprouts premises so that this upscale market could be brought to the Newark community. It took 21 month, at enormous financial risk to our clients, to bring the Sprouts Market to Newark. Our clients took on this risk in reliance on the City’s promises that it would approve a CUP for a health and fitness facility next door after Sprouts opened for business.

In addition, our clients continued looking for other credit retail tenants who might come to the center to occupy the rest of the vacant space at 6203 Jarvis Avenue. We can provide you with exhaustive documentation from the commercial real estate brokers of their efforts to find someone else for this space.

While the construction work was going on for the Sprouts Market, our clients repeatedly requested authorization to proceed with the health and fitness center, but were asked by City officials to “be patient” and keep looking for a credit retail tenant. At our clients’ request, the brokers revisited their previous retail contacts to see if anyone had changed their mind. Nobody had.

Since the opening of Sprouts Market, our clients have continued to look for other retail credit tenants and have continued to stay in touch with the City Manager’s Office. They have continually been told that they need to “be patient.”

The City’s requests for “patience” have cost our clients hundreds of thousands of dollars. Our clients endured this in reliance on the assurance that we would receive the support of the City Manager, not only if they brought Sprouts, but later if they could not find a credit-worthy retail tenant. It is now time for the City to approve the health and fitness center so that we do not lose this tenant as well.



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LEGAL AUTHORITY

There can be no basis for the failure of the City to approve the conditional use permit for Fitness 19. This is an extremely appropriate family-friendly facility that will be an asset to the Newark community. There is nothing about the request for the conditional use that is contrary to other uses that the City has approved in this area. Indeed, the City has granted similar conditional uses for workout facilities in the immediate vicinity. The City granted a CUP to Anytime Fitness to operate a gym in the Four Corners center in 2012 – at a location right next door to Curves, another existing health and fitness facility.

Fifth Amendment Taking

On these facts, the City's denial of a conditional use permit in these circumstances would effect a taking of our client's property. The U.S. Supreme Court has made clear as a categorical matter that "the Fifth Amendment is violated where regulation denies all economically beneficial or productive use of land." *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (italics in original); see also, *Lingle v. Chevron USA Inc.*, 544 U.S. 528 (2005). Under *Lucas*, such a "total taking" is "compensable without case-specific inquiry into the public interest advanced in support of the restraint" by the government. *Lucas*, 447 U.S. at 1015. And the Court also pointedly observed that when governments prohibit or deny "a particular use [that] has long been engaged in by similarly situated owners", and "the fact that other landowners, similarly situated, are permitted to continue the use denied to the claimant", they are especially vulnerable to legal challenge. *Id.* at 1031.

The holding and reasoning in *Lucas* are applicable here. Despite strenuous marketing efforts by our clients and their brokers, the demised premises have been empty for more than four years since Raley's closed. The City's insistence that we "be patient" and leave the property empty, when it has approved other nearby health and fitness facilities sought by "similarly situated owners" (*id.*) in the same Community Commercial zoning district, is nothing more than a discriminatory denial of the proposed Fitness 19 use. To the contrary, "when the owner of real property has been called upon to sacrifice *all* economically beneficial uses in the name of the common good, that is, to leave the property economically idle, he has suffered a taking." *Lucas*, 447 at 1019 (italics in original).¹

¹ It is no longer necessary for a landowner owner who has suffered a taking of his property to first sue for just compensation under California law. He may now immediately seek relief in federal court under 42 U.S.C. § 1983 for the violation of his Fifth Amendment rights by the City. *Knick v. Township of Scott, Pennsylvania*, 588 U.S. ___, 139 S.Ct. 2162 (2019), overruling *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson County*, 473 U.S. 172 (1985). *Knick* is consistent with the recent pro-property rights trend in the Supreme Court.



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Separate and apart from *Lucas*, the City's denial of a CUP for Fitness 19 would also effect a regulatory taking under the multi-factor analysis set forth in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 125 (1978), including the "economic impact of the regulation on claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations." The Supreme Court has confirmed this is the "primary" factor and thus the *Penn Central* inquiry "turns in large part" on "the magnitude of a regulation's economic impact and the degree to which it interferes with legitimate property interests." *Lingle*, 544 U.S. at 538-540 (Justice O'Connor writing for a unanimous Court). It is crystal clear from the facts here that the economic impact and burden on our clients' property flowing from a denial of a use permit would be severe, with damages (and potential City exposure) of several million dollars based on the rent and other financial terms of the signed Fitness 19 lease.

Denial of Equal Protection

The Supreme Court has repeatedly "recognized successful equal protection claims brought by a 'class of one,' where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment." *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000), and cases cited therein. This is in keeping with the purpose of the Equal Protection Clause of the Fourteenth Amendment "to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents." *Id.* The City may also wish to take note of the overlap between the Court's protection of "similarly situated" plaintiffs in both the equal protection and takings contexts, both deprivations of their property rights (e.g., *Lucas*). It is no coincidence and will be a central theme if litigation ensues here.

In *Olech* the Village conditioned the connection of the Olechs' property to the municipal water supply on their granting the Village a 33-foot easement over their property, despite having required only a 15-foot easement from other property owners seeking access. These facts, quite apart from the Village's subjective motivation for its differential treatment of the plaintiff, were held "sufficient to state a claim for relief under traditional equal protection analysis." *Id.* at 565; see also, *Fortress Bible Church v. Feiner*, 694 F.3d 208, 222-224 (2d Cir. 2012) (following *Olech* and affirming injunction requiring town to issue building permit, where plaintiff presented "overwhelming evidence that its [project] application was singled by the Town for disparate treatment" compared to other similarly situated property owners).

Equitable Estoppel

The doctrine of equitable estoppel is codified in California Evidence Code § 623, which states:

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“When a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, be permitted to contradict it.”

Four elements must be present to apply the doctrine: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely on the conduct to his injury. *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 489, citing *Driscoll v. City of Los Angeles* (1967) 67 Cal.3d 297, 305. *Mansell* is and remains the leading case upholding the application of equitable estoppel to public agencies.

Equitable estoppel “rests firmly upon a foundation of conscience and fair dealing.” *Mansell*, 3 Cal.3d at 488. Moreover, it is settled that the doctrine of equitable estoppel “may be applied against the government where justice and right require it.” *Id.* at 492, and see cases cited therein. In *Mansell* the California Supreme Court explained that “[t]he government may be bound by an equitable estoppel in the same manner as a private party when the elements requisite to such an estoppel against a private party are present, and in the considered view of a court of equity, the injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel.” *Id.* at 496-497; see also, *Kieffer v. Spencer* (1984) 153 Cal.App.3d 954, 958, 963-964 (applying estoppel doctrine to compel city to grant business license to operate videogame arcade, where petitioner incurred substantial expenses to their “immediate detriment”, including encumbering their property, in reliance on “affirmative representations” by city officials, and “no strong public policy other than ordinary considerations of the general welfare” justified the city’s actions in withholding the license).²

Each of these elements is present, and the City’s conduct gives rise to an estoppel in favor of our clients. Our clients acted in reasonable reliance on the City’s promise to approve the proposed health and fitness use if our clients delivered a “top-notch grocer” like Sprouts to the Four Corners center. Given that this was a “top priority”, the City clearly intended that the Mavromihalis family would act on its statement. Our clients changed their position, to their financial detriment, in reliance on the City’s assurances. They put off bringing a health and fitness facility to the shopping center. And not only that. Our clients made significant financial and other investments; proceeded to market half the building for the Sprouts Market and spend money on a demising wall to make that happen. They also configured and sized the empty space

² The City may think that it is immune from such equitable estoppel claims, which are relatively uncommon. However, this law firm has litigated and successfully raised an estoppel against the City of Napa based on the conduct of city staff in that case – including an assistant city manager – on which our clients reasonably relied to their detriment.



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Page 6

Richard T. Bowles	Cathleen S. Huang
Michael P. Verna	Ethan K. Friedman
Robert I. Westerfield	William T. Nagle
Richard A. Ergo	Cheryl A. Noll
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Of Counsel
Bruce C. Paltenghi

so that it could be marketed for the future health and fitness gym that the City had promised to get “teed up.”

In sum, while our clients dealt with the City in good faith, the same cannot be said of the City. On these facts, we believe a judge or jury will be sympathetic to our clients’ position if litigation becomes necessary for our clients to enforce their constitutional and private property rights. .

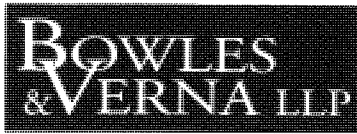
CONCLUSION

It is our clients’ fervent hope that nothing more than this letter is required to move this matter forward. Our clients are not litigious but are prepared to move forward with litigation to recover the damage that the City has caused them to incur based on the representations and promises made. We look forward to hearing from you. Thank you.

Very truly yours,


RICHARD T. BOWLES

RTB:dja



Richard T. Bowles	William T. Nagle
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January 3, 2020

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**Re: Sprouts Center – Fitness 19 Conditional Use Permit Application
6203 Jarvis Avenue, Newark**

Gentlepersons:

The Newark Planning Commission is now scheduled to hear on January 14, 2020 the Fitness 19 application for a conditional use permit (“CUP”) to operate a health and fitness facility in the currently vacant property located at 6203 Jarvis Avenue in the Four Corners shopping center. That property is owned by 6203 Jarvis, LLC, a family limited liability company owned by our clients, Steven and Vickie Mavromihalis, and Dean and Xenia Kuvelis.

In our December 5, 2019 letter, we requested that the City approve the Fitness 19 application, along with bringing to the City’s attention certain other factual circumstances and legal claims which may arise if that CUP application is denied. We write now to provide additional information which strongly supports the granting of a CUP to Fitness 19.

We respectfully request that this letter and the attached information be made a part of the Planning Commission Staff Report on this matter. Further, please be sure it is given to all Planning Commissioners in advance of the January 14 hearing. Thank you.

Seventeen Other California Cities in the Past Decade Have Approved New Use Permits for Fitness 19 Stores.

Those cities got it right. They recognized that Fitness 19 does generate sales tax revenue from its own operations. Contrary to apparent perceptions of City of Newark staff, Fitness 19 sells taxable products and services to its patrons. See December 27, 2019 letter to Deputy Community Development Director Art Interiano from Mitch Gardner of G2 Design Build Inc. and Bob Rodger of Fitness 19 (“Interiano Letter”), at pp. 1 - 2.

And at least as important, Fitness 19 will draw hundreds of thousands of fitness customers annually to existing retail shopping centers and stores nearby. The result? Fitness 19 has a track record of stimulating increased, sales tax generating activities in nearby shopping centers, retail stores and restaurants where it operates. Other California cities over the past decade have had the vision to recognize this positive economic spillover from the impacts and value that Fitness 19 brings to the community, to local residents and to adjacent retail uses.

Other cities have had the wisdom to approve Fitness 19’s CUP applications. **So should Newark.**

Health and Fitness Gyms Are a Good “Fit” for Malls and Shopping Centers Seeking to Increase Customer Visits.

We also refer the City to pages 2 – 7 of the Interiano Letter, where the findings and conclusions from several recent news articles are highlighted. A few quotes will suffice here. “Malls are turning to health clubs to help boost foot traffic.” “Put a gym in a mall, and boom, you suddenly have a busier mall.” “Malls never wanted gyms. Now they court them.” “Before or after working out, people are more likely to grab a quick bite to eat, shop for groceries, or pick up their dry cleaning from a neighboring business.” “Overall, the addition of a fitness tenant is a smart move for brokers and landlords when leasing a shopping center.”

Newark isn’t an island isolated from these nationwide retail trends. The experience in other communities is equally applicable here. Fitness 19 is and will be a good fit for the Four Corners center.

The Exhaustive, Four-Plus Year Marketing Efforts by John Cumberlich & Associates to Bring a Credit Retail Tenant to Our Clients’ Vacant Property in the Four Corners Center

John Cumberlich was the listing broker for the vacant premises at 6203 Jarvis Avenue in the Four Corners shopping center. We refer the City to the attached “Newark leasing summary” memorandum dated December 19, 2019, prepared by Mr. Cumberlich (the “Cumberlich Memo”). It describes and summarizes how, “over the past four+ years,” Mr. Cumberlich and his team “thoroughly and continuously marketed the property to the entire commercial real estate

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industry through multiple channels.” They also made direct outreach contacts with more than 120 first class Bay Area retailers, all of whom are listed in the three-page spreadsheet attached to the Cumberlich Memo.

The upshot of those efforts? The Comments section of the spreadsheet documents a litany of reasons why other retailers declined or weren’t interested in coming to the Four Corners location. It demonstrates that **the only potential tenants to express any interest in leasing our clients’ property, and who submitted offers to lease, were two health and fitness users – Fitness 19 and Crunch Fitness.** After determining that Fitness 19 had the stronger track record and was a better fit for the Newark community, our clients selected Fitness 19 as a leasing partner for the vacant premises.

The foregoing evidence – from the unanimous CUP approvals in other California cities, well-established retail trends and media reports on the synergy between retail and fitness uses in shopping centers, and the extensive, multi-year marketing efforts by Mr. Cumberlich – strongly support the Planning Commission’s approval of Fitness 19’s CUP application. Fitness 19 will bring an active, lively and family-friendly clientele to the Four Corners area. It will increase economic activity and retail sales, and will be a welcome addition to the center, and the City of Newark generally.

But that’s not the end of the story here. These and other facts also highlight the damages our clients will sustain, and the multi-million dollar legal and financial exposure the City will face, if it denies the proposed Fitness 19 use.

The City’s Liability for a Regulatory Taking

The Fifth Amendment prohibition against the taking of private property without just compensation “is violated where regulation denies all economically beneficial or productive use of land.” *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992); see also, *Lingle v. Chevron USA Inc.*, 544 U.S. 528 (2005). Just such a taking will occur if the City denies the Fitness 19 CUP application now – after four-plus years and concerted and extensive efforts to market our clients’ Newark property to retail users have come up empty. The record and evidence in this case shows that the proposed health and fitness use is, in fact, the *only* viable “economically beneficial or productive use” (*id.*) of the vacant premises at 6203 Jarvis Avenue. The circumstances encountered by Mr. Cumberlich and his team, and amply documented in the Cumberlich Memo, will weigh strongly against the City in future litigation if a CUP is not granted to Fitness 19.

Moreover, our clients’ damages are easily proven. Fitness 19 was ready to occupy the property over two years ago. Fitness 19 has now signed a 15-year lease for the premises, plus two (2) five-year options. The lease calls for minimum annual rent payments of approximately \$400,000 - \$500,000 during the initial 15-year term – which are of course contingent on the

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City's approval of a CUP. To this must be added our clients' very substantial financing and carrying costs that they incurred to keep their property vacant since the Sprouts market opened in mid-July 2017 – in compliance with repeated requests from City staff that they be “patient” and keep looking for a non-existent retail tenant.

The City is looking at a potential damages verdict against it of several million dollars, plus a likely seven-figure award of attorneys' fees and costs in favor of our clients under 42 U.S.C. § 1988.

In these circumstances, the City and its elected officials should reasonably ask themselves: Is a denial of the beneficial use proposed by Fitness 19 really worth taking this risk? Will Newark residents – your constituents – praise you for putting the City's finances at risk, or for wasting their tax dollars on the needless litigation that will result from denial of a CUP? The clear answer to both questions is a resounding NO. The only rational and sensible decision here is approval of Fitness 19's application without further delay.

The City of Newark Has Approved Other Health and Fitness Uses in the Four Corners Shopping Center. In These Circumstances, Denial of the Fitness 19 CUP Application Would Be Discriminatory and Unlawful.

Here too, the facts support our clients' position and fatally undermine any lawful basis for denying a use permit to Fitness 19. It is beyond dispute that the City permitted Curves, a women's fitness club chain, to operate in the Four Corners center more than a decade ago. Then in 2012, the City granted a CUP to Anytime Fitness to open a fitness gym right next door to Curves. The Curves and Anytime Fitness properties share the same Community Commercial zoning designation as our clients' property. Moreover, that Anytime Fitness isn't “high sales tax” generating retail store was not put forward by the City as a basis for denying it a use permit. Nor did the City deny a permit to Anytime Fitness because of its close proximity to, or the potential “anti-competitive” impacts that Anytime Fitness's opening might or might not have on Curves.

These facts have constitutional significance under both the Fifth Amendment taking and Fourteenth Amendment equal protection clauses. The Supreme Court made clear that a city which prohibits or denies a particular use that has “long been engaged in by similarly situated owners”, and/or where” other landowners, similarly situated, are permitted to continue the use denied to the claimant”, is especially vulnerable to a Fifth Amendment taking claim. *Lucas, supra*, 505 U.S. at 1031. In the same vein, a city violates the Equal Protection Clause where it intentionally treats a property owner “differently from others similarly situated” and there is “no rational basis for the difference in treatment.” *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). The City cannot deny this application because of “concern” for the impact on Anytime Fitness.

