



## AGENDA REPORT

**Meeting Date:** September 10, 2015

**Item Number:** E-4

**To:** Honorable Mayor and City Council

**From:** Brenda A. Lavender, Real Estate & Property Manager

**Subject:** LEASE TERMINATION AND SETTLEMENT/RELEASE AGREEMENT AND TERMINATION OF MEMORANDUM OF LEASE BY AND BETWEEN THE CITY OF BEVERLY HILLS AND DEAN JOFFE DBA DELICIOUS SNACK COMPANY AT 8400 GREGORY WAY – LA CIENEGA PARK.

**Attachments:**

1. Lease Termination and Settlement/Release Agreement
2. Termination of Memorandum of Lease

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### RECOMMENDATION

It is recommended that City Council approve the Lease Termination and Settlement/Release Agreement and Termination of Memorandum of Lease by and between the City of Beverly Hills and Dean Joffe dba Delicious Snack Company at 8400 Gregory Way – La Cienega Park. A copy of the agreements is on file with the City Clerk.

### INTRODUCTION

The termination agreements sever the lease with Dean Joffe and formally allows for the closing of the Delicious Snack bar effective September 1, 2015. The operation of the Delicious Snack Company began in February, 2013 and was a positive addition to the City and to La Cienega Park, providing food and beverage options to the park patrons, sports spectators and participants that frequent the park.

The sales, although initially encouraging, were not sufficient for Mr. Joffe to recover his investment from improving the location and continue to operate the snack bar. On May 6, 2014, City Council approved an amendment to the lease that restructured the rent from a flat rate of \$666.66 monthly to 10% of monthly gross sales. Even with the

reduced rent, Mr. Joffe was not financially able to sustain the operation of the snack bar and ask the City to terminate the lease early.

Based on the initial response and activity level at the park, staff believes that another operator could successfully operate a snack shop. There is year around activity at the park and the snack shop is a nice amenity for the park. The city will preserve the option of providing residents and park patrons with the service of a snack bar at La Cienega Park by purchasing all the equipment and fixtures that Mr. Joffe installed.

### **DISCUSSION**

Mr. Joffe expended \$20,000 for the improvement of the snack shop including equipment, fixtures, infrastructure improvements and permit fees. As a part of the early termination the City will purchase all of the installed equipment, fixtures and improvements for \$5,000.

Staff will regain possession of the space and develop terms for marketing the space for rental and/or lease.

### **FISCAL IMPACT**

The fiscal impact of this deal is the immediate loss of any percentage rent paid by Mr. Joffe, and the \$5,000 one-time charge for the purchase of the equipment and fixtures

David Lightner   
Approved By

# **Attachment 1**

## LEASE TERMINATION AND SETTLEMENT/RELEASE AGREEMENT

THIS LEASE TERMINATION AND SETTLEMENT/RELEASE AGREEMENT (this “**Agreement**”) is dated as of September 1, 2015, and is entered into by and between the CITY OF BEVERLY HILLS, a California municipal corporation (“**Lessor**”) and DEAN JOFFE, an individual doing business as “Delicious Snack Company” (“**Lessee**”).

### RECITALS:

A. Lessor and Lessee executed that certain “Lease By and Between The City of Beverly Hills and Dean Joffe (dba Delicious Snack Company) For A Snack Bar at La Cienega Park” dated April 17, 2012, for certain space within the park located at 8400 Gregory Way, Beverly Hills, California (the “**Premises**”), which was amended by an Amendment No. 1 to Lease dated May 6, 2014 (and as so amended, said lease is hereinafter referred to as the “**Lease**”).

B. A Memorandum of Lease dated April 17, 2012 executed by Lessor and Lessee was recorded on June 6, 2012 as Document No. 2012084742 in the Official Records of Los Angeles County, California (the “**Memo**”).

C. Lessor and Lessee have agreed to enter into this Agreement in order to terminate the Lease and the Memo on the terms and subject to the conditions hereinafter set forth.

### AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and release(s) set forth, the sufficiency of which the parties hereto acknowledge, the parties hereto agree as follows:

1. Termination of Lease; Payment by Lessor for Equipment. If Lessee delivers possession of the Premises to Lessor on or before the date hereof (i.e., September 1, 2015) including the possession of Lessee’s personal property, then Lessor shall promptly pay \$5,000 to Lessee for the equipment described on Exhibit “A” and Lessor shall return the \$3,000 security deposit to Lessee less any appropriate deductions under the terms of and in accordance with the Lease. The Lease shall terminate as of the date on which Lessee so delivers possession to Lessor, and upon such termination, except for Lessee’s obligations under this Agreement (including, without limitation, Section 4 below), Lessee shall have no further obligations to Lessor in connection with the Lease.

