



AGENDA REPORT

Meeting Date: December 1, 2015
Item Number: D-7
To: Honorable Mayor & City Council
From: Mark Cuneo, City Engineer

Subject: RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS APPROVING THE FINAL MAP FOR TENTATIVE TRACT MAP NO. 69145 (309-325 SOUTH ELM DRIVE) AND ACCEPTING, SUBJECT TO IMPROVEMENT, A RIGHT-OF-WAY DEDICATION; AND APPROVE A SUBDIVISION IMPROVEMENT AGREEMENT WITH K PACIFIC INVESTMENTS, LLC AND AN AFFORDABLE HOUSING COVENANT AND REGULATORY AGREEMENT AND DEED OF TRUST AND AUTHORIZE THE CITY MANAGER TO EXECUTE ALL REQUIRED DOCUMENTS ON BEHALF OF THE CITY.

Attachment:

- 1) Resolution
- 2) Final Tract Map
- 3) Planning Commission Resolution No. 1508 Conditionally Approving the Tentative Parcel Map on March 13, 2008
- 4) Planning Commission Resolution No. 1613 Approving a one-year Time Extension on May 26, 2011
- 5) Location Map
- 6) Community Development Memorandum Regarding compliance with Conditions of Approval
- 7) Subdivision Improvement Agreement
- 8) Affordable Housing Covenant And Regulatory Agreement
- 9) Deed Of Trust, Assignment Of Rents Security Agreement And Fixture Filing

RECOMMENDATION

It is recommended that the City Council find that the final tract map conforms to the tentative map, all applicable requirements of the State Subdivision Map Act and the City's subdivision ordinances, and adopt the resolution approving the final map for Tract Map No. 69145 and accepting, subject to improvement that is satisfactory to the City Engineer, dedication of 2.5-foot strip along the alley that abuts the property. Additionally, it is recommended that the City Council approve an Affordable Housing Covenant and Regulatory Agreement and Deed of Trust pertaining to three affordable housing units that are required and a Subdivision Improvement agreement with K Pacific Investments, LLC and authorize the City Manager to execute the Subdivision Improvement Agreement on behalf of the City.

INTRODUCTION

This report is a request for City Council adoption of the findings that Tract Map No. 69145 located at 309-325 Elm Drive is consistent with the previously approved tentative map and that the tentative map conditions have been met. It also provides for City Council adoption of a resolution approving the final map for Tract Map No. 69145 (Attachment No. 1) and accepting a 2.5-foot dedication of right-of-way for the alley along the western edge of the project, as shown on the final map (Attachment No. 2). Additionally, since the public improvements associated with this subdivision have not been completed, a subdivision improvement agreement between the City and K Pacific Investments, LLC, is required by state law to insure completion of all off-site improvements to the satisfaction of the City Engineer.

DISCUSSION

At its meeting of March 13, 2008, the Planning Commission approved Tentative Tract Map No. 69145, and adopted Resolution No. 1508 (Attachment No. 3). Additionally, at its meeting of May 26, 2011, the Planning Commission adopted Resolution No. 1613 (Attachment No. 4) to extend the rights granted under Resolution No. 1508 for one-year. The Tentative Tract Map also received additional automatic extensions due to the financial recession, by virtue of State legislation that extended tentative maps that had been approved but still had not been developed.

The applicant, Sergey Kiselev, Managing Member of K Pacific Investments, LLC, has prepared the final map to construct a new 30-unit residential condominium structure located at 309-325 Elm Drive (Attachment No. 5). The applicant is constructing the buildings in accordance with the approved plans. The applicant submitted a final tract map for approval by the City Council that is substantially the same as the approved tentative tract map. Other than the completion of the off-site improvements, the final map meets all the conditions imposed by Planning Resolution No. 1508 (as explained in the attached memo from the Community Development Department) and was approved by the City Engineer. Staff has now reviewed the final map and is recommending its approval by the

Council. Pursuant to the State Subdivision Map Act, the City must approve the final map if it substantially conforms to the tentative map and “it conforms with all requirements of [the Map Act], and any local subdivision ordinance applicable at the time of approval or conditional approval of the tentative map”. Approval of the Final Map and completion of the required improvements to the alley will allow the applicant to sell the individual units.

As discussed above, the conditions of approval included in Planning Resolution No. 1508, required improvements in the public right-of-way. Since the required public improvements have not be completed and accepted, the City Council, as a condition precedent to the approval of the final map, shall require the applicant to enter into a subdivision improvement agreement (Attachment No. 7) with the City to thereafter complete the improvements to the City’s satisfaction at the applicant’s expense. Performance of the subdivision improvement agreement will be guaranteed by a form of security that is acceptable to the City Attorney. The City Attorney’s Office prepared the attached subdivision improvement agreement, and Staff recommends that the City Council approve it and authorize the City Manager to execute it on behalf of the City.

Lastly, the developer requested and received approval of a density bonus to increase the height of the project in exchange for selling ten percent (three) of the units to low income households. Attached to this report as Attachments 8 and 9 are an agreement and deed of trust that were prepared by the City Attorney’s Office ensuring that the three units will be affordable and available to low income households for a minimum period of thirty years. Accordingly, Staff recommends that the City Council also approve the attached Affordable Housing Covenant And Regulatory Agreement and Deed of Trust.

FISCAL IMPACT

There are no known financial impacts associated with this action.

David Lightner 
Approved By

Attachment 1

RESOLUTION NO. 15-R-_____

RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS
APPROVING THE FINAL MAP FOR TENTATIVE TRACT MAP NO. 69145
(309-325 SOUTH ELM DRIVE) AND ACCEPTING, SUBJECT TO
IMPROVEMENT, A RIGHT-OF-WAY DEDICATION

The Council of the City of Beverly Hills hereby finds, orders, and resolves as follows:

Section 1. Tentative Tract Map No. 69145 was submitted for approval of two condominium structures consisting of thirty (30) condominium units at 309-325 South Elm Drive, Beverly Hills.