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Long story short: Our clients will have strong constitutional claims against the City on both taking and equal protection discrimination grounds if the Fitness 19 use permit is denied, in view of the City's past disparate and favorable treatment of adjacent property owners seeking permission for health and fitness uses in the Four Corners area. The City needs to face up to its exposure under *Lucas* and *Olech*, and not try to downplay it.

Equitable Estoppel

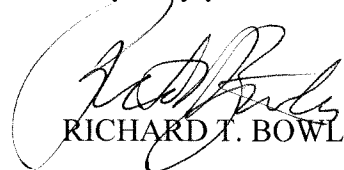
Finally, there is the matter of equitable estoppel, which "rests firmly upon a foundation of conscience and fair dealing" and "may be applied against the government where justice and right require it." *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488, 492. Our clients acted in reasonable reliance on the promise of City staff to get the proposed health and fitness use of their vacant property "teed up" for approval if and when our clients delivered a "top-notch grocer" like Sprouts to the Four Corners center. Our clients lived up to their side of the bargain. It is time for the City to do the same.

Conclusion

It remains our clients' earnest desire and hope that the City will review carefully the information in the Interiano Letter, the Cumberlich Memo and our letters. We hope it will weigh carefully its legal and financial exposure; reconsider its previously expressed position; and approve the pending Fitness 19 CUP application at the January 14, 2020 hearing. While it is not their first choice, our clients are fully prepared to pursue litigation against the City for any and all damages that will result from a denial of the Fitness 19 use.

We are available to meet with the appropriate City officials prior to the Planning Commission hearing if that would be helpful, and look forward to hearing from you. Thank you.

Very truly yours,


RICHARD T. BOWLES

RTB:dja

Enclosure

cc: Anne Stedler
Economic Development Manager
Anne.stedlar@newark.org

MEMORANDUM

To: Steven Mavromihalis, et al.
From: John Cumbelich
Date: December 19, 2019
Re: Newark leasing summary

Further to our ongoing discussions I have attached a spreadsheet that summarizes many of the retailers that our firm has been in dialogue with over the past four+ years in our efforts to lease the 28,000 SF co-anchor space at your Newark property.

In addition to our firm's direct outreach to the user community such as those noted on the spreadsheet, we have thoroughly and continuously marketed the property to the entire commercial real estate industry through multiple channels. These include:

- The property has been continuously posted at www.LoopNet.com, which is the industry standard forum for exposing commercial real estate listings. We have received occasional responses through LoopNet inquiries from uses such as banquet hall, night clubs and independent operators of martial arts, basketball courts or trampoline parks. None of these users generated offers.
- The property has been exposed for years at industry conventions of the International Council of Shopping Centers (ICSC), both regionally and nationally. ICSC is the largest trade organization in the shopping center industry.
- The property has been continuously marketed to the Northern California commercial real estate industry through our firm's daily marketing blasts send to over 800 commercial real estate brokers and professionals.
- The property has been continuously posted to our firm's available properties website, www.cumbelich.com
- The property has been continuously exposed to each of our firm's 35 partner offices throughout North America (X Team Retail Advisors), each of whom are exclusively focused on the leasing of best in class properties and representing first class retailers, as we are.

Perhaps just as telling as all of the users that have declined interest, due to a lack of interest in Newark in general or to this location in particular, are all of the first-class retailers that we have successfully consummated lease transactions with. Our firm has developed deep roots in the Northern California shopping industry over the past 30+ years, during which time our elite firm has consummated several of the most notable retail leases in Northern California. A partial list of uses with whom we have successfully consummated Bay Area leases with include:

- 24 Hour Fitness
- Apple
- BevMo!
- Big Lots
- Burlington

- Circuit City
- Cost Plus
- Crunch Fitness
- CVS/Longs Drugs
- Dick's Sporting Goods
- Famsa
- Fitness 19
- Forever 21
- Golf Mart
- Golfsmith
- Hobby Lobby
- Home Expo
- Kroger
- Lowes
- Orchard Supply Hardware
- Party City
- Petco
- Petsmart
- Pottery Barn
- Restoration Hardware
- Ross Dress for Less
- Smart & Final
- Sport Chalet
- Sprouts
- Stein Mart
- Target
- Tiffany & Co.
- TJ Maxx
- ULTA
- Villa Sport
- Wal Mart
- Walgreens
- Yoga Works

The partial list above demonstrates that our firm has one of the largest and most extensive resumes in successfully attracting first class retailers to Northern California locations of any professional currently active in this market.

The list above clearly suggests that if there were a good credit, good quality retailer other than Fitness 19 or Crunch, which was a candidate for this location, we would have identified them long ago.

Feel free to contact me with any questions about the summary above. Thank you

Newark Sprouts Co-Anchor Contact List		
Retailer	Declined?	Comments
24 Hour Fitness	Yes	Staying near mall
99 Only	Yes	decline
99 Ranch Market	Yes	declined interest in relocating
Alamo Draft House	Yes	decline
Aldi	Yes	not ready for Bay Area
AMC Theaters	Yes	regional locations only
Andronico's	Yes	not actively expanding
Arteagas Market	Yes	wrong demographic
Ashley HomeStore	Yes	Territory already covered by multiple other stores
At Home	Yes	Too small. Decline.
Babies R Us	Yes	prefers malls
Bed Bath & Beyond	Yes	Territory already covered, need more soft good co-tenancy
Berkeley Bowl	Yes	decline
Pet CLub	Yes	Not interested.
Bevmo	Yes	Not interested in Newark
Big 5 Sporting Goods	Yes	Their space requirements make it impossible to fit two tenants in the space
Blink Fitness	Yes	not ready for Bay Area
Bob's Discount Furniture	Yes	not ready for Bay Area
Bowlmor	Yes	regional locations only
Burlington	Yes	decline
Buy Buy Baby	Yes	prefers malls
California Family Fitness	Yes	decline
Cash & Carry	Yes	Toured, declined
Chavez Supermarket	Yes	wrong demographic
Chuze Fitness	Yes	not ready for Bay Area
Cost Plus World Market	Yes	Territory already covered, need more soft good co-tenancy
Crunch Fitness	No	submitted offer
CVS	Yes	declined relocation, despite drive thru opportunity
DD's discounts	Yes	Initial interest was conditioned on Tenant's right to terminate. Later withdrew.
Daiso	Yes	decline
Dave & Busters	Yes	regional locations only
David's Bridal	Yes	No requirement here
db Shoes	Yes	regional locations only
Dick's Sporting Goods	Yes	Too close to Hayward
Diddam's	Yes	decline
Dollar Tree	Yes	decline
DSW	Yes	No requirement here
Fitness 19	No	submitted offer
Floor & Décor	Yes	Decline. Too small.
Fresco Market	Yes	wrong demographic
Friedman's Home Improvement	Yes	seeks North Bay only
Gold's Gym	Yes	decline
Golf Galaxy	Yes	not active
Golfsmith	Yes	stopped expanding
Goodwill	Yes	decline
Grocery Outlet	Yes	too close to other store
H Mart	Yes	reviewed, pursued South Bay instead
Hankook Market	Yes	decline
Harbor Freight	Yes	decline
Hobby Lobby	Yes	regional locations only
Home Depot	Yes	too small
HomeGoods	Yes	regional locations only
In Shape Fitness	Yes	reviewed, declined
iPic Theaters	Yes	decline
Island Pacific Market	Yes	decline
Joann Fabrics	Yes	Too close to Pacific Commons in Fremont
Kirkland's	Yes	regional locations only
LA Fitness	Yes	reviewed, declined

La Superior	Yes	wrong demographic
Las Montanas	Yes	wrong demographic
Lidl	Yes	not ready for Bay Area
Liesure Sports Inc.	Yes	prefers upscale trade areas
Lifetime Fitness	Yes	decline. Not a target market.
Lion Supermarket	Yes	decline
Living Spaces	Yes	decline. Too close to Fremont store.
Lowes	Yes	already in Fremont
Mancini's Sleepworld	Yes	decline
Marina Market	Yes	decline
Marshalls	Yes	regional locations only
Maya Cinema	Yes	decline
Metropolitan Theaters	Yes	not seeking this market
Mi Pueblo	Yes	declined interest in relocating
Michael's	Yes	already covered in market
New Seasons	Yes	decline
Nordstrom Rack	Yes	no soft good co-tenancy
Nugget Market	Yes	purchase only, not interested
Off Broadway shoes	Yes	prefers malls
Old Navy	Yes	Territory already covered, need more soft good co-tenancy
Orchard Supply Hardware	Yes	not interested in returning to Newark
Party City	Yes	already in Fremont
Pet Club	Yes	decline
Pet Food Express	Yes	Their space requirements make it impossible to fit two tenants in the space
Pet Supplies Plus	Yes	they are too small
Petco	Yes	Territory already covered, need more soft good co-tenancy
Petsmart	Yes	Territory already covered, too small of trade area
Pier 1 Imports	Yes	prefers malls
Pinstripes	Yes	prefers lifestyle centers
Planet Fitness	Yes	decline
Regal Cinema	Yes	prefers malls
REI	Yes	already in Fremont
Richard's Crafts	Yes	not expanding
Rite Aid	Yes	reviewed, declined
Ross	Yes	declined interest in relocating from across the street
Safeway	Yes	declined interest in relocating from across the street
Seafood City	Yes	decline
Shopko	Yes	not ready for Bay Area
Sierra Trading Post	Yes	not ready for Bay Area
Smart & Final	Yes	Toured, declined
Sport Chalet	Yes	stopped expanding
Stein Mart	Yes	prefers malls and regional locations
Strike	Yes	decline
Studio Movie Grill	Yes	regional locations only
Super Kyo Po	Yes	decline
Target	Yes	toured twice, declined
The Floor Store	Yes	decline
The Sports Authority	Yes	regional locations only
Thomasville	Yes	decline
TJ Maxx	Yes	regional locations only
Tokyo Central/Marukai	Yes	decline
Top Fit	Yes	decline
Total Wine	Yes	Too close to Pacific Commons in Fremont
Total Woman	Yes	prefers lifestyle centers
Toys R Us	Yes	staying at Newpark
Tractor Supply Hardware	Yes	prefers free-standing locations
ULTA	Yes	too small, decline
Villa Sport	Yes	too large, seeks 8 acres
Walgreens	Yes	reviewed, declined
West Marine	Yes	decline

Whole Foods	Yes	met at ICSC, toured, declined
Winco Foods	Yes	reviewed, declined
Zion Market	Yes	decline



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February 4, 2020

VIA E-MAIL AND U.S. MAIL

Jeff Aguilar, Chair and
Members of Planning Commission
City of Newark
37101 Newark Boulevard
Newark, California 94560
Steven.Turner@newark.org
Art.Interiano@newark.org

**Re: Fitness 19 Conditional Use Permit Application
6203 Jarvis Avenue, Newark**

Dear Chair Aguilar and Members of the Planning Commission:

This letter is written following the hearing before the Planning Commission on Tuesday, January 14, 2020. The letter covers three subjects. First, we want to address the questions that came up after the close of the public hearing regarding parking. Second, we wish to bring additional information and testimony to the Planning Commission's attention regarding the positive retail and sales tax benefits that bringing in a new Fitness 19 facility has had for adjacent retail stores in other California cities. Finally, we want to respond to the issues raised by the letter submitted for counsel for the adjoining landlord and the testimony of the representative of the adjoining landlord and his tenant, Anytime Fitness.

Parking

Please refer to the enclosed supplemental letter dated January 16, 2020 from Stephen Abrams, President of Abrams Associates Traffic Engineering, Inc.

In his letter, Mr. Abrams addresses and refutes the comments from counsel for VN Investment Group, LCC ("VN"), as well as addressing the questions of the highest usage periods by both Sprouts and Fitness 19. The key takeaways from Mr. Abrams' supplemental report are that (1) parking studies assess impacts and the availability of adequate parking based on the peak hour demand for different uses, such as the Sprouts supermarket as compared with a health and fitness facility such as Fitness 19; and (2) in this case, those high parking usage periods do not overlap. Contrary to the comments made by VN's counsel, Mr. Abrams makes clear that the "length of time" that people park "is not a factor as the analysis is based on the peak parking



Chair Jeff Aguilar and Members of the
Newark Planning Commission
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available at various times during the week.” (See Abrams letter at p. 1.) The peak parking demand for supermarkets “occurs from about 2:00 PM to 5:00 PM. For a fitness center the data indicates the peak parking demand occurs from about 5:00 PM to 7:00 PM.” (*Id.* at p. 2.)

Hopefully this answers the questions of the Planning Commission regarding parking. If the Commissioners would like Mr. Abrams to attend the February 11 hearing, we would be happy to arrange that.

Fitness 19 Will Bring More Shoppers, Retail Sales and Sales Tax Revenue to the Four Corners Center

As we have previously discussed, Fitness 19 will bring vitality and increased retail shoppers to the Four Corners center after the Commission approves the use permit application as your City staff is recommending. In that regard, the positive impact of Fitness 19 on surrounding retail uses is documented.

Enclosed you will find a January 24, 2020 letter from Victor de Melo of Browman Development Company, Inc. (“BDC”). BDC is the owner of the Dublin shopping center and entered into a long-term lease with Fitness 19 to fill the premises vacated when CVS downsized at that location. Mr. de Melo reports that BDC’s retail center was “severely under-utilized” before Fitness 19’s arrival, and that since then:

“We’ve witnessed this first hand, as Dublin Fitness 19 patrons are shopping at CVS often before or after their work out, bringing new customers to CVS as well as repeat trips for existing customers. *The CVS manager has personally conveyed to me the nice benefit of Fitness 19 patrons constantly visiting their store and helping increase sales*” (emphasis added).

The same thing occurred when Fitness 19 opened a new facility at the Oakbrook Plaza shopping center in Thousand Oaks, leasing vacant space in the center from Gelson’s Markets. Much like Sprouts, Gelson’s operates 27 upscale grocery stores in Southern California. Please refer to the enclosed January 29, 2020 letter from Michael Smith, Director of Real Estate for Gelson’s, who describes how Fitness 19 has “been a meaningful traffic generator for the shopping center”:

“Fitness 19 has now been open for almost a year. The club is beautiful *Even better our sales and customer counts have improved. The new gym attracts hundreds of people each day to the shopping center and we see Fitness 19 member frequently cross-shopping at Gelson’s.* . . . [If we had other excess spaces in our company future I would not hesitate to reach out to Bob at Fitness 19 to co-tenant with our brand” (emphasis added).



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Given Fitness 19's track record in other California communities, the City of Newark will experience similar positive benefits by approving its use permit application.

Finally, the Planning Commission may wish to consider an article which appeared in the January 24, 2020 issue of USA Today, entitled "Store closings pile up: With 1,200 closures already announced, retailers face another grim year" (copy enclosed and link provided below), reporting on the severe difficulties facing nationwide retail chains including Macy's, J.C. Penney, Papyrus, Pier 1 Imports and many others:

<https://www.usatoday.com/story/money/2020/01/24/store-closings-2020-macys-jcpenney-bed-bath-beyond-express/4540886002/>

Response to January 14 Letter from VN's Counsel

The letter from the attorney retained by VN Investment Group, LCC essentially raises three points. They are the parking issue, the CEQA exemption issue and the CC&R issue. Inasmuch as the parking is addressed above, I will not comment further.

As for the applicability of the CEQA exemption for Existing Facilities (19 CCR Section 15301(a)), this was addressed at the January 14 hearing by Mr. Trotter and, perhaps more importantly, was also thoroughly addressed by the City's planning staff. As noted, the staff found the exemption to be absolutely applicable. The Commission should follow the lead of its staff on this issue for the reasons discussed at the January 14 hearing. The resolution of this issue is clear.

CC&Rs

Counsel for VN refers to Section 8.2 of the Agreement of Covenants, Conditions and Establishment of Restrictions dated October 4, 1989 (the "CC&Rs") as providing a basis for denial of the Fitness 19 CUP application. This is incorrect. In response to questions from Chair Aguilar and other Commissioners on this point, Community Development Director Steven Turner was unequivocal that enforcement of the CC&R's was not an issue for the City. He advised the Commission that Newark, like other cities, does not "get involved in enforcing CC&Rs." Speaking for the City's planning staff, Mr. Turner also stated: "We believe that is a private property owner issue that doesn't involve the City."

This is absolutely correct. We agree that neither the Planning Commission, the City Council nor anyone else from the City of Newark should become involved in the CC&Rs. This is between two landlords. It should not have been brought up by counsel VN, nor is it a proper concern of the Planning Commission. Whether or not the landlords can reach agreement on this

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issue is irrelevant to the City's consideration of Fitness 19's entitlement to approval of the Conditional Use Permit.