2. Claims; Mutual Releases.

2.1 Definition of Claims. As used herein, the term “**Claims**” shall mean any past, present or future, fixed or contingent, matured or unmatured, liquidated or unliquidated, claims, cross-claims, obligations, liabilities, rights, demands, notices, injuries, damages, losses, requests, obligations to defend or indemnify, suits, lawsuits, costs, costs of suit, attorneys’ fees, experts’ fees, actions, administrative proceedings, causes of action or orders, of any nature, character, type or description, whenever and however occurring, whether at law, or in equity, and

whether sounding in tort, contract, nuisance, trespass, negligence, strict liability or any statutory, common law or other cause of action.

2.2 Release by Lessor. Effective as of the date on which the Lease terminates under Section 2, Lessor hereby fully and irrevocably releases, waives, acquits and discharges Lessee from all Claims, whether known or unknown, existing or potential, suspected or unsuspected, or that may hereafter be sustained, that Lessor may have or assert, or may hereafter have or assert, by reason of any contract (express, oral or written, implied in fact or implied in law), right to defense or indemnification (legal or equitable, contractual, statutory or common law), liability, matter, cause, fact, thing or act or omission arising out of, caused by or having any connection with the Lease or the Premises excluding Claims arising from any failure by Lessee to comply with the terms of this Agreement.

2.3 Release by Lessee. Effective as of the date on which the Lease terminates under Section 2, Lessee hereby fully and irrevocably releases, waives, acquits and discharges Lessor from all Claims, whether known or unknown, existing or potential, suspected or unsuspected, or that may hereafter be sustained, that Lessee may have or assert, or may hereafter have or assert, by reason of any contract (express, oral or written, implied in fact or implied in law), right to defense or indemnification (legal or equitable, contractual, statutory or common law), liability, matter, cause, fact, thing or act or omission arising out of, caused by or having any connection with the Lease or the Premises excluding claims arising from any failure to Lessor to comply with the terms of this Agreement. Without limiting the foregoing, Lessee acknowledges and agrees that the foregoing release shall apply not only to its personal Claims, if any, but also to any future loss resulting from Claims brought by third-parties against Lessee in connection with the Lease or the Premises.

2.4 Discovery of Facts. Lessor and Lessee acknowledge that they may hereafter discover facts different from, or in addition to, those that they now believe to be true with respect to any and all of the matters or rights released in this Section. Nevertheless, Lessor and Lessee agree that the releases set forth in this Section shall be and remain effective in all respects, notwithstanding the discovery of any such different or additional facts.

2.5 1542 Waiver. Lessor and Lessee hereby waive and relinquish all rights and benefits under California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

\_\_\_\_\_  
Lessor's Initials

D.J.  
\_\_\_\_\_  
Lessee's Initials

3. Stipulation by Lessee. Lessee hereby stipulates and agrees that if Lessee fails to deliver possession of the Premises as provided by Section 1, then Lessor shall have the irrevocable right, upon ex parte application and without notice to Lessee or any hearing, to a

judgment from any court with jurisdiction awarding possession of the Premises to Lessor (without limiting any other remedies Lessor may have for Lessee's breach of this Agreement).

4. Condition of the Premises. Lessee's obligations under the Lease with respect to the condition of the Premises at the time possession of same is delivered to Lessor upon termination of the Lease shall survive the termination of the Lease, it being agreed and understood that such obligations are expressly excluded from Lessor's release set forth in Section 2.2 above.

5. Recordable Termination of Memorandum of Lease. Concurrently with Lessee's execution and delivery of this Agreement, Lessee shall execute a Termination of Memorandum of Lease in the form attached hereto as Exhibit "A" and shall deliver it to Lessor (with Lessee's signature thereon having been duly acknowledged by a notary). Lessor shall thereafter execute the Termination of Memorandum of Lease (with Lessor's signature duly acknowledged by a notary), but Lessor shall not record the Termination of Memorandum of Lease prior to the earlier of (i) termination of this Lease under Section 1; or (ii) a default by Lessee under Section 1.