Section 2. The Planning Commission conditionally approved said Tentative Tract Map, and the final map has been filed in a timely manner.

Section 3. The Council of the City of Beverly Hills finds as follows:

(a) The final map filed herein is in substantial compliance with the tentative tract map and complies with all of the requirements of the California Subdivision Map Act and the City's subdivision ordinance.

(b) The applicant has performed all conditions precedent to final map approval as required by the tentative map approval and has entered into a subdivision improvement agreement with the City to ensure that remaining off-site improvements are completed to the City's satisfaction.

(c) For the reasons set forth in the resolution approving the tentative map, the design of the subdivision and proposed improvements will not cause substantial environmental damage or any health problems and will not conflict with any public easements.

(d) For the reasons set forth in the resolution approving the tentative map, the discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the California Regional Water Quality Board.

Section 4. The Council of the City of Beverly Hills does hereby resolve as follows:

(a) The final map for Tract Map No. 69145 is approved.

(b) The streets, alleys, highways, and other public ways shown on the map are accepted, subject to improvements, on behalf of the public.

(c) The Subdivision Improvement Agreement is approved.

(d) The Affordable Housing Covenant and Regulatory Agreement and Deed of Trust for the three units that are to be available to low income households are approved.

Section 5. The City Engineer is directed to record the Final Map along with the Subdivision Improvement Agreement and the Affordable Housing Covenant and Regulatory Agreement and Deed of Trust.

Section 6. The approval of the Final Tract Map shall be construed as approval of only those matters expressly shown or stated in the map, and shall not be construed as an

approval of any other matters submitted to or considered by the Planning Commission or the Council and not expressly shown or stated on the Final Map or in this resolution.

Section 7. The City Clerk shall certify to the adoption of this resolution and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Council of this City.

Adopted:

JULIAN A. GOLD, M.D.
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



DAVID SNOW
Interim City Attorney

APPROVED AS TO CONTENT:



DAVID LIGHTNER
Director of Capital Assets

Attachment 2

TRACT NO. 69145

IN THE CITY OF BEVERLY HILLS,
COUNTY OF LOS ANGELES,
STATE OF CALIFORNIA

BEING A SUBDIVISION OF PORTIONS OF LOTS 1602, 1603, 1604, 1605 AND 1606 OF TRACT NO. 6380, AS PER MAP RECORDED IN BOOK 69, PAGES 11 THROUGH 20, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

RONALD N. KOESTER L.S. 5930 MAY 2015

FOR CONDOMINIUM PURPOSES

OWNER'S STATEMENT:

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR ARE INTERESTED IN THE LANDS INCLUDED WITHIN THE SUBDIVISION SHOWN ON THIS MAP WITHIN THE DISTINCTIVE BORDER LINES, AND WE CONSENT TO THE PREPARATION AND FILING OF SAID MAP AND SUBDIVISION. WE HEREBY DEDICATE TO THE PUBLIC USE ALL STREETS, HIGHWAYS AND OTHER PUBLIC WAYS SHOWN ON SAID MAP.

K PACIFIC INVESTMENTS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, OWNER

[Signature]
SERGEY KISELEV, MANAGING MEMBER

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 TO THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ON JUNE 25, 2015 BEFORE ME AMANDA VANELLE PALMER, NOTARY PUBLIC, PERSONALLY APPEARED SERGEY KISELEV, MANAGING MEMBER, 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,

SIGNATURE: *[Signature]*

PRINTED NAME: AMANDA VANELLE PALMER, NOTARY PUBLIC

NOTARY COMMISSION NUMBER: 2003352

MY COMMISSION EXPIRES: SEPTEMBER 26, 2018

MY PRINCIPAL PLACE OF BUSINESS IS IN: LOS ANGELES COUNTY

SIGNATURES OMISSIONS:

THE SIGNATURE OF CHEVRON CORPORATION, A CORPORATION, SUCCESSOR IN INTEREST TO STANDARD OIL COMPANY OF CALIFORNIA, A CORPORATION, SUCCESSOR OR ASSIGNEE, THE OWNERS OF THE LEASEHOLD ESTATE UNDER AN OIL AND GAS LEASE RECORDED SEPTEMBER 23, 1964 AS INSTRUMENT NO. 3152, SEPTEMBER 24, 1964 AS INSTRUMENT NO. 4272, AND FEBRUARY 1, 1965 AS INSTRUMENT NO. 2774 IN BOOK M-1756 PAGE 428, ALL OF WHICH OFFICIAL RECORDS, MAY BE OMITTED UNDER THE PROVISIONS OF SECTION 66436, (a)(3)(C) OF THE SUBDIVISION MAP ACT, THEIR INTEREST IS SUCH THAT IT CANNOT RIPEN INTO A FEE TITLE, AND SAID SIGNATURE IS NOT REQUIRED BY THE LOCAL AGENCY.

BOARD OF SUPERVISORS CERTIFICATES:

I HEREBY CERTIFY THAT ALL CERTIFICATES HAVE BEEN FILED AND DEPOSITS HAVE BEEN MADE THAT ARE REQUIRED UNDER THE PROVISIONS OF SECTIONS 66492 AND 66843 OF THE SUBDIVISION MAP ACT.

EXECUTIVE OFFICER, BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

BY: _____ DEPUTY _____ DATE _____

I HEREBY CERTIFY THAT SECURITY IN THE AMOUNT OF \$ _____ HAS BEEN FILED WITH THE EXECUTIVE OFFICER, BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES AS SECURITY FOR THE PAYMENT OF TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES ON THE LAND SHOWN ON MAP OF TRACT NO. 69145 AS REQUIRED BY LAW.