Further, as was pointed out, one has to question whether Fitness 19 is actually a "recreational use" within the meaning of Section 8.2 of the CC&R's. The history in this matter, and well-settled principles of contract interpretation, strongly suggest that the Fitness 19 use is not. Both Anytime Fitness and Curves are in the same category as Fitness 19. If they were "recreational" uses, they should have been submitted for approval by the owner of "Parcel 1" (i.e., our clients and their predecessors in interest) in accordance with the CC&Rs. There is no evidence that VN or its predecessors ever did so. VN did not approach our clients or seek our consent before bringing Anytime Fitness to the Four Corners center in 2012. These facts and circumstances have a direct bearing, as it is a "cardinal rule of construction that when a contract is ambiguous or uncertain *the practical construction placed upon it by the parties before any controversy arises as to its meaning affords one of the most reliable means of determining the intent of the parties.*" *Bohman v. Berg* (1960) 54 Cal.2d 787, 795 (emphasis added; also noting that the "practical construction" is the "best evidence of what was intended").

And even if one assumes that Section 8.2 applies here – and it does not – the same evidence noted above prevents VN from enforcing it against Fitness 19. Inasmuch as the VN parties failed to comply with this provision of the CC&Rs, they have waived the provision and are estopped from asserting it against our clients.¹ It has been the law for over a century that a waiver of the right to enforce a covenant occurs where substantially all of the landowners have acquiesced in a violation of the covenant, resulting in its abandonment. *Bryant v. Whitney* (1918) 178 Cal. 640, 643. Put another way, "where a party has violated the restrictions in his own deed, he cannot enjoin violations by others . . ." *Diederichsen v. Sutch* (1941) 47 Cal.App.2d 646, 650. This legal principle applies with full force to VN here.

Moreover, a court would likely reject any purported attempt by VN to enforce Section 8.2 under the unclean hands doctrine. That doctrine "demands that a plaintiff act fairly in a matter for which he seeks a remedy. He must come into court with clean hands, keep them clean, or he will be denied relief, regardless of the merits of his claim." *Aguayo v Amaro* (2013) 213 Cal.App.4th 1102, 1110, quoting *Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978. The unclean hands doctrine comes into play, and will bar relief here, because there is such a "direct relationship" between VN's misconduct in failing to seek our

¹ It is worth noting that VN has likewise waived Section 8.2's purported exclusion of "educational" uses from the Four Corners center. It has leased portions of the center to three educational use tenants – The Tutoring Club, Masako Music Studio and Anqi Chinese School – without ever seeking or obtaining our clients' consent pursuant to the CC&Rs. And not only that. VN's pattern of conduct in advancing its own economic self-interests without complying with Section 8.2 is further evidence of its unclean hands with respect to the Fitness 19 CUP application.

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clients' consent to Anytime Fitness under Section 8.2, while now purporting to rely on the very same provision of the CC&Rs vision keep Fitness 19 out of the Four Corners center, that it "would be inequitable to" enforce that provision against our clients. *Kendall-Jackson, supra*, 76 Cal.App.4th at 979 (citing numerous cases applying the unclean hands doctrine to circumstances that "involve the very [same] subject matter and affect the equitable relations between the litigants").

The well-documented decline of bricks-and-mortar retail stores since the CC&Rs were prepared and recorded more than 30 years ago also has legal consequences. Specifically, these changed conditions in the retail marketplace fatally undermine VN's contention that Section 8.2 of the CC&Rs still applies to and may be enforced in the current circumstances. California has long recognized that a covenant imposing a building or use restriction "will not be enforced where changed circumstances in the neighborhood have rendered the purpose of the restrictions obsolete." *Marra v. Aetna Construction Co.* (1940) 15 Cal.2d 375, 378, citing *Downs v. Kroeger* (1927) 200 Cal.743; see also, *Wolff v. Fallon* (1955) 44 Cal.2d 695, 697-698 (affirming trial court judgment declaring covenant restricting property to residential purposes was not binding; citing numerous adverse changes in circumstances since subdivision was created in 1913, including that "there was no ready market for the lot as residential property").

For all of these reasons, the Planning Commission should follow the advice of City staff and approve the Fitness 19 CUP without involving itself further in this "private property owner issue."

Opposing Testimony

A suggestion was made at the January 14 hearing that our clients should be bringing in a nonprofit medical facility to the center. Please see attached the list of prohibited use exclusions set forth in Exhibit G to the Sprouts Lease. You will note that Paragraph 1(ff) specifically precludes putting this sort of tenant into the vacant premises at 6203 Jarvis Avenue. (See Exhibit G at p.2.)

It is also noteworthy that Sprouts expressly agreed, in Exhibit G, that our clients could lease the vacant premises for "(ii) a gym or health club." (See Exhibit G at p. 4.) The question of whether Sprouts has approved having the Fitness 19 facility next door to its store was raised briefly at the January 12 Planning Commission meeting. The answer to that question is yes. As Exhibit G makes clear, Sprouts effectively granted that approval as part of the negotiations for its lease. And Sprouts reaffirmed that it has "no objections" to a fitness user in the shopping center in a September 19, 2019 letter to our clients (copy enclosed).

In order to get the upscale grocery store tenant that the City of Newark wanted, it was necessary for ownership to agree to this list of exclusions. This list of exclusions was made



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known to Assistant City Manager Terrence Grindall prior to the lease being executed and was implicitly, if not expressly, approved by the City. This occurred in conjunction with Mr. Grindall's earlier assurances to our clients that the City would approve Fitness 19 if we delivered Sprouts, as we have previously pointed out.

There was also concern raised by the owner of Anytime Fitness that Fitness 19 might impact his business. While we do not believe that Fitness 19 is directly competitive with Anytime Fitness, even if it is and even if it is predictable that Anytime Fitness' business would be impacted, these facts are not relevant considerations in determining whether to grant the CUP application. Indeed, the fact that Anytime Fitness is, and Curves was, at the Four Corners center after the City approved a CUP for Anytime Fitness, is confirmation that this CUP should be granted. As we have pointed out in prior letters, the City cannot selectively grant and deny CUP approvals in a manner which unlawfully discriminates against and takes away our clients' constitutional and legal property rights.

Conclusion

We appreciate the time the City and the Planning Commission have taken to address this matter. We believe it is time for the approval to be issued. There is no appropriate and sustainable basis for rejecting the Fitness 19 application. We look forward to prompt resolution. Thank you.

Very truly yours,



RICHARD T. BOWLES

RTB:dja

Enclosures

cc: David J. Benoun, City Manager (w/encls.) – via email
Steven Turner, Community Development Director (w/encls.) – via email
Art Interiano, Deputy Community Development Director (w/encls.) – via email

EXHIBIT 1



January 16, 2020

Mirchell Wade Gardner
g2 design/build inc.
150 Linda Vista Avenue
Pasadena, CA 91105

Re: Response to Comments on the Parking Review for 6203 Jarvis Avenue in the City of Newark

Dear Mr. Gardner,

This letter was prepared to respond to comments on the Parking Review for 6203 Jarvis Avenue, dated June 21, 2019. The comments received on the Parking Review are incorrect in implying the length of time typically spent by a patron in a fitness center is a factor in the parking analysis. The fact is the parking analysis is based on the total parking demand at various times of the day and week combined with forecasts of the peak parking demand for the land uses. In other words, the length of time that people are parked is not a factor in the analysis, which is based on a snapshot of the peak parking occupancy that was recorded in the surveys combined with the forecast increase in the peak parking demand associated with the Fitness 19 proposal. The length of time that people park is not a factor as the analysis is based on the peak parking available at various times during the week.

The comments also incorrectly suggest that "*Assumptions were made about the availability of parking demand based, in part, on the typical time occupying a parking space spent by a patron of a supermarket.*" Again, this is simply not true as the assumptions are all based on the maximum parking demand and occupancy levels at various times of the day and week, not on the length of time that patrons spend at various specific land uses (i.e. supermarkets, fitness centers, restaurants, etc.) The assumptions on parking are from the 5th Edition of the Institute of Transportation Engineers Parking Generation Manual (dated January, 2019). The Parking Generation Manual states the following about the purpose of its parking demand data: "*The purpose of the Parking Generation Manual is to present data and information that will enable an analyst to forecast parking demand by time of day on a specific day of the week, at a specific land use.*"

Please note that when shared parking calculations are provided, time of day factors are normally derived from shared parking data provided by the Urban Land Institute (ULI).¹ For a

¹ *Shared Parking*, Second Edition, Urban Land Institute, Washington D.C., 2005.

supermarket the data indicates the peak parking demand occurs from about 2:00 PM to 5:00 PM.² For a fitness center the data indicates the peak parking demand occurs from about 5:00 to 7:00 PM.

If you have any questions or need additional information please do not hesitate to contact me.

Sincerely,



Stephen C. Abrams
President, Abrams Associates
T.E. License No. 1852

² *Shared Parking*, Second Edition, Urban Land Institute, Washington D.C., 2005.

EXHIBIT 2



BROWMAN DEVELOPMENT COMPANY, INC.
Development • Leasing • Management

January 24, 2020

City of Newark Planning Commission
37101 Newark Boulevard
Newark, CA 94560

Re: Fitness 19 Application

Dear Chair Aguilar and Members of the Planning Commission:

Our company, Browman Development Company, Inc. (BDC) is the owner of the CVS, Fitness 19 and Daiso anchored property in downtown Dublin at 7201 Regional Street. BDC is a Walnut Creek based retail development company developing and acquiring shopping center properties since 1989 with over 4 million square feet of commercial properties in our portfolio. Our specialty is acquiring and re-developing retail development properties in strong bay area communities like Newark.

In 2014, our company acquired the CVS anchored Dublin property. Upon our acquisition of the property, CVS and its predecessors (Longs Drugs and Thrifty Payless) had occupied the 60,000 square foot property as a pharmacy since 1969. CVS was leasing the entire building but only occupying 50% of the space and it was severely under-utilized.

We worked diligently over the next couple years with the City of Dublin and our leasing team to downsize CVS (at their request) to 28,000 square feet, and attract quality alternate users to bring much needed customer traffic to the property and surrounding shopping center. After a 24-month marketing effort, we were very excited to secure a long-term commitment from Fitness 19 and Daiso to our retail center.

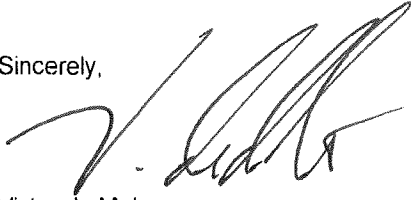
The retail industry has changed dramatically over the last 10 years, with thousands of store closures especially big box stores and the increasing strength of e-commerce retail replacing bricks and mortar retail. We've discovered, fitness is the ideal use to partner with traditional retailers like pharmacy, general merchandise and high-quality grocery users to attract critical customer traffic. We work with all the major neighborhood retailers (Target, Safeway, CVS, Walgreens, Kohl's) and they are supportive of fitness uses co-anchoring shopping centers because they bring daily trips to the shopping center, increase sales and drive traffic.

We've witnessed this first hand, as Dublin Fitness 19 patrons are shopping at CVS often before or after their work out, bringing new customers to CVS as well as repeat trips for existing customers. The CVS manager has personally conveyed to me the nice benefit of Fitness 19 patrons consistently visiting their store and helping increase sales.

As we are working on current and future retail development/redevelopments, quality fitness operators like Fitness 19 are one of our first marketing outreach efforts because they drive traffic to our shopping center which benefit all retailers. Fitness 19 has been a quality addition to our Dublin property and we look forward to partnering with them throughout the Bay Area on additional opportunities.

I would look forward to answering any questions about our experience working with Fitness 19 in our Dublin property and the positive benefits they've brought not only to our retail property but the surrounding shopping center and downtown Dublin.

Sincerely,

A handwritten signature in black ink, appearing to read 'V. de Melo', written in a cursive style.

Victor de Melo
Senior Vice President
Browman Development Company, Inc.
(925) 588-2225 Direct
(925) 588-2230 Fax
vdemelo@browmandevelopment.com

EXHIBIT 3

Gelson's

To whom it may concern:

January 29,2020

Re: Fitness 19

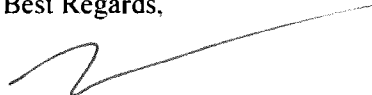
Hello, I am Michael Smith Director of Real Estate for Gelson's Markets. Let me provide some information for anyone unfamiliar with our company. We operate 27 upscale grocery stores throughout Southern California. The company is known as the premier grocery chain known for exceptional customer service, superior produce, highest quality meat, and unmatched selection of wine and liquor. We strive to provide value to our customers and many customers consider our shopping experience as the Nordstrom or grocers.

One of our recent store openings was in the Oakbrook Plaza in the upscale suburban community of Thousand Oaks, CA. We purchased the Lease out of the Haggens bankruptcy of a former Haggens / Alebertson's store. The center is owned by Regency Centers which controls hundreds of retail centers across the U.S. However, we leased this box with the intentions of demising the space to fit our prototype of 35,000 SF so we didn't need the excess space of approximately 9,000 SF. Fitness 19 was immediately interested in the space, but at that moment Gelson's didn't believe a "discount" gym would bring the customer base we felt was complimentary to the shopping center but especially an upscale grocer. We attempted to sublease the surplus space to various retailers for a couple years. We were never able to reach agreeable terms with any of traditional retailers. In the end, we visited a local Fitness 19 and actually one of our company executives worked out at Fitness 19 and I saw a first-class product that was not reflective of the discount price. The lack of interest from other retailers and the impressive tenant improvement we saw at Fitness 19 as a good fit.

Fitness 19 has now been open for almost a year. The club is beautiful – nicer than the other store we visited three years ago. Even better our sales and customer counts have improved. The new gym attracts hundreds of people each day to the shopping center and we see Fitness 19 members frequently cross-shopping at Gelson's. A Core Power yoga studio also opened recently on the other side of our space and we are seeing a benefit from their tenancy as well.

The takeaway; as a landlord of Fitness 19 is an first class company and we find it general benefits continuing and if we had other excess spaces in our company future I would not hesitate to reach out to Bob at Fitness 19 to co-tenant with our brand. They have been a meaningful traffic generator for the shopping center. Please don't hesitate to give me a call if you had any additional questions at 818.613.4118

Best Regards,



Michael Smith

Gelson's Markets

EXHIBIT 4



MONEY

Store closings pile up: With 1,200 closures already announced, retailers face another grim year

Nathan Bomey USA TODAY

Published 12:01 a.m. ET Jan. 24, 2020 | Updated 9:13 a.m. ET Jan. 24, 2020

Corrections & Clarifications: An earlier version of this story misstated the percentage decline in Kohl's same-store sales for the period of November and December.

The start of a new decade isn't offering much hope for beleaguered retailers.

Traditional chains are looking increasingly frail less than a month into 2020, with vacancies piling up and few near-term prospects for a turnaround.

National chains Macy's, J.C. Penney, Papyrus, Express and Pier 1 Imports, as well as other retailers, have collectively announced 1,218 store closures this year, according to global marketing research firm Coresight Research.

The fallout comes after a year in which retailers closed more than 9,200 stores, according to Coresight. Those included the liquidation of Payless ShoeSource, Fred's, Gymboree and Charlotte Russe and mass closures by Family Dollar, Forever 21, Charming Charlie, Sears, Kmart, A.C. Moore and GameStop.

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Retailers will likely announce plans to close more than 100 million square feet of space in 2020 for the fourth straight year, projected real estate data tracker CoStar. That's the equivalent of about 562 Walmart supercenters.

"This year will generally be more of the same," said Robin Trantham, a consultant for CoStar. "We expect many companies – and many sizable companies – to announce closures."

To be sure, it's common for the industry to face a reckoning of sorts early in the year following the do-or-die holiday shopping season. About half of closures are typically announced in the first quarter, according to CoStar.

But the cascading nature of the recent closure announcements reflects a deepening crisis for retail. Some recent closure announcements include:

- Home goods retailer Pier 1 Imports announced plans to close up to 450 locations, or nearly half of its stores.
- Schurman Retail Group announced the closure of its 246 stores, including stationery and greeting card chains Papyrus and American Greetings.
- Fashion retailer Express announced plans to close 91 locations, including 31 stores by the end of January and 35 by the end of January 2021.
- Department store chains Macy's and J.C. Penney are closing 29 and six stores, respectively.
- Bed Bath & Beyond is closing 60 locations, including 40 of its namesake locations.

With too many stores in the U.S. and chains trying to figure out the right approach, "the current decade will continue to see store closures and a repurposing of retail real estate as the retail landscape adapts to the digital era," Coresight Research analyst Marie Driscoll said in an email.

Off to a bad start

As the new year starts, many stores are already looking ghostly. In the third week of the month, foot traffic to stores fell 4.9% compared with the same period last year. And it was down 1.4% compared with the previous week, according to Cowen retail analysts.

That came despite nice weather, which typically encourages shopping. Average temperatures were 3.8 degrees warmer last week than the same week a year earlier, and they were 6.8 degrees warmer than usual for this time of year.

Don't expect conditions to get much better for the retail sector later in the year, either.