6. Entire Agreement. This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreement and discussion.

7. No Waiver. The waiver of any provision of this Agreement must be in writing and signed by the party providing such waiver. The waiver of a breach of any provision of this Agreement shall not be deemed to be a waiver of such provision or any subsequent breach of the same or any other provision of this Agreement. Acceptance of performance after the due date of such performance shall not be deemed to be a waiver any preceding breach of any provision of this Agreement, regardless of the accepting party's knowledge of such preceding breach at the time of acceptance of such performance. The parties further acknowledge and agree that if and to the extent that either party does not require the other to strictly comply with the covenants, agreements and obligations contained herein, such action or inaction shall not constitute a waiver of, or otherwise affect or prejudice in any manner, either party's present or future rights, remedies, benefits or powers, including the right to require performance of such covenants, agreements and obligations strictly in accordance with the terms and provisions of this Agreement.

8. Severability. If any court of competent jurisdiction determines any provision of this Agreement to be invalid, illegal or unenforceable, that provision shall be deemed severed from the rest, which shall remain in full force and effect as though the invalid, illegal or unenforceable provision had never been a part hereof.

9. Modifications. No provision of this Agreement may be changed, discharged, supplemented, terminated or waived except in a writing signed by the parties hereto.

10. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.

11. Counterparts; Facsimile/Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to

be an original, and all of which, taken together, shall be deemed to be one and the same instrument. Facsimiles and emailed copies of this Agreement may be executed and may be delivered by facsimile or email.

12. Governing Law, Jurisdiction. The terms and conditions of, and the rights and obligations under, this Agreement shall be construed and enforced in accordance with, and governed by, the local laws of the State of California. Lessee hereby submits to the jurisdiction of the Superior Court of the State of California in Los Angeles County and agree that any dispute regarding the interpretation or enforcement of, or any other matter relating to, this Agreement shall be determined in and by such court.

13. Time of Essence. Time is of the essence of each provision hereof in which time is a factor.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Agreement as of the day and year first set forth above.

**LESSOR:**

CITY OF BEVERLY HILLS,  
a California municipal corporation

ATTEST:

By: \_\_\_\_\_  
Julian A. Gold, M.D., Mayor

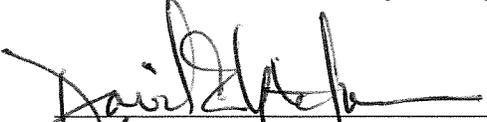
\_\_\_\_\_  
Byron Pope, City Clerk

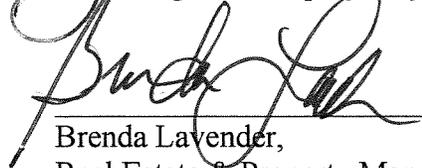
APPROVED AS TO FORM:

  
\_\_\_\_\_  
Laurence S. Wiener, City Attorney

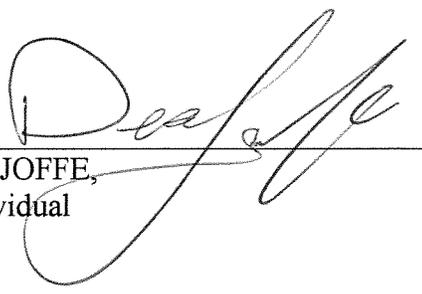
APPROVED AS TO CONTENT:

\_\_\_\_\_  
Mahdi Aluzri, Interim City Manager

  
\_\_\_\_\_  
David Lightner, Deputy City Manager

  
\_\_\_\_\_  
Brenda Lavender,  
Real Estate & Property Manager

**LESSEE:**

  
DEAN JOFFE,  
an individual

## EXHIBIT "A"

### LIST OF EQUIPMENT BEING PURCHASED BY LESSOR

1. Ice –O-Matic Ice Machine
2. Ice-O-Matic Ice Cube Maker, under counter 238 lbs. – part #ICEU220HA
3. Grease Trap System
4. Cali Restaurant Equipment Corp S3CP-1818 2D 3 Compartment sink 18X18 W/2DB 18” part #CRCS3CP18182D
5. T&S B-0230LN-M Sink Mix Faucet wall mounted 8” ctr (6/CS) for 3 tub sink part #TSB0230LNM
6. T&S 062XM 12” Swing nozzle (cs/12 ea) for 3 tub sink part # TS062XM
7. Cali Restaurant Equipment Corp S1CP-1818-ND Single Compartment sink 18X18 no drain mop sink part # CRCS1CP1818ND
8. T&S B-0230LN-M Sink Mix Faucet Wall mounted 8” ctr (6/CS) for mop sink part #TSB0230LNM
9. T&S 062XM 12” Swing Nozzle (cs/12 ea) for mop sink part # TS062XM
10. Long Range Systems (LRS) paging system including the 1 freedom transmitter, 12 smoked coaster call guest pagers, 1 charger (holds up to 30 coaster call pagers), 12 Custom Coaster Label (Order in sets of 15)
11. 2 - Tempa 12 plus tankless water heaters (electric water heaters)
12. 1 - 61” x 25” x 24 “ sheet metal table
13. 1 - 28/19 sheet metal shelf  
1 - 18 x 22 sheet metal shelf
14. 1 - 4 channel DVR Avermedia network ready, 1 t drive for DVR recording, 12 v DC power supply, 3 mini-dome camera 600 TVL color indoor, 1 low voltage equipment box
15. HOOD: 4824VX-2-PSP-F- 5ft 6” Long Exhaust-Only Wall Canopy Hood with front perforated supply plenum and built-in 3” standoff, filter, incandescent light fixture – high temp assembly, clear thermal and shock resistant globe (L55 fixture), Exhaust riser – 12” diameter Supply riser – 12” square to 10” round supply collar and 10” round volume damper, Nailor 1090 Series, Field Wrapper 12” high front, right, Right End Panel 48” top Width, 42” Bottom Width, 45” High 430 SS , Left end Standoff 1” Wide insulated, Face Mount Fan Switch, Face Mount light switch
16. Fire System: Ansul 3.0 Ansul 3 gallon wall mounted fire system (includes pre-piped hoods(s) with detection). Includes piping for hood
17. Fan #1: VXD50 High Speed Direct Drive Centrifugal Upblast Exhaust Fan with speed control (single phase only), disconnect switch and 13-3/4” wheel, Grease cup for kitchen-duty centrifugal exhaust fans, Gasketing – Thermeez Woven Ceramic Tape – ¼ x 1” with adhesive back – Mas Temp 1500 degrees F, hinged Base for Curb.
18. Fan #2 VSA-G10 – Supply Fan VSA-G10 Supply Unit with 10” Blower in Size #1 Housing. Supply Fan handles 960 CFM@ .350” wc ESP, Fan runs a 605 RPM. Supply Motor 0.333 HP, 1 Phase 115V 7.0 FLA, ODP (open Drip Proof) down discharge – Air Flow Right – Left Sloped Foam Filtered intake for size #1 standard untampered supply unit 26.75” Wide x 25.875” long x 23.375” high, includes 2” foam EZ Kleen Metal Mesh filters.

19. Electrical System #1: 111110FP 120v/1Ph, W/1 Exhaust Fan, 1 Supply Fn, Exhaust in Fire, Fan On/Off Thermostatically controlled includes 1 duct thermostat.
20. Duct Run #1 (P1) VDW1247LR Duct 12" diameter, 47" long flange at both ends. Stainless steel. (P2) VDW1260AJDKIT Duct adjustable, 12" diameter, 59.5" long, flange at one end with a 12" adjustable collar – stainless steel. (P3) VDW1912TP Duct to Curb Transition, 10-1/2" Curb to 12" Duct, 16 GA aluminized. 3M-2000PLUS Duct – 3M Fire Barrier 2000 Plus Silicone – Used as sealant to Seal Duct Joints. VDW 12CLASY Duct "V" Clamp, 12" Duct, assembly
21. ARTCIC AIRE AF23 Freezer, reach in, One section, 23 cu.ft.
22. TRU TSSU -18-12 SN 467071612
23. SCOTTSMAN SCE170A-1H SN 07051320010348 (DAXX)
24. NEMCO MODEL #6205 Pizza Oven, electric, countertop 2-deck, insulated, removable 19" fibrament decks, tubular heating elements, thermostatic controls 300-700 degrees F, 60 min, bell timer, automatically vented with a power fan, stainless steel construction, 6' cord & 5-15P plug, 120v/60/1ph, 1800 watts, 15 amps, 4" adjustable legs, ETL, NSF
25. YOSHIMASA YMAC-36 Air Curtain W/ Micro Switch/Remote
26. GLOBE PG36E ELECTRIC GRIDDLE 36"
27. CALI REST EQUI CORP ES-3036-S EQUIPMENT STAND 30x36, 430 S/S TOP
28. WARING WDF-1000 HEAVY DUTY 10lbs DEEP FRYER 120 VOLT
29. SHOPKEEP.COM INC. Wireless Point of Sale System.