EXECUTIVE OFFICER, BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

BY: _____ DEPUTY _____ DATE _____

PARKING REQUIREMENT NOTE:

THE SUBJECT CONDOMINIUM PROJECT CONSISTS OF 30 RESIDENTIAL CONDOMINIUM UNITS AND 88 PARKING SPACES. REQUIRED PARKING SPACES SHALL BE PERMANENTLY ASSIGNED TO EACH UNIT AND SHALL BE LABELED AS SUCH. SEVEN GUEST PARKING SPACES SHALL BE MAINTAINED AT ALL TIMES, BRINGING THE TOTAL REQUIRED PARKING SPACES THAT SHALL BE MAINTAINED TO 88. ADA PARKING STALLS SHALL MEET ALL ADA REQUIREMENTS. PARKING SPACES SHALL BE USED SOLELY FOR THE PARKING OF PERSONAL VEHICLES. ASSIGNED PARKING SPACES MAY NOT BE LEASED, SUBLEASED, SOLD SEPARATELY FROM THE CONDOMINIUM UNIT, OR OTHERWISE GIVEN TO OTHERS NOT A RESIDENT(S) OF THE CONDOMINIUM UNIT WITHIN THE DEVELOPMENT.

SURVEYOR'S STATEMENT:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF K PACIFIC INVESTMENTS, LLC IN JANUARY 2014. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS WITHIN 24 MONTHS FROM THE FILING DATE OF THIS MAP, AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THE NOTES TO ALL CENTERLINE MONUMENTS SHOWN AS "TO BE SET" WILL BE ON FILE IN THE OFFICE OF THE DIRECTOR OF PUBLIC WORKS BEFORE 24 MONTHS FROM THE FILING DATE OF THIS MAP AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP. I HEREBY STATE THAT SAID SURVEY IS TRUE AND COMPLETE AS SHOWN.

[Signature]
RONALD N. KOESTER 6/23/15
L.S. 5930



CITY ENGINEER'S CERTIFICATE:

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP, THAT THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP AND ANY APPROVED ALTERATIONS THEREOF. THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND OF ANY LOCAL SUBDIVISION ORDINANCES OF THE CITY OF BEVERLY HILLS APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH, AND THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT.

[Signature]
DAVID G. GILBERTSON, ACTING CITY SURVEYOR
LS 6941, EXPIRES 09/30/2017



CITY CLERK CERTIFICATE:

I HEREBY CERTIFY THAT THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS BY RESOLUTION NO. _____ ADOPTED ON THE _____ DAY OF _____, 2015, APPROVED THE ATTACHED MAP AND ACCEPTED ON BEHALF OF THE PUBLIC ALL STREETS, HIGHWAYS AND OTHER PUBLIC WAYS AS SHOWN ON THE ATTACHED MAP.

DATE _____ CITY CLERK OF THE CITY OF BEVERLY HILLS

SPECIAL ASSESSMENT STATEMENT:

I HEREBY STATE THAT ALL SPECIAL ASSESSMENTS LEVIED UNDER THE JURISDICTION OF THE CITY OF BEVERLY HILLS, TO WHICH THE LAND INCLUDED IN THE WITHIN SUBDIVISION OR ANY PART THEREOF IS SUBJECT AND WHICH MAY BE PAID IN FULL, HAVE BEEN PAID IN FULL.

DATE _____ CITY TREASURER OF THE CITY OF BEVERLY HILLS

CONDOMINIUM NOTE:

THIS TRACT IS APPROVED AS A CONDOMINIUM PROJECT FOR 30 UNITS, WHEREBY THE OWNERS OF THE UNITS OF AIR SPACE WILL HOLD AN UNDIVIDED INTEREST IN THE COMMON AREAS WHICH WILL, IN TURN, PROVIDE THE NECESSARY ACCESS AND UTILITY EASEMENTS FOR THE UNITS.

BASIS OF BEARING:

THE BEARINGS SHOWN HEREON ARE BASED ON THE SIDELINES OF ELM DRIVE SHOWN AS NORTH 00°05'49" EAST ON TRACT NO. 6380 RECORDED IN BOOK 69, PAGES 11 THROUGH 20 INCLUSIVE OF MAPS, RECORDS OF LOS ANGELES COUNTY. THE SIDELINE IS ESTABLISHED FROM AN OFFSET OF THE CENTERLINE OF ELM DRIVE ESTABLISHED THROUGH FOUND CENTERLINE MONUMENTS.

PARKS AND RECREATION FACILITIES CONSTRUCTION TAX NOTE:

THE PARK AND RECREATION FACILITIES CONSTRUCTION TAXES SET FORTH IN CHAPTER 9 OF TITLE 8 OF THE BEVERLY HILLS MUNICIPAL CODE MAY BE REQUIRED TO BE PAID UPON THE ISSUANCE OF ANY BUILDING PERMIT FOR THE CONSTRUCTION OF ANY BUILDING OR STRUCTURE, OR ANY ADDITION THERETO, ON ANY PROPERTY OR IN ANY BUILDING LOCATED IN THIS SUBDIVISION.