The second half of 2020 poses particular challenges for the industry, according to Morgan Stanley research analyst Kimberly Greenberger, who tracks specialty retailers, department stores and footwear.

It will be "tricky with the election looming" for retailers to stand their ground, since the presidential election could cause consumers to get skittish about spending, Greenberger wrote Wednesday in a research note.

Although the "fundamental consumer backdrop is healthy," people's spending on discretionary items "is likely to be challenged," Greenberger wrote.

Is your store on the list?: J.C. Penney closing more stores and a call center

Mall foot traffic underwhelms: Express closing 91 stores as fashion retailer grapples with declining sales

Even some chains that were recently thought to be on solid ground are encountering turbulence. The proposed split of Old Navy from its troubled counterpart, Gap, was called off last week amid a "lackluster performance" for Old Navy, Cowen retail analyst Oliver Chen wrote in a research note.

"The company has a lot of work ahead to drive consistent performance," and figure out the right number of stores to keep open," Chen said of Old Navy.

Department stores falter

Of course, digital threats remain at the heart of the retail industry's crisis. E-commerce made up 11.2% of total retail in the third quarter of 2019, up from 4.2% during the same period in 2010, according to financial data firm Refinitiv.

Department stores, which historically set themselves apart with their wide variety of merchandise, are particularly threatened by Amazon and other digital marketplaces.

Sears and J.C. Penney, in particular, are facing the fight for their lives in 2020. Sears barely survived its recent bankruptcy filing but almost immediately resumed store closures after emerging from Chapter 11 last February.

Some retailers are taking an if-you-can't-beat-'em-join-'em approach. Department store chain Kohl's won praise last year when it announced a returns partnership with Amazon that was hailed as effective insulation from digital competition because of the foot traffic it would presumably create.

But the significance of that deal is being called into question after Kohl's surprised investors this month by reporting a same-store sales decrease of 0.2% in November and December. The company experienced what CEO Michelle Gass called "softness" in women's apparel, "which we are working with speed to address."

In an effort to lure shoppers into the store, department stores put an average of 74% of their merchandise on sale in 2019, according to Refinitiv.

Hases and have-nots

It's not all doom and gloom for the retail sector. Retailers have announced about 500 more openings than closures so far this year, Coresight Research said.

And some retailers are capitalizing on the demise of others.

Makeup chain Ulta Beauty is projected to pick up sales as department stores continue to wither, according to Oppenheimer equity analyst Rupesh Parikh. Ulta could benefit if J.C. Penney accelerates store closures, which would affect the Sephora beauty shops located within the ailing department store.

In a world of haves and have-nots, the haves are still flourishing.

Namely, Walmart and Target are still in great shape, with sales growing and profits rising for discount chains. And specialty retailers like Five Below continue to lure shoppers with low prices and convenient options.

But even they're not immune. Target reported same-store sales growth of 1.4% in November and December, which was "below expectations," the company said earlier this month. And Five Below reported weaker-than-expected holiday season as same-store sales fell 2.6%.

For retailers to thrive in 2020, they'll have to place an emphasis on "building customer loyalty via authenticity and innovation through inspiring product, relevant marketing and customer-centric stores," Chen wrote.

And they need to place an emphasis on a smooth customer experience between their digital and physical operations, including options like buy-online-pick-up-in-store.

Customers who shop in a physical store become more likely to shop at the store online, and the other way around, according to a recent study by the International Council of Shopping Centers.

For every \$100 a customer spends online with a retailer, they spent \$131 in-store with the same retailer within a 15-day period, according to the ICSC report.

It also works in reverse. After spending \$100 in a physical store, the average customer spends \$167 online with the same retailer, according to the study.

"Though many are inclined to pit e-commerce against physical retail, those retailers that offer their customers both options – a choice of shopping online and in stores – tend to boost sales in both arenas," ICSC reported.

Follow USA TODAY reporter Nathan Bomey on Twitter @NathanBomey.

EXHIBIT 5

EXHIBIT G

PROHIBITED USES AND EXCLUSIVE RIGHTS

1. **Prohibited Uses.** The following uses (collectively, "**Prohibited Uses**") are prohibited in any portion of Parcel 1:

- a. any so-called single price point discount or discount dollar stores (such as Dollar Tree, 99 Cents and More, Family Dollar, Dollar General, or any stores with a similar business plan or similar operation);
- b. any use causing unreasonably loud noises (including any business using exterior loud speakers);
- c. manufacturing facility;
- d. dry cleaner (excluding, either (i) 1 dry cleaner which does not use perchloroethylene or any other Hazardous Substances or (ii) 1 facility for drop off and pick up of clothing cleaned at another location);
- e. any facility for the sale, lease or rental of automobiles, trucks, motorcycles, recreational vehicles, boats or other vehicles;
- f. car wash, tire store, automobile repair shop or service station or any facility storing or selling gasoline or diesel fuel in or from tanks;
- g. used clothing or thrift store, a "Salvation Army" or "Goodwill" type store or similar business, or a "second hand" store where principle business is selling used merchandise;
- h. a donation drop-off facility;
- i. a "surplus" store selling under stock or overstock merchandise or liquidation outlet;
- j. amusement center, carnival, virtual reality, laser tag, jump/trampoline facility, game arcade, or a children's recreational facility or play center of any kind, including, but not limited to, concepts such as "Boomerang's," "Funtastic," "Chuck E. Cheese," "Jump Zone" and "Peter Piper Pizza", or other stores operating under similar business plans and operations;
- k. spa or massage parlor (excluding (i) 1 "Massage Envy" or similar therapeutic massage retailer operating in a first-class manner, and (ii) 1 nail salon occupying no more than 2,500 square feet of Gross Floor Area);
- l. adult book shop or adult movie house;
- m. mortuary or funeral parlor;
- n. coin operated laundry;
- o. cocktail lounge, bar or tavern or sale of alcoholic beverages, whether or not packaged (excluding the sale of alcoholic beverages in conjunction with the operation of a



restaurant not prohibited under this Lease, provided such use may not be located within a 300 foot radius of the Premises);

- p. night club;
- q. cinema or theater;
- r. Intentionally deleted;
- s. bowling alley, pool hall, or skating rink;
- t. animal raising or storage facility (except incidental to a full-line retail pet supply store);
- u. pawn shop, auction house, flea market, swap meet, or junk yard;
- v. the drilling for and/or removal of subsurface substances, dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes;
- w. hotels or lodging facilities intended for human use;
- x. church;
- y. gun range or shooting club;
- z. day-care facility, educational facility or School (defined below) (excluding 1 "Sylvan," "Kumon" or similar tenant operating in a first-class manner, provided such use may not occupy more than 2,500 square feet of Gross Floor Area); for purposes of this provision, "School" means a beauty school, barber college, reading room, place of instruction or any other operation serving primarily students or trainees rather than retail customers;
 - aa. drive-throughs except in the location(s) shown on Exhibit A;
 - bb. any restaurant;
 - cc. any facility related to the occult sciences, such as palm readers, astrologers, fortune tellers, tea leaf readers or prophets;
 - dd. frozen food locker or sales facility, or milk distribution center;
 - ee. nursing home, old age center, or governmental facility (other than a post office), recruiting center or employment center;
 - ff. any office, medical and/or professional uses; any office, medical, and/or professional uses occupying, collectively, more than 10% of the Gross Floor Area of the Shopping Center; and any single office, medical, and/or professional use occupying more than 2,500 square feet of Gross Floor Area; provided however, in no event shall Parcel 1 contain an urgent care facility or an abortions clinic;

gg. any tobacco store, lounge or electronic cigarette type store or medical or otherwise legalized marijuana dispensary.

To determine whether a use which is otherwise prohibited within a specified radius of the Premises is in fact in violation of such radius restriction, the measurement taken shall be the distance from the building (from the point nearest the Premises) from which such alleged Prohibited Use is occurring to the point of the Premises closest to such building. To the extent this Paragraph 1 expressly permits any of the Prohibited Uses to be conducted by a limited number of users, Existing Tenants shall count towards such limit.

Except as set forth in the last sentence of this Paragraph 1, the Prohibited Uses shall not apply to any Existing Tenant; provided that to the extent Landlord has the right to consent to a change in use, sublease or assignment, Landlord shall withhold such consent if the resulting use would violate a Prohibited Use. "Existing Tenant" means a Parcel 1 tenant listed on Exhibit G-3 (and its permitted subtenants, successors and assigns) which is party to an effective lease with Landlord (or Landlord's predecessor) signed prior to the Effective Date. Notwithstanding the foregoing, the prohibited uses set forth on Exhibit G-2 are also deemed "Prohibited Uses" and shall apply to all Parcel 1 tenants and occupants.

2. Tenant's Exclusive Rights. From and after the Effective Date, Tenant shall have the exclusive right in the Building to conduct the operation and sale, either singly or in any combination, of any of the following activities and/or merchandise: (i) the operation of a grocery store, meat or seafood market or produce market, or the sale of any such items; (ii) the sale of vitamins and supplements, ethnic foods, natural or health food, or packaged ice cream; (iii) the sale of natural cosmetics, natural health or beauty products; (iv) the sale of packaged beer and wine for off-premises consumption; and (v) the operation of a full service bakery and/or over-the-counter delicatessen offering sliced or butchered meats and cheeses for off-premises consumption (all of which are included in and referred to as "Tenant's Exclusive"), and all other Parcel 1 tenants or occupants are prohibited from engaging in Tenant's Exclusive except on an Incidental Basis (defined below), other than fresh meat, seafood and produce for which there is no exception. "Incidental Basis" means the area dedicated to the sale of such items occupies the lesser of: (a) 250 square feet of Gross Floor Area; or (b) 3% of the sales area of the subject premises; provided not more than 2 linear feet of retail selling space shall be dedicated to the display and sale of any one category of ancillary products. Tenant's Exclusive shall not apply to any Existing Tenant whose lease does not prohibit the use of its premises for the portion of Tenant's Exclusive at issue; provided that to the extent Landlord has the right to reasonably consent to a change in use, or assignment, Landlord agrees to withhold such consent if the resulting use would violate Tenant's Exclusive.

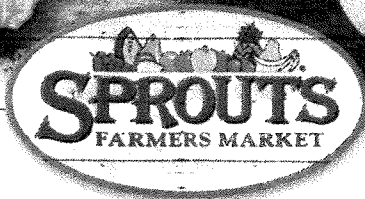
If Landlord fails to impose Tenant's Exclusive or any Prohibited Use pursuant to the lease or other occupancy agreement of any occupant of Parcel 1, and such violation continues for 30-days after Tenant remits written notice thereof to Landlord, then, as Tenant's sole remedy: (i) from and after the commencement of the violation until the violation is cured, pay the reduced sum of 50% of Base Rent in lieu of Rent otherwise due under this Lease for such period; or (ii) Tenant may terminate this Lease upon written notice to Landlord at any time prior to the cessation of such violation. If Tenant exercises its termination right, this Lease shall terminate as of the date set forth in such Notice.

Notwithstanding anything to the contrary contained in this Lease, neither Tenant's Exclusive nor the Prohibited Uses shall restrict or limit Landlord from leasing space on Parcel 1 for the following specific uses: (i) a full service pharmacy or drug store such as CVS or Walgreens; (ii) a gym or health club; and (iii) a discount apparel store such as Ross.

3. Limitation on Tenant Remedies. If Landlord properly imposes Tenant's Exclusive or any Prohibited Use by including it in an occupant's lease or other occupancy agreement for any portion of Parcel 1, and if such occupant violates Tenant's Exclusive or any Prohibited Use, Tenant may give Landlord written notice of such violation, and as long as Landlord diligently and in good faith attempts to cause the occupant to cease such violation, Tenant shall have no rights or remedies against Landlord based upon such violation, even if Landlord is unsuccessful in such lawsuit.

A handwritten signature or set of initials, possibly "JOK", is written in the bottom right corner of the page.

EXHIBIT 6



Theodore E. Frumkin II
Chief Development Officer
SFM, LLC
5455 E. High Street, Suite 111
Phoenix, Arizona 85054
(602) 814-8016

September 12, 2019

Via Email (steven@teammavronmihalis.com)

6203 Jarvis LLC
1021 Valle View Court
Novato, CA 94945

Re: **PROPOSED FITNESS USE IN THE SHOPPING CENTER**
Shopping Center Lease by and between 6203 Jarvis LLC ("Landlord"), and SFM,
LLC ("Tenant") for Sprouts Farmers Market Store #424 located in Newark, CA
("Shopping Center")

Dear Mr. Mavronmihalis:

This letter is in response to Landlord's request for Tenant's consent to leasing space in
the Shopping Center to a fitness user.

Tenant has no objections to the use of the Shopping Center for a fitness use.

Should you have any questions, please contact Janet Young at 602-682-1516 or
janetyoung@sprouts.com.

Sincerely,

Theodore E. Frumkin II
Chief Development Officer

October 2, 2019

Matt Morales
Anytime Fitness (Owner)
6347 Jarvis Ave
Newark, CA 94560
707-484-2200




RE: Requesting City of Newark deny Conditional Use Permit for Fitness 19

Dear Art Interiano,

It has come to the attention of business owners in the Sprouts Shopping Center that Fitness 19 has applied for a Conditional Use Permit to open a gym between Sprouts and Anytime Fitness (also a gym). We, business owners in the Sprouts Shopping center, are opposed to another gym opening in the center. Among the primary concerns, there is already an existing and well established gym in the center and across the street. In addition, the increased traffic and parking needs of a large gym during busy peak hours would be detrimental and negatively impact the many restaurants and other businesses.

We would kindly request that the City of Newark deny this permit.

Kind Regards,

Matt Morales (owner) Anytime Fitness	Celine (owner)
GEORGE REID (OWNER) JEWELRY BY DESIGN	Alma Se } owners of
 SIMPLY THAI	Melissa Pure water ice
Pier 98 Bill	BELLA EYE CARE OPTOMETRY 
 Daany Parikh	THE NATION CALVIN DO



ATTORNEYS AT LAW

18101 Von Karman Avenue
Suite 1800
Irvine, CA 92612
T 949.833.7800
F 949.833.7878

Gregory W. Sanders
D 949.477.7669
gsanders@nossaman.com

Refer To File # -

VIA HAND DELIVERY

January 14, 2020

William Fitts, Chairperson and
Members of the Planning Commission
City of Newark
37101 Newark Boulevard
Newark, CA 94560-4330

Re: Opposition to Proposed Conditional Use Permit U-19-9 to Allow Fitness 19 at
6203 Jarvis Avenue

Dear Chairperson Fitts and Members of the Planning Commission:

We represent VN Investment Group, LCC, the owners of the shopping center adjacent to the proposed location of the Fitness 19 physical fitness center. The purpose of this letter is to inform you of our objections to the proposed Fitness 19 conditional use permit and the bases for our client's objections.

By way of background, the proposed location of the Fitness 19 physical fitness center and the adjacent shopping center were developed as an integrated facility. The proposed location and the adjacent shopping center are governed by an Agreement of Covenants, Conditions and Establishment of Restrictions and Grants of Easements, dated October 4, 1989 and recorded in the records of the Alameda County Recorder as Instrument no. 89-273594 ("Agreement"). A copy of the Agreement is attached.

VN Investment Group, LLC is the successor in interest to Newark C&C Associates, a California limited Partnership, defined as "Developer" in the Agreement. The current owner of the location of the proposed Fitness 19 physical fitness center is the successor in interest to Ozark Investments, LTD., a California limited partnership, defined as "Ozark" in the Agreement. By its terms, the Agreement binds the successors in interest to Developer and Ozark. Accordingly, the terms of the Agreement are binding on the current owner of the proposed Fitness 19 location and the adjacent shopping center.

Following is a discussion of the bases of VN Investment Group's opposition to the proposed Fitness 19 conditional use permit:

I. Contrary to the city staff's assertion, the proposed conditional use permit is not eligible for a CEQA exemption.

In the Staff Report to the Planning Commission on the proposed conditional use permit (incorporated into the Planning Commission agenda and marked as a draft dated November 12,

2019), the staff asserts that the proposed conditional use permit is “exempt from CEQA per 15301.” The staff’s assertion is completely misplaced. The proposed conditional use permit is not eligible for exemption under the California Environmental Quality Act (Pub. Res. Code sec. 21000, et seq.) (“CEQA”).

By its terms, CEQA Guidelines section 15301 applies only to minor alterations and minor additions to existing structures, restoration or rehabilitation of deteriorated or damaged structures, etc. Section 15301 does NOT apply to uses to which existing structures will be put. It is patently clear that a change in use that is greater in intensity than a previous use of an existing structure may produce significantly greater environmental impacts. That is the case with regard to the proposed Fitness 19 use with regard to parking and traffic circulation impacts as further discussed below.

Inasmuch as the proposed Fitness 19 conditional use permit is not eligible for an exemption from the requirements of CEQA, an initial study must be undertaken by the city pursuant to CEQA Guidelines section 15063 to determine whether, for example, an environmental impact report must be prepared to assess the impacts associated with the proposed conditional use permit.