**EXHIBIT "B"**

**FORM OF RECORDABLE "TERMINATION OF MEMORANDUM OF LEASE"**

(Attached.)

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Beverly Hills  
Office of the City Manager  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attn: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Recording Fee: Exempt pursuant to California Government Code Section 27383

**TERMINATION OF MEMORANDUM OF LEASE**

THIS TERMINATION OF MEMORANDUM OF LEASE (this "Termination") is dated for reference purposes as of September 10, 2015 and is entered into by and among the CITY OF BEVERLY HILLS ("Lessor"), and DEAN JOFFE, an individual doing business as "Delicious Snack Company" ("Lessee").

**RECITALS**

A. Lessor and Lessee executed that certain "Lease By and Between The City of Beverly Hills and Dean Joffe (dba Delicious Snack Company) For A Snack Bar at La Cienega Park" dated April 17, 2012, for certain space in the park located at 8400 Gregory Way, Beverly Hills, California (the "Premises"), which was amended by an Amendment No. 1 to Lease dated May 6, 2014 (and as so amended, said lease is hereinafter referred to as the "Lease").

B. The Amendment No. 1 to Lease was recorded on May 28, 2014 as Document No. 20140547956 in the official Records of Los Angeles, California.

C. A Memorandum of Lease dated April 17, 2012 was executed by Lessor and Lessee and was recorded on June 6, 2012 as Document No. 2012084742 in the Official Records of Los Angeles County, California (the "Memo").

D. Lessor and Lessee have entered into a Lease Termination and Settlement/Release Agreement dated as of September 1, 2015 ("Termination Agreement").

E. Lessor and Lessee now desire to terminate the Recorded Memorandum and the recorded Amendment No. 1 pursuant to the terms of the Termination Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Termination. The Lease, the recorded Memorandum and the recorded Amendment No. 1 are hereby terminated.

2. Counterparts. This Termination may be executed in any number of counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, taken together, shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Termination as of the date first above written.

**LESSOR:**

CITY OF BEVERLY HILLS,  
a California municipal corporation

ATTEST:

By: \_\_\_\_\_  
Julian A. Gold, M.D., Mayor

\_\_\_\_\_  
Byron Pope, City Clerk

**LESSEE:**

\_\_\_\_\_  
DEAN JOFFE,  
an individual

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Los Angeles )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Los Angeles )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

# **Attachment 2**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Beverly Hills  
Office of the City Manager  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attn: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

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### **AGREEMENT**

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IN WITNESS WHEREOF, Lessor and Lessee have executed this Termination as of the date first above written.

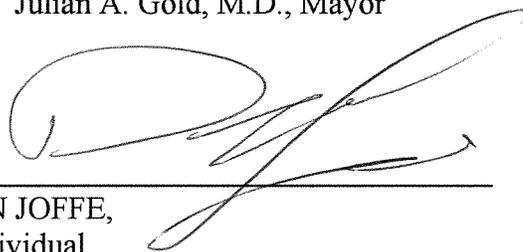
**LESSOR:**

CITY OF BEVERLY HILLS,  
a California municipal corporation

ATTEST:

By: \_\_\_\_\_  
Julian A. Gold, M.D., Mayor

\_\_\_\_\_  
Byron Pope, City Clerk



**LESSEE:**

\_\_\_\_\_  
DEAN JOFFE,  
an individual

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

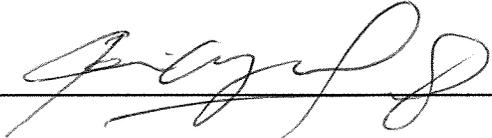
State of California )  
County of Los Angeles )

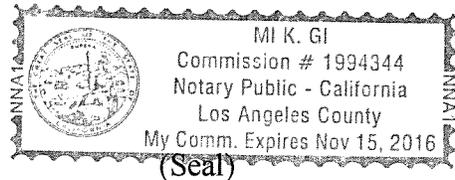
On Aug. 24, 2015, before me, Mi K. Gi,  
(insert name and title of the officer)

Notary Public, personally appeared Dean Joffe,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same  
in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Los Angeles )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
(insert name and title of the officer)

Notary Public, personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)