TRACT NO. 69145

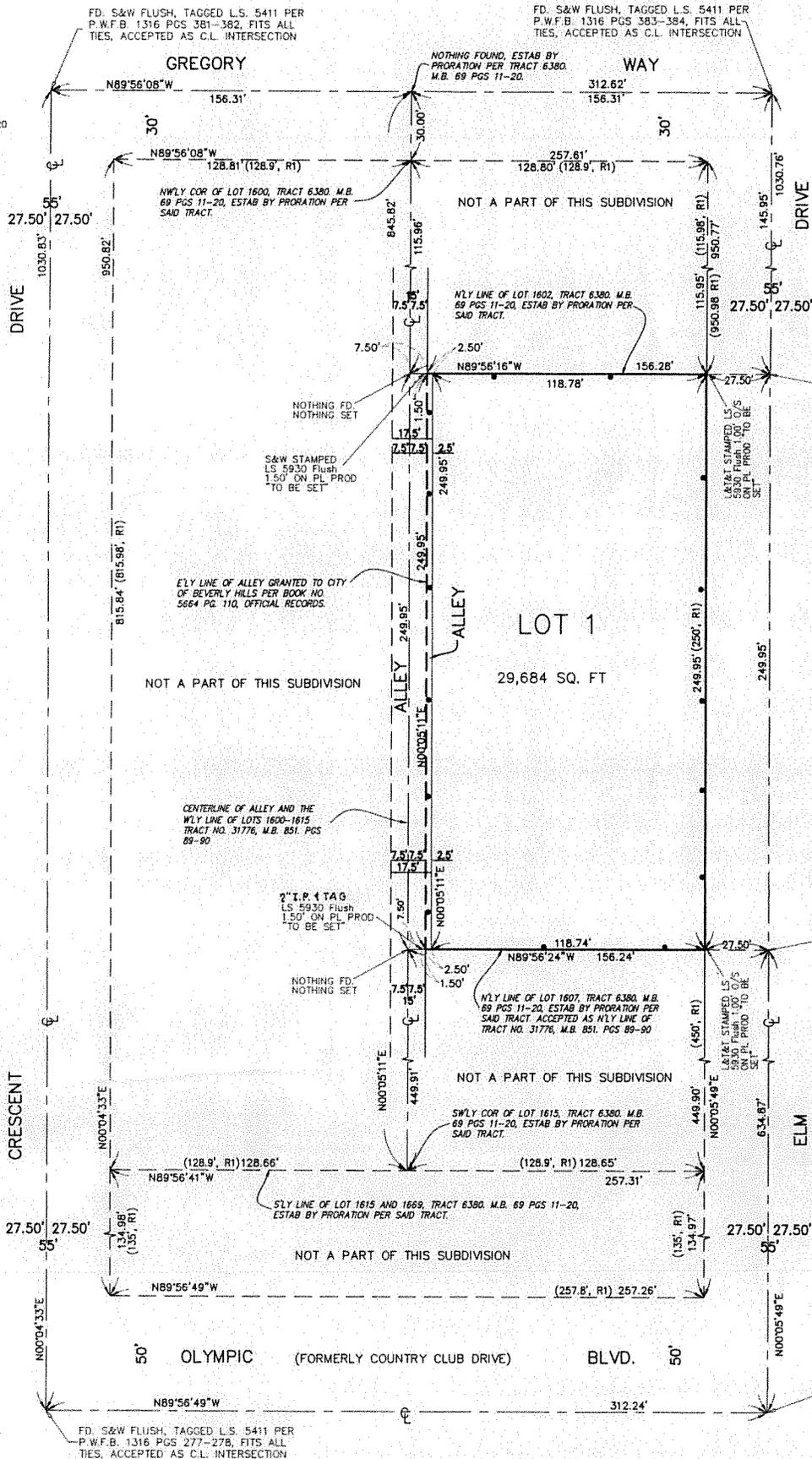
IN THE CITY OF BEVERLY HILLS,
COUNTY OF LOS ANGELES,
STATE OF CALIFORNIA
FOR CONDOMINIUM PURPOSES

LEGEND

INDICATES THE BOUNDARY OF THE LAND
BEING SUBDIVIDED BY THIS MAP.



R1 TRACT 6380, BK. 69 PGS 11-20



FD. S&W FLUSH, TAGGED RCE 29108
PER TR. 62386 BK. 1356 PGS 79-81,
FITS PER P.W.F.B. 1316 PAGES
79-81, ACCEPTED AS C.L.
INTERSECTION

Attachment 3

RESOLUTION NO. 1508

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS ADOPTING A NEGATIVE DECLARATION AND CONDITIONALLY APPROVING A TENTATIVE TRACT MAP NO. 69145, A DENSITY BONUS PERMIT, AN R-4 PERMIT AND A DEVELOPMENT PLAN REVIEW PERMIT TO ALLOW CONSTRUCTION OF A THIRTY UNIT RESIDENTIAL CONDOMINIUM STRUCTURE ON THE PROPERTY LOCATED AT 309-325 SOUTH ELM DRIVE.

The Planning Commission of the City of Beverly Hills hereby finds, resolves, and determines as follows:

Section 1. Abraham Amouyal, property owner (hereinafter referred to as the "Applicant"), has submitted an application for approval of Tentative Tract Map No. 69145, Development Plan Review for a four story, 45 foot high, 30 unit condominium building, a Density Bonus permit for a 20% density bonus above the Zoning Code allowed density of 25 units and a construction incentive of relief from the Zoning Code required 33 foot height and three story maximum and General Plan map required 40 foot height limit and an R-4 permit for additional front yard paving for a property located at 309-325 South Elm Drive (the "Project").

The subject site is located mid-block on the west side of South Elm Drive between Gregory Way and Olympic Boulevard. The site is zoned R-4 in a multi-block R-4 area. To the west the parcels border a single family residential area that fronts Crescent Drive. To the north, across Gregory Drive, is Beverly Vista Elementary School. To the south is a multiple family residential portion of Olympic Boulevard. This block of Elm Drive, as well as to the east on Rexford Drive, is

zoned R-4. All parcels in this R-4 area that border single family residential lots are allowed a maximum height of 33 feet and three stories. All other portions of this R-4 area have a maximum height of 45 feet and four stories. This portion of South Elm Drive is characterized by a mix of older multi-family residential developments, some of which exceed the current height requirements for the area. The buildings on the block vary in architectural style, age, density and height.

The project area is currently five lots (alternatively the “site”) developed with three two-story apartment buildings, one single-story single family residence and one two-story duplex. All structures on the site, which collectively contain 23 dwelling units, would be demolished to accommodate the new development. None of the existing structures has been deemed eligible for local historic listing or designation through the local government review process.

The proposed 30-unit condominium is comprised of two four-story (45 foot high) structures. The two structures would be constructed over a single two-level subterranean parking garage. The two structures are identical in floor area and contain 26,787 square feet of floor area above grade, for a total project area of 53,574 square feet. Each structure contains 15 residential units. Each structure is 104 feet in width. Vehicle access to underground parking is located off of South Elm Drive. The townhome units facing South Elm Drive have street facing entryways accessed by concrete walkways leading to the sidewalk. The Project also has a 15 foot wide interior courtyard.