II. The “Parking Review” for the proposed Fitness 19 conditional use permit is not adequate.

A “Parking Review” for the proposed Fitness 19 conditional use permit dated June 21, 2019, was undertaken for the city by Abrams Associates. The study simply measures the amount of parking that will be necessary to accommodate the Fitness 19 use and compares the parking demand against the number of spaces available at the proposed Fitness 19 location and adjacent shopping center. The “Parking Review” does not measure the amount of time that patrons of the proposed Fitness 19 facility will occupy parking spaces.

When the proposed location for the Fitness 19 facility and adjacent shopping center were developed, the proposed Fitness 19 location was intended to be used as a supermarket. Assumptions were made about the availability of parking based, in part, on the typical time occupying a parking space is spent by a patron of a supermarket. That amount of time is much shorter than the time typically spent by a patron of a physical fitness center. Inasmuch as the “Parking Review” does not take the parking time differential into account, it presents a skewed analysis and conclusion that creates a false illusion that there is sufficient existing parking to accommodate the Fitness 19 use. Accordingly, the “Parking Review” is inadequate and cannot be relied on by the Planning Commission. Before considering the proposed Fitness 19 conditional use permit, the city must undertake an adequate parking study that takes the foregoing into account.

III. The proposed Fitness 19 use has not been approved by VN Investment Group, LLC, as required by the Agreement.

Section 8 (General Use Restrictions) of the Agreement provides at Section 8.2 that no portion of the Entire Property, defined in the Agreement to include the proposed location of the Fitness 19 facility and the adjacent shopping center, may be used for a recreational use without

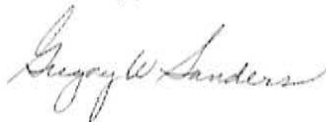
the prior written consent of Developer (now VN Investment Group, LLC). VN Investment Group, LLC has not approved the proposed Fitness 19 use in writing as required by the Agreement.

There is no doubt that the proposed Fitness 19 use is a recreational use. The aforementioned Staff Report provides that the Fitness 19 use is a permitted use in the Community Commercial (CC) zone because a "physical fitness center falls under the use category of 'Indoor sports and recreation'" use. (Emphasis added.) If the proposed Fitness 19 use is not a recreational use, then it is not a use permitted by the Community Commercial zoning of the property and the conditional use permit must be denied.

VN Investment Group, LLC has not approved the proposed Fitness 19 use in writing as required by the Agreement. Unless and until such approval occurs, Fitness 19 cannot use the proposed location for the intended use.

For all of the foregoing reasons, we respectfully request that the Fitness 19 conditional use permit application be denied.

Sincerely,



Gregory W. Sanders
Nossaman LLP

GWS:jg

#7

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

89-273594
013 087

DOWNEY, BRAND, SEYMOUR & ROHWER
555 Capitol Mall, Suite 1000
Sacramento, California 95814-4686 ⁵⁹/₄₉

RECORDED IN OFFICIAL RECORDS
OF ALAMEDA COUNTY, CALIF.
RENE C. DAVIDSON, CO. RECORDER

AGREEMENT OF COVENANTS, CONDITIONS AND
ESTABLISHMENT OF RESTRICTIONS AND GRANTS
OF EASEMENTS

'89 OCT 5 PM 12 58

THIS AGREEMENT OF COVENANTS, CONDITIONS AND
ESTABLISHMENT OF RESTRICTIONS AND GRANTS OF EASEMENTS
("Agreement") is made as of the 4th day of October, 1989,
by and between NEWARK C&C ASSOCIATES, A CALIFORNIA LIMITED
PARTNERSHIP ("Developer"), located at 1771 Stockton Boulevard,
Sacramento, California 95816, and OZARK INVESTMENTS, LTD., A California
Limited Partnership ("Ozark"), located at 500 West Capitol
Avenue, West Sacramento, California 95605.

RECITALS

1. The property subject to this Agreement
(hereinafter referred to as the "Entire Property") is situated in
the City of Newark, County of Alameda, State of California, and
is legally described as follows:
The Entire Property is shown on the Parcel Map attached hereto as
Exhibit A, which by this reference is made a part hereof ("Parcel
Map").
2. Developer is the owner of the parcels of land
shown as Parcels 2, 3, 4, 5, 6, 7 and 8 on the Parcel Map.
3. Ozark is the owner of the parcel of land shown as
Parcel 1 ("Ozark Parcel") on the Parcel Map.

C

4. Developer and Ozark intend that the Entire Property be developed as an integrated commercial-retail shopping center ("Shopping Center"), substantially as shown on the "Site Plan", attached hereto and incorporated herein as Exhibit B, and for such purposes do hereby fix and establish, for the benefit of each other and their respective heirs, assigns, successors, mortgagees and tenants, certain easements, covenants, restrictions, liens and charges (hereinafter collectively referred to as the "Restrictions"): upon and subject to which the Shopping Center, and any part thereof, shall be improved, maintained, held, leased, sold or conveyed. Such Restrictions shall be covenants running with the land pursuant to applicable law, including without limitation Section 1468 of the California Civil Code, and shall run with each and every portion of the real property comprising the Shopping Center and shall inure to and pass with each and every such portion, and shall apply and bind the respective successors in interest thereof, and all and each of the restrictions are imposed upon the Shopping Center as mutual and reciprocal equitable servitude in favor of the Shopping Center, and any portion thereof. Each covenant to do or refrain from doing some act on a Parcel (i) is a burden upon such Parcel for the benefit of the other Parcels, (ii) runs with each Parcel and (iii) shall benefit or bind each owner of a Parcel during its ownership of a Parcel or any portion thereof or any interest therein derived in any manner. References to an "owner" shall be defined as a fee simple owner of any Parcel within the

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Shopping Center and their successors and assigns. As long as Developer or Ozark has an interest (fee or leasehold) in the Entire Property, all approval rights and obligations of each party in this Agreement shall remain with Developer or Ozark, as the case may be. In the event Developer and Ozark no longer have any interest (fee or leasehold) in the Entire Property, all rights and obligations of each party shall transfer to their respective successors in interest.

SECTION 1. USE IN GENERAL

1.1 The Entire Property may be used for any lawful purpose not specifically prohibited herein, all as more specifically described hereinafter.

1.2 For the purpose of this Agreement, the Entire Property is divided into two (2) categories which relate to use, each of which is delineated on the Site Plan, and are hereinafter referred to respectively as "Building Area" and "Common Area." The buildings and improvements to be constructed on the Entire Property and the Entire Property are sometimes collectively referred to herein as the "Shopping Center."

SECTION 2. BUILDING AREA

2.1 The construction, establishment and maintenance of buildings upon the Entire Property shall be specifically confined and limited to the Building Areas, and any deviations shall require the prior written consent of Developer and Ozark, which consent shall not be unreasonably withheld or delayed.

2.2 (a) No building or other structure shall be erected, placed, maintained or substantially altered on any part of the Entire Property until or unless the exterior appearance and coloring thereof, specifically including, but not limited to, elevations, height, canopy design and dimensions and location of other building projections, shall have been approved by Developer and Ozark which approval may be delegated; provided, however, that such approval shall not be unreasonably withheld or delayed, and any such approval is not a warranty or guaranty of governmental approval or compliance, and Developer or Ozark shall not be liable to each other or any other party whatsoever by reason of mistake in judgment, negligence or non-feasance arising out of or in connection with, or for any action or non-action in connection with the approval or disapproval of or failure to approve any such plans. Any failure of Developer or Ozark to respond in writing to any written request for such approval within twenty (20) days of its receipt shall constitute an unqualified and irrevocable approval by such party of the specifications and drawings submitted. Developer and Ozark shall, upon giving such approval, evidence the same by endorsing such approval upon a copy of the final specifications and the elevations sheets of the working drawings for such building.

(b) All buildings in the Shopping Center shall be limited to a single story in height (not considering mezzanines), not to exceed thirty-two (32) feet (except improvements on Shops 6 and 7 and Pads A, B and C as shown on the

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Site Plan shall not exceed twenty-eight (28) feet), excluding any roof equipment and reasonable screening for such equipment.

2.3 Notwithstanding the provisions of Paragraphs 2.1 and Developer's and Ozark approval pursuant to Paragraph 2.2(a), portions of the Common Area adjacent to Building Areas may be used for, and reciprocal nonexclusive easements are hereby granted for:

(a) The installation, removal, repair, replacement and maintenance of building canopies over pedestrian sidewalks, over Common Areas and Building Areas, together with canopy support columns upon and over such sidewalks and Common Areas;

(b) Pedestrian sidewalks and flower boxes, planting containers, and other decorative and landscaping features thereon;

(c) Such advertising or identification signs of building occupants as may be desired to be attached to or erected upon the Building Area, including building canopies; provided, however, said signs shall be consistent with a sign criteria prepared by a licensed architect and approved by Developer and Ozark, which approval shall not be unreasonably withheld or delayed and provided, any sign on the Building Area of an occupant thereof shall only identify or advertise the business of the occupant being conducted in such Building Area;

(d) The installation, removal, replacement, repair, use and maintenance of fire hose connections, downspouts,

hose bibbs, standpipes, yard or floodlights, subterranean building foundations, and such signs or shadow boxes of building occupants as may be attached to or form an integral part of a building at any time situated upon any portion of a Building Area;

(e) The construction and operation of a loading ramp and dock on the Ozark Parcel for the exclusive use of Ozark; provided, however, that any exclusive loading ramp and dock shall not be considered a part of the Common Area;

(f) The construction and operation of trash enclosures or trash bins;

(g) The opening thereunto of doors from contiguous Building Areas which open outward;

(h) The temporary erection of ladders, scaffolding and storefront barricades during periods of construction, remodeling or repair of buildings and building appurtenances, upon the condition, however, that such construction, remodeling or repair is diligently performed and such ladders, scaffolding and barricades are thereupon promptly removed.

Any owner wishing to use the Common Area or its Parcel in a manner set forth in this Section 2.3 may do so at its own expense and shall be responsible for the proper maintenance of such use to the extent such maintenance is not within the general scope of Common Area maintenance, or is extraordinary to the Common Area maintenance generally provided by the Maintenance Director, as set forth in Section 5, below.

SECTION 3. COMMON AREA

3.1 The Common Area shall be used for "Access and Parking" and for "Services and Activities" (as each term is hereinafter defined) and for no other purposes except those specifically described herein, without the prior written consent of Developer and Ozark which consent shall not be unreasonably withheld or delayed. No changes in the number of parking spaces, or in the configuration of the Common Area from that shown on the Site Plan shall be made without the prior written consent of Developer and Ozark which consent shall not be unreasonably withheld or delayed; provided Developer or Ozark may withhold its consent to any change that would result in the number of the parking spaces available for standard size American cars in the area designated in Exhibit C attached hereto being reduced below 300.

3.2 The term "Access and Parking" as used herein shall mean and be deemed to include and permit the following:

(a) The parking of passenger vehicles and the pedestrian and vehicular traffic of the owners and their respective heirs, successors, assigns, grantees, mortgagees, tenants, subtenants, licensees and concessionaires, and the officers, directors, agents, employees, customers, visitors and licensees and invitees of any of them (hereinafter called "permitted users"), of any and all portions of the Building Area within the Entire Property;

(b) The ingress and egress of any of the above-designated persons and the vehicles thereof, to any and from any portion of the Common Area and the public streets adjacent to the Common Area;

(c) The movement of pedestrians and passenger vehicles between mercantile, business and professional establishments and occupants located or to be located within the Building Area;

(d) Subject to Section 3.1, the construction, maintenance, repair, replacement, rearrangement and reconstruction of parking sites or stalls, including bumpers, private streets, sidewalks, ramps, driveways, lanes, curbs, gutters, traffic control areas, signals, directional signs, traffic islands, traffic and parking lighting facilities;

(e) The ingress and egress of delivery and service trucks and vehicles to and from Building Areas or any portion thereof and the public streets adjacent to the Entire Property for the delivery of goods, wares or merchandise and the rendition of services to the owners and their respective permitted users. The Common Area shall not at any time be used for the parking of trucks, or the loading or unloading thereof, except for the parking, loading or unloading of trucks during and in connection with the construction or demolition of buildings upon a Building Area, the servicing and supplying of a Building Area which cannot be serviced and supplied from areas designated as loading areas, the delivery or removal of trade fixtures

(including signs) or the construction, repair or maintenance of parking area and improvements and facilities herein permitted, upon the condition, however, that any such use shall be confined to that which is reasonably necessary in connection with the matters herein specified and shall be diligently and promptly performed;

(f) The temporary parking or standing of trucks, tractors, trailers and other delivery vehicles used in conjunction with the exercise of any of the activities described in subparagraph 3.3 below.

3.3 The term "Services and Activities" as used herein shall mean and be deemed to include and permit the following:

(a) The installation, maintenance and operation, within the confines of the Common Area, of underground public utilities serving Building Areas, together with and including vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, conduits and related facilities, and sewage facilities, all of which shall be even with or below the surface, except hydrants, transformers, risers and other facilities which by their nature must be installed, maintained or operated above ground;

(b) The provision of other facilities such as mailboxes, public telephones and benches for the comfort and convenience of customers, visitors, invitees, licensees and patrons of the mercantile, business and professional establishments and occupants located or to be located upon the

Building Area or any portion thereof, as the owners may from time to time deem appropriate;

(c) The seasonal or periodic sale of merchandise from sidewalks which are immediately adjacent to Building Areas (provided the owners of such Building Areas have approved said sale, which approval shall not be unreasonably withheld or delayed), which sale shall not unreasonably impair pedestrian access along said sidewalks, impede vehicular traffic flow within the Shopping Center nor diminish the number of the parking spaces as shown on the Site Plan;

(d) The construction, maintenance, repair, replacement, rearrangement and reconstruction of underground public utilities, underground sewage facilities, and all other common facilities.

(e) Subject to governmental approval, Developer shall erect a pylon sign structure in the location indicated on the Site Plan. The Shopping Center pylon structure and identification sign thereon and all monument signs for the Shopping Center shall conform to the sign criteria prepared by a licensed architect mutually approved by Developer and Ozark. The cost and expense of erecting any Shopping Center monument signs and said pylon structure, and of installing the electrical system for the operation of the identification signs thereon (including underground conduit and electrical panels) and maintaining all such signs shall be borne in the same ratio as each user's square feet of sign identification bears to the total

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square feet available on the sign. The available identification space on the pylon shall be allocated as follows: the top one-third (1/3) of available sign space to Developer for Shopping Center identification; the middle one-third (1/3) of available sign space to Ozark; and the bottom one-third (1/3) of available sign space to Developer for use by no more than two (2) occupants, each either occupying more than 15,000 square feet of floorspace in the Shopping Center or being the single occupant of a free-standing pad building. Ozark shall have a right of first refusal for one-third (1/3) of the available sign space on any Shopping Center monument as it may become available from time to time, which monument signs may only be used to identify the Shopping Center and/or to identify occupants of the Shopping Center occupying more than 15,000 square feet of floor space in the Shopping Center or being the single occupant of a free-standing pad building. No more than two (2) occupants shall appear on any one monument sign, with or without the Shopping Center identification;

(f) The construction, maintenance, repair, replacement and reconstruction of any mall or landscaped area including plants, planting boxes, edgers, decorative walls, and sprinklers and valves, all as may be required by any governmental authority having jurisdiction;

(g) The installation, operation, repair, replacement and maintenance of public utilities, together with vaults, manholes, meters, pipelines, valves, hydrants, conduits,

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poles and related facilities, and sewage services, serving any Building Area; provided, however, that any poles or other above-surface installations shall be located so that there shall be an unimpeded access for vehicles and trucks to and from the public streets from and to the loading areas of any Building Area and all crossarms and pole racks and the like attached thereto shall be in compliance with all applicable laws;

(h) Subject to the provisions of Sections 3.2, above, rearrangement and reconstruction of truck loading and unloading areas including ramps, docks and similar facilities; trash, refuse and garbage container storage areas; visible recycle bins in the area(s) shown on the Site Plan; and other incidental and related facilities;

(i) With respect to the Ozark Parcel, the storage of shopping carts and the operation of vending machines on the sidewalks immediately adjacent to its Building Area, provided such storage and operation does not unreasonably impair pedestrian access along said sidewalks;

(j) All the Services and Activities permitted within the Common Area shall be performed with reason and judgment so as not to unreasonably interfere with the serving and supplying of the loading areas of the Building Areas.

SECTION 4. COMMON AREA IMPROVEMENT

4.1 Developer shall, on behalf of Developer and pursuant to that certain "Development Agreement" between Developer and Ozark of even date herewith (the "Development

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Agreement"), improve or cause to be improved, for Access and Parking and Services and Activities, as herein contemplated, all portions of the Common Area herein established and as shown on the Site Plan.

