

AGREEMENT FOR TOLLING AND SUSPENSION OF TIME

This AGREEMENT FOR TOLLING AND SUSPENSION OF TIME ("Agreement") is made as of April 7, 2020 ("Effective Date"), by and between the City of Redlands, a California municipal corporation and general law city ("City"), and Lone Chang, LLC, a California limited liability company ("Chang"), with regard to the following facts and circumstances. City and Chang are sometimes individually referred to herein as a "Party" and, together, as the "Parties."

RECITALS

WHEREAS, Chang is the owner of certain real property within the city of Redlands for which Tentative Tract Map No. 16878 ("TTM 16878") was originally approved by City on April 5, 2005; and

WHEREAS, TTM 16878, located on the west side of Wabash Avenue, south of San Bernardino Avenue, and north of Capri Avenue, subdivides 41.22 acres into seventy-six (76) residential lots and four (4) common lots in the R-E Residential Estates District; and

WHEREAS, Government Code section 66452.6, subdivision (e), a provision of the State Subdivision Map Act, provides in relevant part that "Upon application by the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body...for a period not exceeding 6 years. The period of extension specified in this subdivision shall be in addition to the period of time provided in subdivision (a). Prior to the expiration of an approved or conditionally approved tentative map, upon application by the subdivider to extend that map, the map shall be automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first;" and

WHEREAS, through a series of extensions, some granted by City pursuant to Government Code section 66452.6, subdivision (a), and Redlands Municipal Code section 17.07.120 (c), and some automatic extensions granted by the State of California, TTM 16878 remained valid until April 5, 2020, when it was due to expire; and

WHEREAS, Chang has obtained all available extensions of TTM 16878 as permitted by Government Code section 66452.6, subdivisions (a) and (e), and Redlands Municipal Code section 17.07.120 (c); and

WHEREAS, Government Code section 66452.6, subdivision (a), states in relevant part that "a tentative map on property subject to a development agreement . . . may be extended for the period of time provided for in the agreement but not beyond the duration of the agreement;" and

WHEREAS, on December 4, 2019, Chang submitted an application to the City for approval of a development agreement, and paid the required fees therefor, with the intent, among other things, to extend the life of TTM 16878 to April 5, 2025; and

WHEREAS, consideration of a development agreement is a quasi-legislative function of the City Council of City, and neither State law nor City's Municipal Code provides any specific timelines within which an application for a development agreement must be processed and considered by City; and

WHEREAS, Chang asserts that its application for a development agreement extends the expiration date of TTM 16878 in accordance with the above-identified statutory provisions, and City staff questions the legal basis for that assertion; and

WHEREAS, there is not adequate time under present circumstances, including but not limited to the consequences of the pending public health emergency related to COVID-19, for City and Chang to negotiate a development agreement and conduct the required legal proceedings thereon by June 4, 2020; and

WHEREAS, the Parties desire to avoid any distraction, burden, expense, and uncertainty with regard to whether Chang's application for a development agreement extends the expiration date of TTM 16878;

NOW, THEREFORE, based upon the foregoing Recitals and the terms and conditions herein, in consideration of the mutual promises contained herein and for such other good and valuable consideration the receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

Section 1. Tolling Period. Chang and the City agree, to the extent permitted by law, to toll and suspend the time within which City will negotiate, process, conduct the required legal proceedings, and take final action on Chang's application for a development agreement from the Effective Date of this Agreement until September 30, 2020 (the "Tolling Period"), unless hereafter further extended by written agreement of the Parties.

Section 2. No Development during Tolling Period. Chang acknowledges and agrees that it shall not be entitled to proceed with the development of TTM 16878 during the pendency of the negotiations and proceedings associated with its application for a development agreement, and shall not be entitled to do so until and unless City approves the development agreement application and provides that the expiration date of TTM 16878 shall be extended for the duration of the development agreement.

Section 3. City Exercise of Discretion. Chang acknowledges and agrees that nothing in this Agreement shall dictate or in any way control or constrain the exercise of discretion of the City in any particular manner in its processing of and final action on Chang's application for a development agreement.

Section 4. Defense and Indemnity. If any action is commenced against the City by a third party to challenge this Agreement or any of its terms and conditions, Chang shall defend, indemnify, and hold harmless City, and its elected and appointed officials, officers, and employees with regard to such action.

Section 5. No Admissions of Fault. The Parties acknowledge and agree that the purpose of this Agreement is simply to provide the Parties with additional time to discuss a resolution of differing interpretations of applicable laws and regulations. Neither the fact that the Parties have entered into this Agreement, nor the terms and conditions of this Agreement, shall be construed in any manner as an admission of any fault, wrongdoing, or liability by Chang, City or any City officials, officers and employees.

Section 6. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained herein, and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the Parties. The Parties acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise with regard to the subject matter of this Agreement, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement.

Section 7. Modification of Agreement. Any alteration, change or modification of or to this Agreement shall be made by written instrument executed by each Party in order to become effective.

Section 8. Binding Effect. This Agreement, and all of the terms and provisions hereof, shall be binding upon, and shall inure to the benefit of, the Parties and their respective heirs, legal representatives, successors, and assigns.

Section 9. Termination. Either Party may, at any time, provide the other with written notice terminating this Agreement by email, mail, or personal delivery. Such termination shall be effective no sooner than sixty (60) calendar days following delivery of written notice of exercise of the termination option to the non-terminating Party. The sixty (60) calendar day period shall be deemed to have commenced after the date of delivery of such notice in accordance with Section 11 hereof. Such notice of termination shall in no event result in the shortening of any period of limitation otherwise provided by law. In the event that Chang files a lawsuit against City regarding the dispute described herein, then this Agreement shall automatically become null and void.

Section 10. Lapsed Causes of Action. This Agreement has no effect on claims or causes of action that, prior to the Effective Date of this Agreement, were already barred by the statute of limitations or otherwise barred by the passage of time, and this Agreement shall not be construed to revive any such time-barred claims or causes of action. Any defense which any Party may have, including those based on laches or related equitable defenses, shall not be based upon or supported in any way by the postponement of any claim or defense during the Tolling Period.

Section 11. Notices. Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the date of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a Party may provide notice in accordance with this section:

City
City Clerk
City of Redlands
35 Cajon Street
P.O. Box 3005 (mailing)
Redlands, CA 92373
jdonaldson@cityofredlands.org
(909) 798-7531

Chang
Eudeen Chang
Troutman Sanders
5 Park Plaza, Suite 1400
Irvine, CA 92614
eudeen.chang@troutman.com
(949) 622-2706

Section 12. No Third party Beneficiaries. This Agreement shall not be deemed to confer any rights upon any third parties as beneficiaries of this Agreement, nor obligate either of the Parties to this Agreement to any person or entity not a Party to this Agreement.

Section 13. Attorneys' Fees. Should any action be commenced to enforce or interpret the terms or conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and costs, in addition to any other relief to which that Party may be entitled, including fees for a Party's use of "in-house" counsel.

Section 14. Severability. Should any portion, word, clause, phrase, sentence, or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

Section 15. Governing Law. This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced and governed under the laws of said State.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) set forth below.

Date: April 7, 2020

LONE CHANG, LLC, a California limited liability company

By: 
Eudeen Chang

Date: ~~April 7, 2020~~
April 15, 2020

CITY OF REDLANDS, a California municipal corporation

By: 
Paul W. Foster, Mayor

ATTEST:

By: 
Jeanne Donaldson, City Clerk