Density Bonus Permit. California Government Code Section 65915 and Article 15.2 of the Beverly Hills Municipal Code both stipulate that an applicant may submit a request to the City for a 20 percent density bonus and one construction incentive for a project that includes at least 10 percent of total units for lower income households. Three of the proposed project’s 30 dwelling units

in the project are proposed to be set aside for lower income households. The Applicant is requesting the 20 percent density bonus, increasing the number of units allowed at the project site from 25 to 30 and is also requesting a construction incentive of increased building height which calls for relief from the zoning code required 33 foot height limit and three story maximum and General Plan map required 40 foot height limit at the project location. The Applicant is proposing a fourth story with a maximum height of 45 feet.

R-4 Permit for Additional Walkways. The Applicant requests four additional walkways to provide street facing access to some of the individual townhome units. The City may grant this request, through an R-4 permit, if the review authority finds that the proposed walkways are compatible with the nearby streetscape and the scale of surrounding development.

Front Façade Modulation. The Project consists of two separate buildings located over one underground parking structure. The minimum required front façade modulation area for each of the proposed buildings is 3,438 square feet. The proposed project exceeds the required front façade modulation for each of the proposed buildings.

Rear Setback Reduction. The Project design takes advantage of the allowed reduction in the required rear yard setback from 15 feet to 10 feet to offset the loss of usable floor area mandated by the modulation requirements, as permitted by Municipal Code Section 10-3-2808 E. The five foot reduction in rear setback is code compliant.

Landscape Plan. A landscape plan has been submitted by the Applicant. Both the architectural and the landscape plans shall be subject to review and approval by the Architectural Commission, and a condition of approval to this effect is proposed.

Section 2. The Project has been environmentally reviewed pursuant to the California Environmental Quality Act (“CEQA”), (Public Resource Sections 21000, et seq.), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq.), and the City’s Local CEQA guidelines. The Project consists of the construction of two multi-family residential structures with a total of 30 dwelling units in an urbanized area and an initial study was conducted pursuant to Section 15063 of the Guidelines. The City prepared an initial study and, based on the information contained in the applications filed by the Applicant, determined that there was no substantial evidence that approval of the Project would have a significant environmental impact. Therefore, the City prepared a negative declaration on November 8, 2007 in accordance with Section 15070 of the State CEQA Guidelines. The project was modified after the preparation of the initial study and negative declaration and an addendum to the negative declaration has been prepared. Pursuant to Section 15074(b) of said Guidelines, the Planning Commission independently reviewed and considered the contents of the initial study, the negative declaration and the addendum to the negative declaration during the course of a public hearing prior to deciding whether to approve the Project. Based on the initial study, the negative declaration, addendum to the negative declaration, the comments received thereon, and the record before the Planning Commission, the Planning Commission hereby finds that the amended negative declaration for the Project represents the independent judgment of the City and that there is no substantial evidence that the approval of the Project may have any significant environmental impact. The documents and other material that constitute the record on which this decision is based are located in the Department of Community Development and are in the custody of

the Director of Community Development. Specifically, the Planning Commission weighed the evidence presented on the issues of potential shade/shadow and privacy impacts on adjacent properties and concluded that there was no evidence that the Project would have any impacts in this regard.

Section 3. On November 7, 2007, a notice of intent to adopt a negative declaration was mailed to all property owners and residents within 300 feet of the Project site and all property owners and residents within 500 feet of the project located in a single family residential zone. The Project was noticed in the local newspaper in accordance with Section 15072. On November 29, 2007, the Planning Commission visited the site and held a duly noticed public hearing to consider the application and continued the item to a later date. On February 13, 2008 notice of the revised project was mailed to all property owners and residents within 300 feet of the Project site and all property owners and residents within 500 feet of the project located in a single family residential zone. Additionally the revised Project was re-noticed in the local newspaper. On February 28, 2008, the Planning Commission held a duly noticed public hearing to consider the application and continued the item to March 13, 2008. On March 13, 2008, the Planning Commission conducted a site visit at which time Commissioners went to the roof of an existing structure on the Project Site and to neighboring properties to assess potential privacy issues, and held a public hearing to consider the application. Evidence, both written and oral, was presented at said hearing.

Section 4. Based upon the evidence presented in the record on this matter, including the staff report and oral and written testimony, the Planning Commission hereby finds, as follows, with respect to the Density Bonus Permit:

4.1 As proposed the project is in compliance with the affordable housing requirements of State and local law. The incentive of an additional fourth story is physically suitable for the project site, which is located in a multi-family residential zone. Other nearby structures on this block of South Elm Drive exceed the current height limits for the zone. In addition the proposed fourth story is stepped back from the edges of the building to minimize mass impacts from the additional building height. Privacy screening is located on the fourth story to mitigate potential privacy impacts on adjacent single family residences. The Planning Commission hereby grants the density bonus incentive allowing a fourth story at a maximum height of 45 feet, substantially as shown on the revised plans reviewed by the Planning Commission on March 13, 2008.

Section 5. Pursuant to Beverly Hills Municipal Code Section 10-3-3104, in reviewing the application for Development Plan Review, the Planning Commission considered the following issues:

5.1 Whether the proposed plan is consistent with the General Plan and any specific plans for the area;

5.2 Whether the proposed plan will adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area;

5.3 Whether the proposed plan will create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards; and

5.4 Whether the proposed plan will be detrimental to the public health, safety or general welfare.

Section 6. Based upon the evidence presented in the record on this matter, including the staff report and oral and written testimony, the Planning Commission hereby finds, as follows, with respect to the Development Plan Review:

6.1 As conditioned, and as allowed under the Density Bonus Permit, the development as proposed meets Zoning Code requirements, particularly regarding use, height, density and parking and would be consistent with the adopted General Plan of the City which designates this as a low medium density multiple-family residential area. The project meets General Plan Housing Element Objective 2.2, which state the City should “expand supply of housing affordable to lower income households” and Program 2.5 which states the City should promote utilization of the density bonus ordinance.