4.2 All sidewalks adjacent to a Building Area shall be of concrete construction and not exceed fifteen (15) feet in width. All areas for vehicular use shall be paved with a suitable base and surfaced with a bituminous or asphaltic wearing surface at least four (4) inches in depth or as recommended by the soils engineer approved by Developer and Ozark for the Shopping Center, provided, if such engineer makes more than one recommendation for a particular area of the Shopping Center, the recommendation suggesting a surface of the strongest durability for such designated area shall be used, or, as to portions of the loading areas, if all parties hereto approve, in the alternative, with concrete or such other heavy-duty paving material suitable to withstand heavy truck traffic and which is reasonably acceptable to Developer and Ozark.

4.3 Subject to the foregoing limitations and restrictions, during the course of construction of any buildings which may hereafter be constructed upon a Building Area, portions of the Common Area may be used by the owner thereof for the temporary storage of construction materials and equipment used and to be used in connection therewith, provided that such use does not damage existing improvements (unless repaired by and at the expense of the owner causing such damage within ten (10) days

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from the date that such damage occurs) nor unreasonably interfere with the normal use of such Common Area or any other portion of any Building Area.

4.4 The movement of pedestrians and vehicles between the establishments located and to be located upon the Entire Property (and to and from the public streets) shall be unimpeded; accordingly, no building, fence, wall, hedge or barricade shall be erected or maintained over or upon the Common Area, except:

- (a) Such as may be necessary to protect members of the public from construction or excavation activities;
- (b) Light standards and appropriate landscaping, including hedges, walls, planters and planting boxes and edgers;
- (c) The sign pylon as set forth in Paragraph 3.3(e) above;
- (d) Such fences on the perimeter of the Entire Property as may be agreed upon by Ozark and Developer;
- (e) Monument signs approved by Developer, Ozark and the applicable governmental authorities.

4.5 Except as specifically depicted on the Site Plan, no fence, division, rail or obstruction of any type or kind shall ever be placed, kept, permitted or maintained between the properties of any owners of any portions of the Entire Property, or between any subsequent division thereof, or upon or along any of the common property lines of any portion thereof, except within the confines of the Building Area.

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4.6 No charge, fee, toll, levy or expense shall ever be required, assessed or made of or received (unless imposed by a governmental agency having jurisdiction) from any business guest, invitee, licensee, visitor, customer or patron of any of said mercantile, business and professional establishments. The cost and expense of the operation, management, maintenance, replacement and repair of the Common Area shall be borne and discharged only as provided for in this Agreement.

4.7 All construction and alterations to the Common Area shall be made in accordance with plans and specifications approved by Developer and Ozark prior to the commencement of any such work thereto. Such approval shall not be unreasonably withheld or delayed.

4.8 The improvement and/or use of any portion of a Building Area for Access and Parking or Services and Activities shall not be construed as an inclusion of such portion within the Common Area and such portions may, at any time thereafter, be improved with buildings and appurtenances as herein contemplated.

SECTION 5. COMMON AREA OPERATIONS AND MAINTENANCE

5.1 Upon completion of improvements pursuant to the Development Agreement referenced in Section 4.1 hereof, Developer shall be appointed as the initial maintenance director of the Common Area ("Maintenance Director"). The Maintenance Director shall maintain or cause to be maintained the Common Area in first-class condition and repair, said maintenance to include without limitation, the provision of adequate lighting, water,

electricity, sweeping, gardening, security (including without limitation, the control of loitering, vandalism, malicious mischief and unauthorized use of the Common Area), janitorial services, repairs to and replacing of asphalt paving so as to maintain a smooth and level surface, bumpers, striping, light bulbs, light standards and sprinkler systems and planting areas, and any other items of repair, replacement or maintenance that may be needed from time to time to properly maintain the Common Area.

5.2 As a part of said maintenance and operation, the Maintenance Director shall obtain and maintain insurance as required by Paragraph 10.4.

5.3 The Maintenance Director shall have (and is hereby given) the full right and authority of operation, control and maintenance of the entire Common Area (except exclusive loading ramps and docks for use by an owner or occupant), such authority to also include the right to enact rules and regulations subject to the reasonable approval of Developer and Ozark for the use and operation of the Common Area, including without limitation employee parking. Such right and authority of the Maintenance Director shall continue until the Maintenance Director shall resign by giving ninety (90) days' notice in writing to Developer, Ozark and subsequent owners, if any, or, in the event that Developer or Ozark, as the case may be, shall at any time, be reasonably dissatisfied with the Maintenance Director's performance of its obligations under this Section 5,

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or cost thereof, then Ozark or Developer shall have the right to give the Maintenance Director thirty (30) days' written notice of such dissatisfaction, specifying the particulars in respect of which the Maintenance Director's performance is deemed unsatisfactory. If at the end of the thirty (30) day period from the date of such notice such performance shall continue to be unsatisfactory and not reasonably cured, the notifying party shall have the right to cause to be taken over from the Maintenance Director by a new individual or entity approved by Developer, Ozark and, if applicable, any other owners so that owners of more than fifty percent (50%) of the Entire Property approve, effective on the first day of the next succeeding calendar month, the duties of the Maintenance Director hereunder. In the event that the Maintenance Director resigns or is removed as provided in this Section, the Maintenance Director shall, within sixty (60) days after the effective date of its termination as Maintenance Director, provide to all of the owners a written statement of all costs, fees and expenses which are to be reimbursed to the Maintenance Director pursuant to the terms hereof. Such sums shall be payable by the owners to the Maintenance Director within fifteen (15) days after the delivery of such statement; provided that any such owner may, at such owner's expense, conduct an audit of the Maintenance Director's book and records to verify the sums due so long as such audit is commenced and completed within ninety (90) days after the delivery of the statement. Any new Maintenance Director will,

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after its appointment in accordance with the terms hereof, perform the maintenance, management and operation obligations of the Maintenance Director set forth in this Agreement throughout the remainder of the term of this Agreement, or until resignation or removal in accordance with the terms of this Agreement.

5.4 Notwithstanding any provisions of this Section 5 which may be to the contrary:

(a) The Maintenance Director may cause an affiliate or an independent party or entity to perform some or all of the obligations of the Maintenance Director provided for in this Agreement; provided that if an affiliate is hired, it shall be at a fair market price for the local area.

(b) Each Maintenance Director shall save and hold harmless the preceding Maintenance Director of and from any and all claims, demands, costs, fees, expenses, liabilities and damages arising or occurring subsequent to the date said new Maintenance Director assumes its duties, except for the intentional misconduct or negligence of said preceding Maintenance Director or that of its employees or agents. Said preceding Maintenance Director shall save and hold harmless the new Maintenance Director of and from any and all claims, demands, costs, fees, expenses, liabilities and damages arising or occurring prior to the date the new Maintenance Director assumes its duties, except for the intentional or negligent misconduct of said new Maintenance Director or that of its employees or agents.

(c) In any event, at such times as any Maintenance Director ceases to have an obligation to perform the duties and obligations described herein, said Maintenance Director shall cease to have any liability or responsibility for any acts, events or circumstances occurring subsequent to and not as a result of its performance or non-performance of its duties or obligations while Maintenance Director.

(d) The Maintenance Director may make and shall use its best efforts to enforce or cause to be enforced, reasonable rules and regulations of general application for the supervision, control and use of the Common Area. Any rules and regulations promulgated by the Maintenance Director shall be submitted to the owners for their approval and/or amendment prior to the effective date of such rules and regulations. All rules and regulations must be approved and/or amended by Developer, Ozark and, if applicable, any other owners so that owners of more than fifty percent (50%) of the Entire Property approve. Such approval shall not be unreasonably withheld or delayed.

(e) During any period of time when no person is obligated to perform the duties of Maintenance Director, each owner of a Parcel of the Entire Property shall have the obligation to maintain its Parcel or Parcels in a manner consistent with the provisions of this Agreement.

5.5 The Maintenance Director is hereby authorized to contract for periods not in excess of one (1) year containing provision for the Maintenance Director or its successor to cancel

such contract upon sixty (60) days' notice and is authorized to pay for, on behalf of the owners of the Entire Property, all of the Common Area operating and maintenance expenses incurred to comply with this Agreement, plus, provided the Maintenance Director has not contracted another person to perform its management or administrative duties, a service charge of ten percent (10%) of such expenses, excluding the cost of insurance, taxes, non-recurring single expenditures in excess of Five Thousand Dollars (\$5,000.00) per item and utilities, including without limitation water, electricity, gas, sewer and telephone. The Maintenance Director shall keep accurate books and records in the State of California, and agrees to allow Developer or Ozark to audit, at no expense to the Maintenance Director, all records pertaining to the Common Area. The Maintenance Director also agrees to hold expenses to a reasonable level consistent with the operation and maintenance of a first-class shopping center.

5.6 The owners of the Shopping Center shall pay the Maintenance Director monthly, on an estimated basis for their pro rata share as provided in Paragraph 5.7, for repairs and maintenance costs (including service charge) with the first payment date being the first day of the month following fifteen (15) days after the date said Common Area is open for use to the general public. The Maintenance Director shall reasonably estimate such expenses in advance for a given calendar year and bill the owners for such expenses (including service charge) in

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equal monthly amounts. The owners shall pay the estimated monthly payment on the first day of each calendar month until the Maintenance Director makes the annual adjustment referred to below. Said annual adjustment shall contain detailed invoices and itemized evidence with respect to all costs and expenses for Common Area charges. An annual adjustment based on actual expenses in such calendar year shall be made by the Maintenance Director within sixty (60) days following the close of each calendar year whereby an owner shall receive a refund or pay any additional amount, both within ten (10) days of notice thereof.

5.7 (a) For the purposes of this Agreement, the Building Area of the Entire Property is calculated and agreed to be 129,764 square feet. The proportionate share of the cost of operation, management, control and maintenance of the entire Common Area is to be borne and paid monthly in accordance with Paragraph 5.6, above, by the owner of any part of the Entire Property, in the same ratio that the number of square feet of Building Area located within an owner's Parcel(s) bears to the total number of Building Area in the Entire Property.

(b) Developer and Ozark hereby agree that the fraction of the total amount of said costs and expenses to be paid by the owner of each Parcel shall be as follows:

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Parcel 1	240,000	<u>46.68%</u>
Parcel 2	143,300	<u>27.87%</u>
Parcel 3	22,800	<u>4.43%</u>
Parcel 4	19,600	<u>3.81%</u>
Parcel 5	20,400	<u>3.97%</u>
Parcel 6	17,700	<u>3.44%</u>
Parcel 7	20,300	<u>3.95%</u>
Parcel 8	30,100	<u>5.85%</u>
Total		100.00%

5.8 If any owner sells a Parcel owned by it, then such owner shall have no further obligation under this Agreement with respect to the Parcel thus sold after the date of the conveyance, other than obligations arising prior to the date of the conveyance.

5.9 In the event that any owner fails or refuses at any time to pay its share of any of the maintenance expenses when due, then, after written demand and failure to pay within ten (10) days after receipt of such demand, legal action may be instituted by any owner against the defaulting owner for reimbursement, plus interest at the lesser of either two (2) percentage points over the then current reference rate of interest as announced from time to time by the Bank of America, N.T. & S.A., main office, San Francisco, California, computed annually, but adjusted quarterly or the maximum rate permitted by law. If any owner defaults under this Agreement, any other owner may institute legal action against the defaulting owner for

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specific performance, declaratory relief, damages or other available remedy. In addition to recovery of the sum or sums expended on behalf of the defaulting owner, the prevailing owner shall be entitled to receive from the defaulting owner such amount as the court may adjudge to be reasonable attorney fees, including without limitation, attorney fees incurred in executing upon any judgment. Any and all delinquent amounts together with said interest shall be a lien and charge upon all of the Parcel or Parcels of such owner subject to, and junior to, and shall in no way impair or defeat the lien or charge of any bona fide mortgage or deed of trust upon the same or any part hereof at any time given or made.

5.10 Notwithstanding anything contained herein to the contrary, in the event that the provisions of a particular lease between an owner and its tenant with respect to the calculation, time and method of billing and payment of Common Area operating and maintenance expenses are different from the provisions of this Agreement, the lease provisions shall prevail among said owners and its tenants, but as among the owners, this Agreement shall prevail.

SECTION 6. TAXES AND ASSESSMENTS

6.1 As to any portion of the Entire Property, it is intended and agreed that all real estate taxes and assessments which may be levied, assessed, or charged by any public authority against its Parcel or any part thereof, shall be paid prior to delinquency by the respective owner of said Parcel (or if the

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tenant of any Parcel is obligated to make said payments, by the tenant).

6.2 In the event that any respective owner shall deem any real estate tax or assessment (including the rate thereof or the assessed valuation of the property in question or any other aspect thereof) to be paid by said owner to be excessive or illegal, said owner shall have the right, at its own cost and expense, to contest the same by appropriate proceedings, and nothing contained in this Section 6.2 shall require the owner to pay any such real estate tax or assessment as long as (a) no other owner's Parcel could be affected by such failure to pay, and (b) the amount or validity thereof shall be contested in good faith. If the failure to pay such tax would affect any other owner's Parcel, such other owner shall have the right to pay such tax and shall have a lien on the non-paying owner's Parcel for the amount so paid. Any such lien shall be subject to, and junior to, and shall in no way impair or defeat the lien or charge of any bona fide mortgage or deed of trust upon the same or any part thereof at any time given or made.

6.3 Any assessment for public improvements levied against the Entire Property shall be paid by the Maintenance Director on behalf of all of the owners and shall be reimbursed by all of the owners in the ratio that the land area of each owner's Parcel bears to the land area of the Entire Property; provided, however, that any such assessment initiated by any one or more of the owners hereto for the exclusive benefit of that

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owner's Parcel(s) shall be borne solely by the owner or owners initiating same; and provided further, however, that any such assessment (except one initiated by one or more of the owners) benefiting less than all owners shall be borne solely by the owner or owners so benefiting.

SECTION 7. RESTRICTIONS

7.1 No Parcel or part of any Parcel other than Ozark's Parcel, nor any building or other improvement at any time situated on any Parcel or part of any Parcel other than Ozark's Parcel, shall ever be used to open and operate a supermarket, pharmacy or travel agency or to sell in the Shopping Center (for off-premises consumption) the following items: groceries, meats, meat products, fish, poultry, fruits, vegetables, alcoholic beverages (including beer and wine), bakery products and pharmaceuticals or to provide travel agency services. Such exclusives, however, shall not prohibit (a) take out sales of prepared food or alcoholic beverages by others whose business is substantially all prepared food sales which would be subject to California sales tax as of the date hereof; (b) incidental sales of bakery products (e.g., such products are used to make sandwiches or are "side orders" (e.g., individual pies or cookies) where the sales of such products are not a substantial portion of the business (i.e., the business is not considered to be, e.g., a donut shop, croissant shop, cookie shop or cinnamon roll shop), and (c) with respect to Pad 8 as shown on the Site Plan, the sale of any items other than alcoholic beverages

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(excluding beer and wine), pharmaceuticals and travel agency services, provided such sales are only from a building area with five hundred (500) or less square feet of floor area and provided such sales are in conjunction with a gasoline station business. Ozark shall have the specific exclusives set forth herein for supermarket, liquor (off-site consumption), pharmaceuticals, bakery and travel operations and each specific use; however, if any use is not operated for a period in excess of one (1) year and, thereafter, remains unused for one hundred eighty (180) days (excluding reasonable time periods for reconstruction or remodeling and extended by the period of any and each occurrence of any strikes, labor difficulties, governmental restrictions upon building activity or delays caused by or resulting from fire, casualty, war or acts of God) following notice by owner of the Shopping Center specifying that one or more specific uses has not been operated, and if such use is not resumed within such one hundred eighty (180) day period, then Ozark's exclusive right to such use will discontinue and become a non-exclusive use on the Ozark Parcel. Except as set forth in this Agreement, it is further recognized and agreed that Ozark shall have the nonexclusive right to use the property for any other lawful retail purpose.

7.2 Ozark covenants that it shall cause a Raley's Superstore to operate on the Ozark Parcel for the first ten (10) years Ozark opens to the public its supermarket building on the Ozark Parcel; provided, however, if Raley's, a California

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corporation, is acquired by or merged into another entity, Ozark shall ~~only be required to use good faith efforts to~~ cause the purchaser or surviving entity to assume this covenant for its remaining term by operating a comparable supermarket. *abc*

7.3 If, any time after Ozark opens to the public its supermarket building on the Ozark Parcel, Ozark ceases to operate the Ozark Parcel with a use consistent with a first-class shopping center for twelve (12) consecutive months, for a period of ninety (90) days ("Option Period") beginning after the end of said twelve (12) month period the owner of Parcel 2 ("Optionee") shall have an option to purchase the Ozark Parcel from Ozark by delivering to Ozark within the Option Period written notice of Optionee's election to exercise said option. Within thirty (30) days after Ozark's receipt of such election, the parties shall negotiate and agree on a purchase price for the Ozark Parcel or an appraiser to determine such price. If Ozark and Optionee agree upon a purchase price Optionee shall pay Ozark such price in cash within ninety (90) days after the end of said thirty (30) day period. If Ozark and Optionee agree on an appraiser, the appraiser shall determine the purchase price within thirty (30) days of said thirty (30) day period and Optionee shall pay Ozark such price in cash within ninety (90) days after said appraiser's determination of such price.