6.2 As conditioned, the new multi-family development would not adversely affect the existing development located in the area. The condominium building would be harmonious with the existing land use and density in the area. The proposed modulation would reduce the mass of the structure when viewed from the street. The proposed six foot high visual barrier would mitigate privacy impacts from the fourth story on adjacent single family homes. There are a variety of multi-family buildings in this block of South Elm Drive which were built under different zoning standards and consequently many of the buildings do not provide the modulation required under today’s Zoning Code. After review and approval of the Planning Commission, the project will be reviewed by the

Architectural Commission. The Architectural Commission shall ensure that the architecture and landscaping proposed is harmonious with development in the area.

6.3 As conditioned, the proposed Project will not create any significant adverse traffic impacts or vehicular or pedestrian safety or circulation problems. A traffic impact analysis report was prepared by Hirsch/Green Transportation Consulting, Inc. to assess the potential impacts of the proposed condominium project. Hirsch/Green Transportation also provided a revision letter for the revised project on February 7, 2008. The expectation is that the proposed Project will result in a net increase of 62 new daily trips, including seven new AM peak hour trips and seven net new PM peak hour trips. There is a small net increase in traffic because the Project increases the net number of units on the site by seven units. The analysis of the report concludes that the proposed Project will be only a minor traffic generator and will not significantly impact any of the study intersections. The report also concludes that no traffic or access mitigation measures are warranted for this Project. Therefore, it is not anticipated that the Project would generate adverse traffic impacts, traffic hazards, pedestrian/vehicle conflicts, or pedestrian safety hazards. Access to nearby schools has been studied and the proposed project should not conflict with schoolchildren and other pedestrians who may travel in front of the project site.

6.4 As conditioned, the proposed Project will not be detrimental to the public health, safety, or general welfare. The project would be constructed in accordance with the City's Building Code standards and is consistent with the zoning for the area.

Section 7. Pursuant to Beverly Hills Municipal Code Section 10-3-3700, in reviewing the application for an R-4 Permit, the Planning Commission considered the how the following findings could be met:

- 7.1 That the proposal is compatible with the nearby streetscape.
- 7.2 That the proposal is compatible with the scale of surrounding development.

Section 8. Based upon the evidence presented in the record on this matter, including the staff report and oral and written testimony, the Planning Commission hereby finds, as follows, with respect to the R-4 Permit:

8.1 The additional paving on this five-lot site is compatible with the nearby streetscape. The additional walkways leading to the ground level townhomes could contribute to making the building's interface with the public street more pedestrian friendly.

8.2 The proposed walkways to individual townhome entrances are compatible to the scale of surrounding development. Many of the multifamily residential structures on this portion of Elm Drive are located on single parcels and have direct pedestrian accessibility from the street to the dwelling units. The provision of additional pedestrian walkways allowing direct pedestrian access to units is compatible with the scale and configuration of the existing residential structures located on Elm Drive.

Section 9. Pursuant to Section 66474 of the California Government Code, in reviewing the application for Tentative Tract Map No. 69145, the Planning Commission considered the following issues:

9.1 Whether the proposed tentative tract map and the design or improvement of the proposed subdivision are consistent with the General Plan of the City;

9.2 Whether the site is physically suitable for the type of development and the proposed density;

9.3 Whether the design of the subdivision and the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;

9.4 Whether the design of the subdivision or type of improvement is likely to cause serious public health problems and whether the design of the subdivision or the type of improvement will conflict with any public easements; and

9.5 Whether the discharge of waste water from the proposed subdivision into the existing sewer systems will result in a violation of existing requirement prescribed by the California Water Quality Control Board.

Section 10. Based upon the evidence presented in the record on this matter, including the staff report and oral and written testimony, the Planning Commission hereby finds, as follows, with respect to Tentative Tract Map No. 69145:

10.1 The proposed project site's General Plan land-use designation is multi-family

residential and contemplates development at the density proposed. Therefore, the project and its design are consistent with the General Plan of the City if the density bonus permit is granted. The project meets General Plan Housing Element Objective 2.2, which states the City should “expand supply of housing affordable to lower income households” and Program 2.5 which states the City should promote the utilization of the density bonus ordinance.

10.2 The site is zoned for low medium density multi-family residential development in part because it is suitable for such development which includes the proposed project. The proposed density of 30 units meets current Zoning Code requirements with the granting of a density bonus and is appropriate to the site. All necessary utilities are in place to adequately serve the proposed project.

10.3 This project has been evaluated under the requirements of the California Environmental Quality Act (CEQA) and it has been determined that the project will not have a significant effect on the environment or cause environmental damages or injuries to wildlife or their habitat. The site is fully developed with urban uses, and contains no natural habitat for wildlife. A negative declaration and addendum have been prepared pursuant to Article 6 of the CEQA Guidelines.

10.4 The project design has been preliminarily reviewed by the Public Works Department and the Building and Safety Division for code compliance. The project will not encroach into any public easement areas. Therefore, the design of the subdivision and types of improvements are not likely to cause serious public health problems or conflict with any public easement. Access to nearby schools has been studied and the proposed project should not conflict with schoolchildren and

other pedestrians who may travel in front of the project site.

10.5 The project has been preliminarily reviewed by the Public Works Department. Discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the California Regional Water Board provided the NPDES water requirements are complied with. Appropriate conditions of approval are recommended to require compliance with the NPDES Permit requirements. Therefore, the discharge of waste water from the proposed subdivision into the existing sewer systems will not result in a violation of existing requirements presented by the California Water Quality Act Control Board.

Section 11. Based upon the foregoing findings and subject to the Conditions of Approval, the Planning Commission hereby adopts the Negative Declaration and approves the Density Bonus Permit for a 20 percent density bonus and one construction incentive for building height up to 45 feet, the Development Plan Review to allow construction of a 30 unit residential condominium structure, the R-4 Permit for additional paving in the front yard setback and the Tentative Tract Map No. 69145 on the property located at 309-325 South Elm Drive in the City of Beverly Hills and County of Los Angeles, subject to the conditions set forth in Section 12 below.

Section 12. Conditions of Approval

1. The Applicant shall construct and maintain the improvements on the property in a substantial conformance with the plans submitted to and approved by the Planning Commission at its meeting of March 13, 2008. The Applicant shall not change the scope of the improvements as

set forth on said plans without the prior written consent of the City of Beverly Hills. The Applicant shall expressly include this restriction in the covenant accepting the conditions of approval set forth in this resolution.

2. The Applicant shall submit revised plans to the Director of Community Development that substantially conform with the preliminary fourth floor plan reviewed and approved by the Planning Commission at the March 13, 2008 Planning Commission meeting. The revised plans shall locate fourth floor open space at least 12 feet from the west edge of the buildings.

3. A six foot tall privacy wall shall screen the fourth floor open space for units 304, 308, 402 and 404, as shown on the plans submitted for the March 13, 2008 Planning Commission meeting. All views of adjacent single family residences on South Crescent Drive shall be screened by the privacy wall. The privacy wall shall be composed of a 3'6" solid base, and a 2'6" frosted glass pane top. The privacy wall shall substantially conform with the design reviewed at the March 13, 2008 meeting of the Planning Commission.

4. No roof-top areas that are not identified as open space on the approved plans shall not be converted into roof-top open space for the life of the building.

5. Because of the sufficiency of on-site parking for the Project, residents of this multi-family residential project are not eligible to participate in the City of Beverly Hills Overnight Parking Permit program for overnight street parking.

6. The rooms identified as "bedroom three" on Units 401 and 403 shall have exterior

windows fitted with translucent glazing and be either fixed (inoperable) or of an awning style with a maximum opening angle of 25 degrees.

7. The project shall be subject to the review and approval by the Architectural Commission prior to the issuance of building permits.

8. The Applicant shall record covenants and/or deed restrictions as determined by the City Attorney to ensure that the sale price of the three affordable units shall not exceed an amount determined to be affordable to lower income households. Lower income households are defined in California Government Code Section 50079.5 and the California Department of Housing and Community Development provides a process for determining affordable housing costs. The covenants and/or restrictions on the affordable housing shall be in effect for a period of 30 years.

9. The resale of the affordable housing units shall be only to eligible lower income households for the 30 year period in which the affordable housing covenants and/or restrictions are in effect. The resale price of the affordable units shall not exceed an amount determined to be affordable to lower income households.

10. In recognition of site/design constraints and overall tree condition, one Raywood Ash (*Fraxinus oxycarpa* "Raywood") tree located at the F-1 position in the parkway to the front side of 317 S. Elm Drive (identified as tree 12 in the consulting arborist Hanson report of October 27, 2007) may be removed, at the property owner's expense, with the following requirement:

10.1 Prior to the removal of said tree, the owner posts a 650 dollar bond to the City of Beverly Hills to ensure the installation of one 36 inch box Raywood Ash (*Fraxinus*

oxycarpa ‘Raywood’) tree into the parkway at said address prior to the completion of the project. The purchase and delivery of the replacement tree and the cost to install it shall be the responsibility of the property owner. Prior to the installation of the tree into the parkway, the property owner shall contact the Parks and Recreation Department (310.285.2537) to arrange for inspection of the tree by an Urban Forestry Division Inspector, who will also spot the planting location of the tree. Once the tree and its installation have been deemed proper by the Urban Forestry Inspector, the owner is entitled to a refund of 650 dollars.

11. The property owner or subsequent home-owners association shall ensure the continued protection of remaining City trees by irrigating the parkway no less than weekly and by maintaining the parkway and tree protection fencing for the duration of the project.

12. An off-site improvement plan prepared by a registered civil engineer must be submitted to the Civil Engineering Department prior to the issuance of a building permit. This plan must show all improvements in the public right-of-way fronting the proposed project. All facilities to be constructed or relocated within the public right-of-way must be clearly shown.

13. During the construction period, street sweeping must be conducted as frequently as directed by the City Engineer. Dirt shall not be tracked off the construction site.

14. The Applicant shall file a formal written request with the Transportation and Engineering Department for approval of any type of construction encroachment (steel tie-back rods, soldier beams, barricades, etc.) within the public right-of-way. An indemnity bond must be submitted and approved by the City Attorney prior to excavation. The requirements of City

Council Resolution No. 71-R-4269 shall be satisfied.

15. The 2.5-foot strip of dedication along the alley is required under the Beverly Hills Street Master Plan. Prior to sale or occupancy of any unit in the project, the Applicant shall remove and reconstruct the roadway pavement in their half of the alley including a concrete gutter at the center of the alley in accordance with the specifications of the City Engineer. This condition includes the relocation of any existing improvements such as meter boxes, pull boxes, etc.

16. In the event that ground water is encountered during site excavation, a NPDES Permit shall be required from the State Regional Water Quality Control Board for the dewatering operation. The Applicant shall comply with the City's dewatering requirements.

17. Treatment control Best Management Practices (BMPs) will be required for handling the storm water runoff. This will include the installation of a Fossil Filter on the drain line of the subterranean parking prior to occupancy.

18. A Storm Water Pollution Prevention Plan (SWPPP) shall be submitted to the Public Works Department for review and approval prior to beginning of construction.

19. The Applicant shall comply with the applicable conditions and permits from the Public Works/Engineering Department/Recreation and Parks Department. (Attached is the list of standard conditions.)

20. The project shall comply with all Applicable Fire Department requirements as may be identified during the plan check process, including City of Beverly Hills Fire Department Requirements #2, 5A, 18, and 24.

21. Within three working days after approval of this Resolution, the Applicant shall remit to the City two cashier's checks, payable to the County Clerk, in the amount of **\$50.00 dollars** for a documentary handling fee and **\$1,876.75** for a Fish and Game review fee as required pursuant to Fish and Game Code Section 711.4.

22. These conditions of approval shall run with the land and shall remain in full force and effect for the life of this approval. This resolution approving the Development Plan Review Permit, Tentative Tract Map No. 69145, Density Bonus Permit, and R-4 Permit (the "Permits") shall not become effective until the owner of the Project site records a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution.