If Ozark and Optionee are unable to agree upon a purchase price or an appraiser on or before the expiration of the initial thirty (30) day period, then each will have ten (10)

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days after the expiration of said thirty (30) day period to appoint an appraiser and the two so appointed appraisers shall select a third appraiser within ten (10) days after the expiration of the previous said ten (10) day period. Within twenty (20) days after the expiration of the second ten (10) day period the three appraisers shall provide Optionee and Ozark with their appraisals of the Ozark Parcel and the average of the two closest appraisals shall be the purchase price for the Ozark Parcel. Optionee shall pay Ozark such purchase price in cash within ninety (90) days after the determination of such purchase price.

Any appraiser to be appointed must have at least five (5) years experience in appraising commercial real property in Napa County. If one appraiser is used, Ozark and Optionee shall split equally the cost of such appraiser. If three appraisers are used, each party shall pay for its own appraiser and split equally the cost of the third appraiser.

Time is of the essence of the option granted hereunder. Failure by Optionee to timely exercise its option or make payment of the purchase price as determined hereunder shall result in a termination of the option granted to Optionee and Optionee shall thereafter have no further rights to or interest in the Ozark Parcel.

7.4 If within the first ten (10) years after the opening of a supermarket building on the Ozark Parcel such building is damaged or destroyed and Ozark does not elect to

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rebuild or repair such building within the two (2) year period noted in Section 11 below, Optionee shall have a right of first refusal to purchase the Ozark Parcel after expiration of said two (2) year period. Upon Ozark's election to sell the Ozark Parcel, it shall provide Optionee with written notice of its intention to sell stating the name of the potential transferee, the purchase price and the terms of such sale. Optionee shall have thirty (30) days after receipt of said written election from Ozark within which to exercise its right of first refusal. If Optionee wishes to exercise such right, it must purchase the Ozark Parcel pursuant to the same terms and price contained in Ozark's notice to Developer within thirty (30) days after expiration of the first said thirty (30) day period. If Optionee fails to purchase the Ozark Parcel pursuant to such terms and price within the second said thirty (30) day period, or elects in writing delivered to Ozark not to exercise its right of first refusal, Ozark shall be allowed to sell the Ozark Parcel to the person at the terms and price noted in its notice to Developer within sixty (60) days after Optionee's failure to purchase, or Ozark's receipt of Optionee's decision not to exercise its right of first refusal, whichever occurs first. If Ozark fails to so sell the Ozark Parcel, Ozark shall be required to again give Optionee a right of first refusal pursuant to the terms of this Section 7.4 prior to any sale of the Ozark Parcel by Ozark.

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SECTION 8. GENERAL USE RESTRICTIONS

8.1 Except as otherwise set forth in this Agreement, the Shopping Center shall be used for commercial-retail purposes including service offices (e.g., medical, dental, optical, real estate, financial and insurance) for the construction, operation and maintenance of mercantile, business and professional establishments and related facilities, including vehicular parking areas, all as more specifically described in this Agreement.

8.2 No portion of the Entire Property shall be used during the term of this Agreement for any movie theater, nightclub, bar (unless operated in conjunction with a restaurant and does not exceed thirty-five percent (35%) of the total floor area), tavern, dance hall, bowling alley, skating rink, massage parlor, pornographic shop, adult bookstore, pawn shop, educational, industrial or recreational use or for an auction or for the sale or display of motor vehicles, boats, trailers, motor homes and establishments, the primary business of which is the sale of second hand property, without the prior written consent of Ozark and Developer.

SECTION 9. EXPRESS GRANTS OF EASEMENT

9.1 Each owner, as grantor, hereby grants to the other owners for the benefit of the other owners, their respective successors, assigns, tenants, subtenants, licensees, concessionaires, employees, agents, customers, visitors and invitees, and the customers, employees and invitees of such

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tenants and subtenants and each Parcel belonging to the other owners, as grantees, reciprocal non-exclusive easements for vehicular and pedestrian ingress and egress and vehicular parking upon, over and across the portion of the Common Area within the grantor's Parcels.

9.2 Each owner, as grantor, does hereby grant to the other owners, for the benefit of the other owners, their respective successors, assigns, tenants, subtenants, licensees, concessionaires, employees, agents, customers, visitors and invitees non-exclusive easements appurtenant to each of the Parcels of the Entire Property over, across, upon, in, under and through the portion of the Common Area within such grantor's Parcel, for the purposes set forth in this Agreement.

SECTION 10. INSURANCE

10.1 At all times during the term of this Agreement, each owner shall, at its sole expense, continuously maintain or cause to be continuously maintained standard fire and standard extended coverage insurance on all buildings and all the other improvements located on its Parcel. Said insurance shall be in amounts at least sufficient to avoid the effects of co-insurance provisions of the policies, that is, not less than ninety percent (90%) of the actual replacement costs of said buildings and improvements, but excluding foundations, excavation costs and the costs of underground flues, pipes and drains if such costs are properly under co-insurance requirements.

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10.2 Each owner hereby waives any and every claim which arises or may arise, in its favor and against any other owner during the term of this Agreement for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Entire Property, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under said insurance policies. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or damage to, the said property of any owner. Inasmuch as the said mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person, firm or corporation), each owner shall give to each insurance company which has issued to it policies of fire and extended coverage insurance, written notice of the terms of said mutual waivers, and shall have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waivers.

10.3 (a) At all times during the term of this Agreement, each owner shall, at its sole expense, continuously maintain or cause to be continuously maintained Comprehensive General Liability Insurance, affording "single occurrence" protection to at least a limit of Two Million and 00/100 Dollars (\$2,000,000.00), endorsed to cover personal injury (including false arrest), covering the building, or buildings, on its

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Parcel. Said policy limit may be adjusted from time to time to reflect commercial standards then in effect with the approval of Developer, Owner and, if applicable, other owners, so that the owner of more than fifty percent (50%) of the Entire Property approve of such adjustment.

(b) Each owner shall, upon written request of any other owner, furnish certificates of such insurance or other satisfactory written evidence of such insurance at any time during the term hereof.

10.4 (a) At all times during the term hereof, the Maintenance Director shall continuously maintain or cause to be maintained Comprehensive General Liability Insurance, including Contractual Liability coverage, endorsed to cover personal injury (including false arrest), covering the Common Area. Such insurance shall afford protection to the owners, Ozark and Developer, as named insureds, to the limit of not less than:

(i) Two Million and 00/100 Dollars (\$2,000,000.00) for death of, or bodily injury to, or personal injury to, one or more persons;

(ii) Property damage to the limit of not less than One Million Dollars (\$1,000,000) for each occurrence.

Said policy limits may be adjusted from time to time to reflect commercial standards then in effect with the approval of Developer, Ozark and, if applicable any other owner so that owners of more than fifty percent (50%) of the Entire Property approve of such adjustments.

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(b) The Maintenance Director is hereby designated the agent of each owner for the purpose of obtaining such insurance. The premiums for said policy shall be apportioned among the others in the proportion set forth in Section 5.7. Any policy required hereunder shall provide that said policy shall not be cancelled without at least ten (10) days' prior notice to each owner. If it shall be hereafter determined that it would be beneficial to all owners, the insurance coverage herein required by this Section 10.4 may (a) be placed in separate policies, each for the amounts indicated, from the same insurance company, to avoid a conflict of claims, and each owner shall be named as an additional insured on the other owners' policies or (b) obtained through a blanket policy held by the Maintenance Director showing each owner as an additional insured.

SECTION 11. IMPROVEMENT DESTRUCTION

11.1 If an owner rebuilds or restores improvements on its Parcel or Parcels after an event of destruction of, or damage to, the building(s) of such owner, the Common Area or other improvements upon such owner's Parcel(s), or any part thereof, said owner shall rebuild, repair and restore such buildings and improvements in the same location as presently shown on the Site Plan, and of the same general appearance and condition, and consistent with an integrated, first-class shopping center located in Northern California, as existed prior to the damage or destruction.

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11.2 Any building, Common Area, or other improvements rebuilt, repaired or restored by an owner pursuant to this Agreement, shall be rebuilt, repaired and restored and ready for occupancy within two (2) years (except for Common Area improvements which shall be completed within six (6) months) from the time when the loss or destruction occurred, subject, however, to delays caused by strikes, labor difficulties, governmental restrictions on building activity, fire, war or acts of God. Notwithstanding the provisions of Paragraphs 11.1 and 11.2, in the event that the provisions of a particular lease between an owner and its tenant are different from the provisions of Paragraphs 11.1 and 11.2, then (a) as between such owner and its tenant, the lease provisions shall prevail, and (b) as among the owners, this Agreement shall prevail.

11.3 Any repair, reconstruction or replacement of any building, or Common Area, or other improvements performed by any owner, pursuant to this Section, shall be performed in accordance with the following requirements:

(a) Plans and specifications therefore not previously approved for the original construction of any building shall be approved by Developer and Ozark as to exterior architectural design, exterior construction and location of improvements being restored, prior to the commencement of the work of such repair, reconstruction and replacement, which approvals shall not be withheld without good and valid reason and notice thereof made in writing.

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(b) Any building, Common Area or other improvements being restored shall be at least of equal quality and similar square footage at least as usable for its intended purpose, as such building, Common Area, or other improvements were just prior to the happening of such casualty.

11.4 In the event any owner does not rebuild and restore its damaged buildings, Common Area, or other improvements under the provisions of this Section, such owner shall clear its vacant parcel of all debris and hazardous conditions, and shall maintain its vacant parcel in a clean, safe and sightly condition; provided, however, that in no event shall any owner have the right to withdraw its vacant parcel or portion thereof from the Common Area, or from any easements created and provided for hereunder, at any time during the term of this Agreement and in the event of any such damage or destruction each owner shall cause that portion of its parcel which is devoted to use as part of the Common Area to be repaired and restored to the condition the same was in immediately prior to the occurrence of such damage or destruction, and thereafter to be maintained in such condition and as part of the Common Area during the remaining term of this Agreement in accordance with the terms hereof.

SECTION 12. MISCELLANEOUS PROVISIONS

12.1 Each and all of the foregoing covenants, conditions and restrictions:

(a) Shall apply to and bind each and all of the

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owners and each and all of their respective heirs, successors, assigns, grantees, mortgagees, tenants and subtenants;

(b) Are hereby imposed pursuant to a general plan for the improvement and use of the Entire Property and each Parcel thereof and shall obligate and benefit each such Parcel and the owners, tenants and occupants of any and all portions thereof; and,

(c) Shall obligate, inure to and pass with each and every portion of the Entire Property and shall remain in force and effect as hereinafter provided.

12.2 Breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith, but all of the foregoing provisions, restrictions and covenants shall be binding and effective against any owner of any portion of the Entire Property, or any part thereof, whose title is acquired by foreclosure or trustee's sale or by deed in lieu of foreclosure or trustee's sale; provided, however, any such owner whose title is acquired by foreclosure or trustee's sale or by deed in lieu of foreclosure or trustee's sale shall take title free of any liens created or provided for hereunder, though otherwise subject to the provisions hereof.

12.3 The term "mortgagee", wherever used herein, shall be construed to include beneficiaries and trustees under deeds of trust. Notwithstanding any other provisions in this Agreement for notices of default, the mortgagee of any party in

default hereunder shall be entitled to notice of said default, in the same manner that other notices are required to be given under this Agreement; provided, however, that said mortgages shall have, prior to the time of the default, notified the party hereto giving said notice of default of the mortgagee's mailing address.

12.4 It shall be lawful for any owner to prosecute any proceedings at law or in equity, including injunctive relief, against any person violating, or attempting to violate, any of the covenants, conditions and restrictions herein, and either to prevent it, him or them from so doing or to recover damages from or on account of such violation. All such remedies shall be cumulative.

12.5 In the event of any violation or threatened violation by any party hereto or its successor, tenant or occupant of any portion of the Shopping Center owned by it, of any of the terms, covenants and conditions contained herein, the owners agree that irreparable damage shall have occurred to the other party and in addition to the other remedies provided herein, any owner shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

12.6 Invalidation of any one of the covenants, conditions, restrictions or other provisions herein contained by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions or provisions hereof, and the same shall remain in full force and effect.

12.7 This Agreement shall create privity of contract and estate with and among all grantees of all or any part of the Entire Property and their respective heirs, executors, administrators, successors and assigns.

12.8 Any assignment, conveyance or provision in any lease or contract made in violation of this Agreement shall be void and may be set aside upon petition of one or more of the owners. All costs and expenses of any such suit or proceeding, including attorney fees as hereinafter provided, shall be assessed against the defaulting owner and shall constitute a lien against its real property or the interest therein wrongfully deeded, leased, assigned, conveyed or contracted for until paid such lien to be effective upon the recording of notice in the office of the county recorder for the county in which the Entire Property is located, though any such lien shall be subordinate to any bona fide mortgage or deed of trust covering any portion of the Entire Property, and any purchaser at any foreclosure or trustee's sale (as well as any grantee by a deed in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any such lien, though otherwise subject to the provisions hereof.

12.9 If this Agreement provides that a consent or approval shall not be unreasonably withheld, such consent or approval shall be granted or withheld without unreasonable delay, and, if consent is withheld or approval not granted, the reasons

ror withholding consent or approval shall be stated with reasonable detail.

12.10 In the event that suit is brought for the enforcement of this Agreement or as the result of any alleged breach, the prevailing party or parties shall be entitled to be paid court costs, including reasonable attorney fees, by the losing party or parties including any attorney fees incurred in executing upon any judgement.

12.11 In the event of any condemnation (by any duly constituted authority for a public or quasi-public use) of all or any part of the Entire Property, the portion of the award attributable to the value of any land within the Common Area shall be payable only to the owner(s) thereof, and no claim therefor shall be made by other owners of any other portion of the Entire Property; provided, however, that all other owners of the Entire Property may file collateral claims with the condemning authority over and above the value of the land taken, and provided further, however, that the owner of any portion of the area so condemned shall promptly repair and restore the remaining portion of the area owned by such owner as nearly as practicable to its condition immediately prior to the condemnation without contributions from any other owner.

12.12 The captions heading the various sections of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

12.13 Subject to the provisions of Section 11 above, each owner shall keep, maintain, repair, manage and operate their respective buildings, whether occupied or unoccupied, located on its respective Parcel(s) in good and clean order, operation, condition and repair in conformity with first-class shopping center standards, and in such manner to establish, maintain and present, at all times, the appearance of a clean, well-managed, attractive, well coordinated and unified operation.

12.14 Except as herein specifically provided, no rights, privileges or immunities conferred upon owners by this Agreement shall inure to the benefit of any tenant, customer, employee or invitee or the Entire Property or any other third party; nor shall any tenant, customer, employee or invitee of the Entire Property or any other third party be deemed to be a third party beneficiary of any of the provisions contained herein.

12.15 This Agreement and the application or interpretation thereof shall be governed exclusively by its terms and by the laws of the State of California.

12.16 This Agreement may be executed in any number of counterparts to the same effect as if each party hereto had signed the same document. All counterparts shall be construed together, and shall constitute one Agreement.

12.17 Each party hereto shall execute such other and further documents and instruments reasonably requested by the other party to more clearly evidence and carry out the provisions of this Agreement.

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12.18 Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or create any partnership, joint venture or other association between Developer and Ozark or any of the owners.

12.19 Nothing in this Agreement will be deemed to be a gift or dedication of any portion of the Entire Property to the general public or for the general public or for any public purpose whatsoever. It is the intention of the parties hereto that this Agreement will be strictly limited to and for the purposes expressed herein.

SECTION 13. NOTICES

All notices, consents, requests, demands, approvals, waivers and other communications desired or required to be given hereunder (referred to collectively as "notices") shall be in writing and signed by the party so giving the notice, and shall be deemed effectively given or served as of the date hereinafter specified: (i) on the date of personal service upon the person to whom the notice is addressed or if such person is not available the date such notice is left at the address of the person to whom it is directed, (ii) on the date the notice is received or rejected provided it is sent prepaid, registered or certified mail, return receipt requested, and (iii) on the date the notice is delivered by a courier service (including Federal Express, Express Mail, Emery or similar operation) to the address of the person to whom it is directed provided it is sent

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prepaid, return receipt requested (if available). The address of the signatories to this Agreement is set forth below:

If to Developer: 1771 Stockton Boulevard
Sacramento, California 95816

If to Ozark: 500 West Capitol Avenue
West Sacramento, California 95605-2696

Anyone entitled to receive notice hereunder may, from time to time, change his or its address for receiving notices by giving written notice thereof in the manner outlined above. In the event any notice using an address provided in accordance with this Section 13 is returned undeliverable, such notice shall be effective five (5) days after being mailed to the address as shown on the most recent records of the County Tax Assessor for the owner's parcel.

SECTION 14. TERM AND TERMINATION

14.1 The covenants, conditions and restrictions contained in this Agreement shall be recorded and run with the land and be binding upon each and all of the owners for a period of sixty (60) years from the recording date hereof.

14.2 This Agreement may only be amended or terminated by the written agreement of (a) Ozark, or his successors, and Developer, provided both have a legal interest in the Entire Property, or (b) owners of seventy-five percent (75%) of the Entire Property, if Ozark or his successors or Developer no longer have any legal interest in the Entire Property. Any document shall be duly acknowledged and recorded in the office of

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the county recorder for the county in which the Entire Property is situated.


14.3 This Agreement, though executed on the date above written, shall only be effective upon, from and after its recording in the office of the county recorder for the county in which the Entire Property is situated.

IN WITNESS WHEREOF, this Agreement is executed by the parties hereto as of the day and year first above written.

"Developer"

NEWARK C&C ASSOCIATES,
A CALIFORNIA LIMITED PARTNERSHIP

BY: CONNOLLY DEVELOPMENT, INC.,
a California corporation and
general partner

BY: 
Sean J. Hogan
President

BY: *Ozark Investments LTD, a California Limited Partnership*
OZARK INVESTMENTS, INC.,
a California corporation, its G.P.

BY: 
Charles L. Collins
President

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03/07/89

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ACKNOWLEDGEMENTS

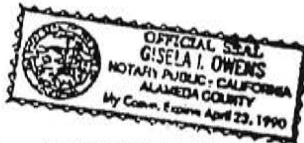
STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) SS.

On April 4, 1989, before me, the undersigned, a Notary Public in and for said County and State, personally appeared SEAN J. BOGAN, personally known to me (or proved to me to be the person that

STATE OF CALIFORNIA)
COUNTY OF Alameda) SS.
On this 4 day of April, 1989, before me, the undersigned, a Notary Public in and for said County and State, personally appeared SEAN J. BOGAN, personally known to me (or proved to me on the basis of satisfactory evidence) to be the _____ President, and

personally known to me (or proved to me on the basis of satisfactory evidence) to be the _____ Secretary of _____ the corporation that executed the within instrument and known to me to be the persons who executed the within instrument on behalf of said corporation, said corporation being known to me to be one of the partners of _____ and _____ the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

Name (Typed or Printed)
Notary Public in and for said County and State



FOR NOTARY SEAL OR STAMP

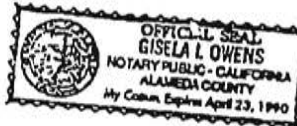
F. 2469 R. 11/82

CHICAGO TITLE INSURANCE COMPANY CORPORATION PARTNERSHIP
Staple

STATE OF CALIFORNIA)
COUNTY OF Alameda) SS.
On this 4 day of April, 1989, before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the _____ President, and

personally known to me (or proved to me on the basis of satisfactory evidence) to be the _____ Secretary of _____ the corporation that executed the within instrument and known to me to be the persons who executed the within instrument on behalf of said corporation, said corporation being known to me to be one of the partners of _____ and _____ the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

Name (Typed or Printed)
Notary Public in and for said County and State



FOR NOTARY SEAL OR STAMP

F. 2469 R. 11/82

CHICAGO TITLE INSURANCE COMPANY CORPORATION PARTNERSHIP
Staple

EXHIBIT "A"

89273594

PROPERTY INFORMATION
89273594
1/11/2011

PREPARED BY: [Illegible]
DATE: [Illegible]
SCALE: [Illegible]
SHEET: [Illegible]

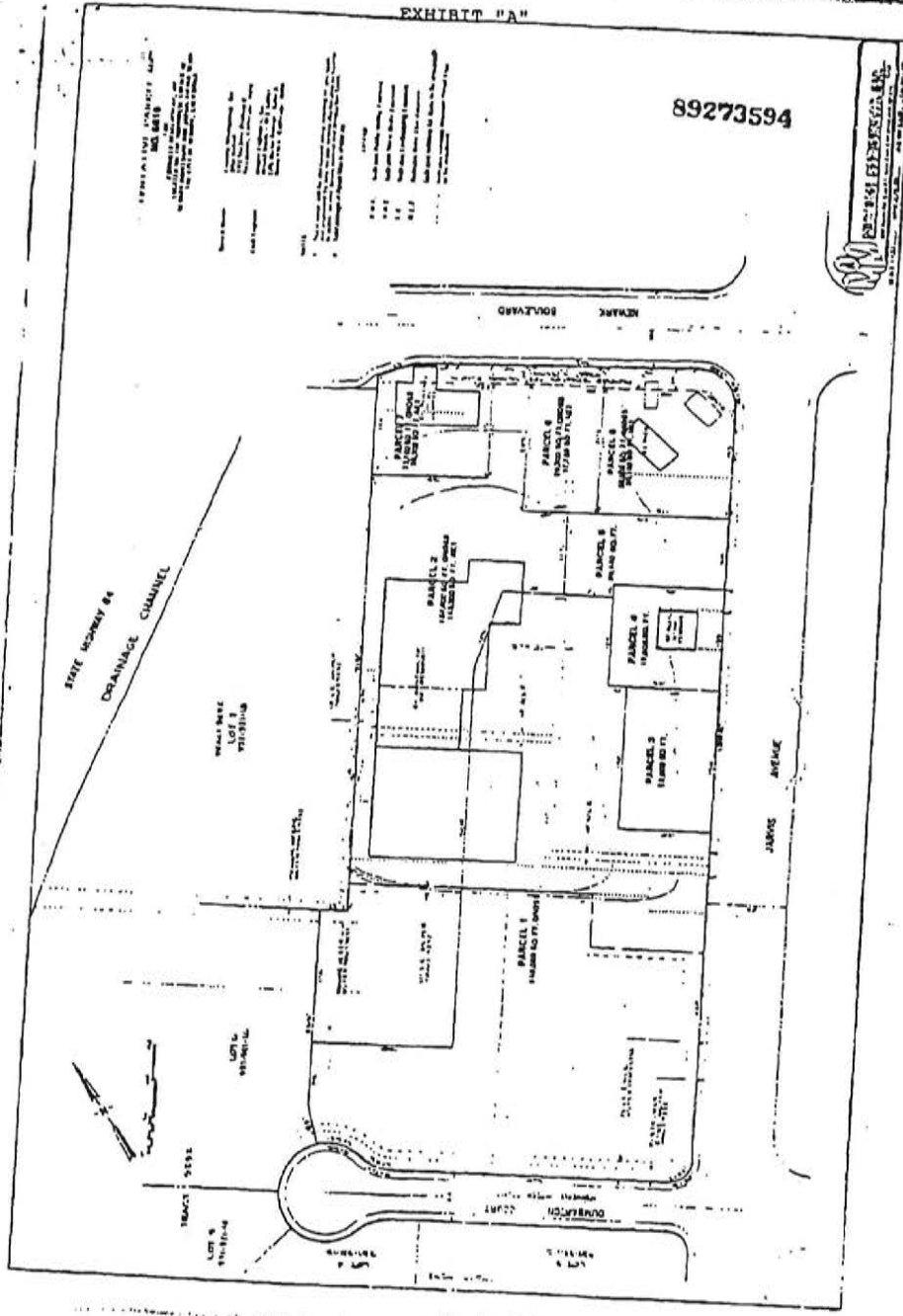
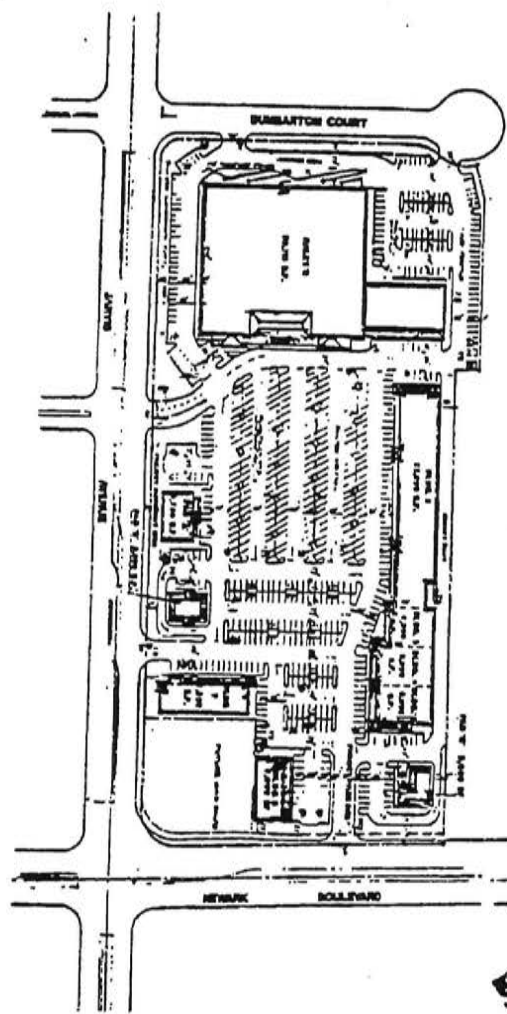


EXHIBIT D

89273594



Summary
 Land/Use as shown
 Building 183,150 sq ft
 Land/Use 183,150 sq ft
 Parking 418 spaces
 Total 418 sq ft

<p>SITE PLAN</p>	<p>NEWARK SHOPPING CENTER NEWARK, CA</p>	<p>CONROY DEVELOPMENT INC. (714) 484-5118</p>	
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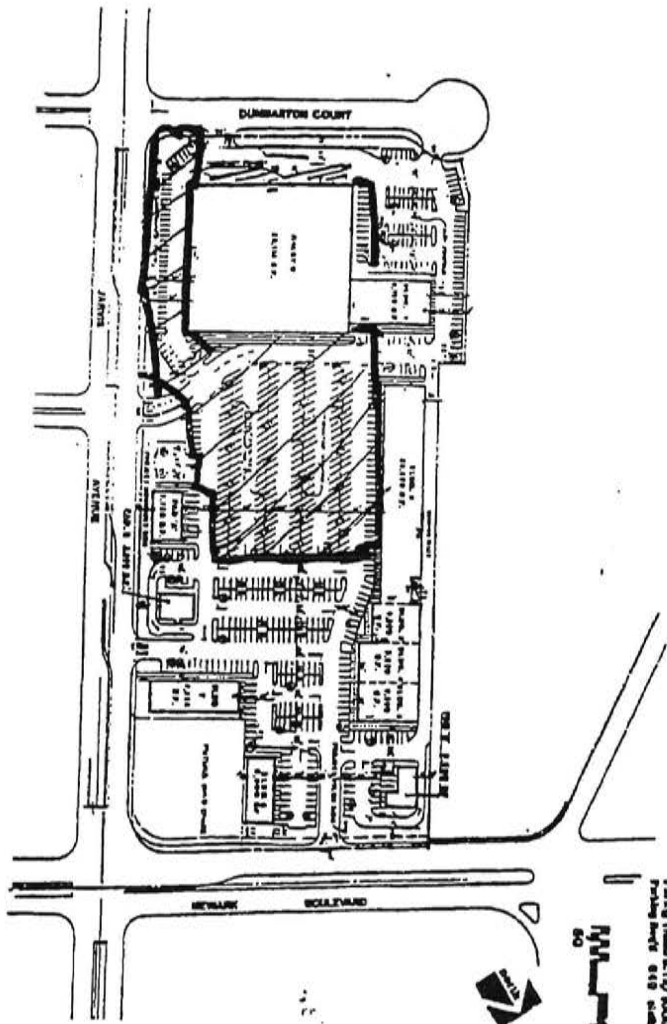


EXHIBIT "C"
Parking Ratio Maintenance Area

Summary
 Land-use to be shown at
 Building 150,000 sq ft
 Land/Building 20/1
 Daily Flood and other
 Parking Ratio 2.1/1,000
 Parking Ratio 600 cars



<p>SITE PLAN</p>	<p>NEWARK SHOPPING CENTER NEWARK, CA</p>	<p>CONSULT DEVELOPMENT INC. 978 486-1416</p>	
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PETITION OPPOSING F-19 FITNESS CENTER

CONDITIONAL USE PERMIT

FOUR CORNERS – SPROUTS SHOPPING CENTER




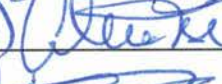
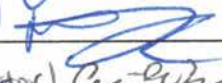


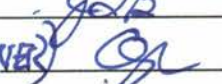

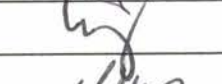
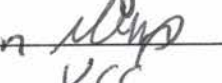
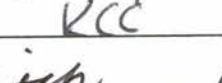
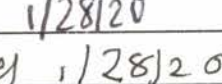
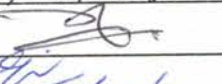
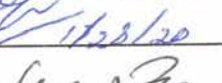
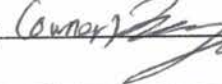
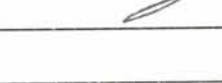

For the reasons stated below, we oppose approval of the F-19 Fitness Center conditional use permit:

We were only recently made aware of a "6203 Jarvis Ave Parking Study" which purports to demonstrate that there are no impacts to parking that may affect the customers of the shopping center in which we are tenants. We are very concerned with the acknowledgements contained in the conclusion of the Parking Study that state:

- 1.) "However, it must be acknowledged that a lot of this available parking is not necessarily located the most convenient areas of the parking lot"
- 2.) "However, it must be acknowledged that some of parts of shopping center parking lot are not necessarily conveniently located for the restaurants."

Because of the conclusion of the Parking Study with these acknowledgements, we currently DO NOT support approval of a conditional use permit for the F-19 Fitness Center to occupy the 28,242 vacant space at the Four Corners – Sprouts Shopping Center.

Print Name	Tenant Name	Signature	Date
1. Vimal Patel	Burger King (owner)	[Signature]	1/27/20
2. John You	Tasty Pot (manager)	[Signature]	1/27/20
3. Karim Hotaki	Vaporation (owner)	[Signature]	1/27/20
4. Kristy Wong	iTea (For owner)	[Signature]	1/27/20
5. Shital Patel	UPS store (manager)	[Signature]	1/27/20
6. Hai-Chong Hsu	Cham See Bistro (owner)	[Signature]	1/27/20
7. VIET DO	PHO NATION (owner)	[Signature]	1/27/20
8. Munsh Haniff	Sip & Lobe	[Signature]	1/27/20
9. AMILA BAILON	Comit Babla (owner)	[Signature]	1/27/2020
10. KANDEE SINGH	SANDALS Curry House	[Signature]	1/27/2020
11. Jessica Veh	R & S Business Services	[Signature]	1/27/20
12. PETER KWONG	VENUS CAFE OWNER	[Signature]	1/27/2020
13. Tao Wang	BiteR OWNER	[Signature]	1/27/2020
14. Jenny Fan	Alan Cheng Dental Group	[Signature]	1/27/2020
15. Ramon Pakios	Tutoring Club OWNER	[Signature]	1/27/20
16. Wali Zain	Tobacco on Sale OWNER	[Signature]	1/27/20
17. Lynette Mana	Dollar cleaning	[Signature]	1/27/20
18. Christine Atchison	Forever Beauty & Slimming	[Signature]	1/27/20

19. DEBBIE JIN BUMBLEBEE PLAYSPACE (OWNER)  1/27/2020
20. Vanessa Lam EKOTIC NAILS (PART OWNER)  1/27/2020
21. ZHI BIAO HOANG PIER 98 SUSHI (OWNER)  1/27/2020
22. Kenny Tse Pure Water & Ice (OWNER)  1/27/2020
23. Michael Tse Pure Water & Ice (OWNER)  1/27/2020
24. Carrie Kimball West Coast World Martial Arts (Program Director)  1/27/2020
25. Belinda Maloney Jewelry by Design (Bm)  1-27-2020
26. Judy Byrne  1-28-2020
27. GEORGE FEI JEWELRY & DESIGN (OWNER)  1-28-2020
28. PISITH LIMSUMALEE SIMPLY THAI  1-28-2020
29. Tracy Ngo  1-28-2020
30. Miriam Preston World Hair Design  1/28/2020
31. KC Chay World Hair Design KCC 1/28/2020
32. Rene Sainants World Hair Design 1-28/2020
33. Maranda Decierdo Bella Eye Care Optometry (for owner) Maranda Decierdo 1/28/2020
34. Georgie Pisco Wi Time (For owner)  1/28/20
35. Minal Patel Subway m8 Patel 1/28/20 m8 Patel
36. VIRENDRA CHAND PIZZA HUT  01/28/2020
37.   1/28/20 
38. Masako Yamamoto Masako's Music Studio (owner)  1/28/2020
39. _____
40. _____