The Applicant shall deliver the executed covenant to the Department of Community Development within 60 days of the Planning Commission decision. If the Applicant fails to deliver the executed covenant within the required 60 days, this resolution approving the Permits shall be null and void and of no further effect. Notwithstanding the foregoing, the Director of Community Development may, upon a request by the Applicant, grant a waiver from the 60-day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state or local law that would affect the Permits.

23. A Fugitive Dust Emission Control Plan prepared in accordance with SCAQMD Rule 403 implementing the best available control measures at the site during construction activities shall be employed at the site during site preparation activities. The Fugitive Dust Control Plan shall apply to any activity or man-made condition on-site capable of generating fugitive dust.

The plan shall implement all of the control measures set forth in Table 1 of Rule 403. In addition, the Applicant shall also implement, at a minimum, at least three (3) of the five (5) methods identified in subsection (d)(5) of Rule 403. The Fugitive Dust Control Plan shall be reviewed and approved by the Director of Community Development prior to the issuance of any grading permits.

24. A cash deposit of \$10,000 shall be deposited with the City to ensure compliance with the conditions of this Resolution regarding construction activities. Such deposit shall be returned to Applicant upon completion of all construction activities and in the event that no more than two violations of such conditions or the Beverly Hills Municipal Code occur. In the event that three or more such violations occur, the City may: (a) retain the deposit to cover costs of enforcement; (b) notify the Applicant that the Applicant may request a hearing before the City within 10 days of the notice; and (c) issue a stop work notice until such time that an additional deposit of \$10,000 is deposited with the City to cover the costs associated with subsequent violations. Work shall not resume for a minimum of two days after the day that the additional deposit is received by the City. If the Applicant timely requests a hearing, said deposit will not be forfeited until after such time that the Applicant has been provided an opportunity to appear and offer evidence to the City, and the City determines that substantial evidence supports forfeiture. Any subsequent violation will trigger forfeiture of the additional deposit, the issuance of a stop work notice, and the deposit of an additional \$10,000, pursuant to the procedure set forth herein above. All amounts deposited with the City shall be deposited in an interest bearing account. The Applicant shall be reimbursed all interest accruing on monies deposited.

The requirements of this condition are in addition to any other remedy that the City may have in law or equity and shall not be the sole remedy of the City in the event of a violation of the conditions of this resolution or the Beverly Hills Municipal Code.

25. No heavy hauling or export of earth material shall occur outside the hours of 10:00 am. to 4:00 p.m., Monday through Friday.

26. Except during concrete pouring, a limit of four hauling trucks per hour (eight truck trips) shall be permitted during all phases of the Project.

27. The Applicant shall post the names and telephone numbers of two construction representatives for the Project on all construction fence signs. Said signs shall also include the name and number for a City contact from the Community Development Department. The representatives' contact information shall be clearly visible to the general public from the street elevation for the duration of the construction activities and the phone numbers provided shall be manned at all times. The Applicant shall transmit the names and telephone numbers of the representatives to the Director of Community Development.

28. The Applicant shall submit a Construction Management Plan to the Department of Community Development for review and approval prior to issuance of a building permit. The Construction Management Plan shall include, at a minimum, the following:

28.1 Written information about the construction parking arrangement sand hauling activities at different stages of construction to be reviewed and approved by the Engineering Division of Public Works and the Building and Safety Division of Community

Development. On-street parking shall be prohibited at all times. The plan shall indicate arrangements for construction parking at a nearby site where the worker can be transported to and from the Project site.

28.2 Information regarding the anticipated number of workers, the location of parking with respect to schedule during the construction period, the arrangement of deliveries, hauling activities, the length of time of operation, designation of construction staging area and other pertaining information regarding construction related traffic.

28.3 The proposed demolition/construction staging for the Project to determine the amount, appropriate routes and time of day of heavy hauling truck traffic necessary for demolition, deliveries etc., to the subject site.

29. Prior to approval of the Final Map and in accordance with the provisions of Section 10-2-704 of the Beverly Hills Municipal Code, the Applicant shall submit a copy of the proposed covenants, conditions and restriction (CC&Rs) for the Project to the Director of Community Development and the City Attorney for review and approval, which CC&Rs shall be recorded before or at the same time as recordation of the final map. The CC&Rs shall include the total number of parking spaces required for each unit and total number of parking spaces required for the Project in total. Further, the CC&Rs shall include the following provisions, which shall also be noted on the final map:

30.1 The subject condominium Project consists of 30 residential condominium units, and 90 parking spaces.

30.2 Required parking spaces shall be permanently assigned to each unit and shall be

labeled as such. Seven guest parking spaces shall be maintained at all times, bringing the total required parking spaces that shall be maintained to 89. ADA parking stalls shall meet all ADA requirements. Parking spaces shall be used solely for the parking of personal vehicles. Assigned parking spaces may not be leased, subleased, sold separately from the condominium unit, or otherwise given to others not a resident(s) of the condominium unit within the development. These statements shall also be noted on the final map and included in the Covenants, Codes and Restrictions. All common areas and facilities shall be clearly depicted and/or described.

31. The Covenants, Codes and Restrictions (CC&Rs) shall restrict the use of recorded or live music in the open space areas located on the fourth floor after 10 pm.

32. The Homeowners Association shall be responsible for the operation and maintenance of the private sewer connection to the public sewer in the public right-of-way, the site drainage system, the maintenance of the common areas and facilities, the exterior of the building, the abutting street trees, parkways and any costs or corrections due to building or property maintenance code enforcement actions.

33. The Applicant shall secure all necessary permits from the Public Works Department and the Engineering Division prior to commencement of any demolition or Project related work.

34. Approval of this Project is subject to any and all other discretionary approvals required by the City for the Project and for the approval of the Tentative Tract Map.

35. Final plans shall be consistent with the preliminary plans approved by this resolution and shall be prepared by a licensed architect. The landscape plan shall also be consistent with the preliminary plans approved by this resolution and shall be prepared by a licensed landscape architect.

36. Prior to final building inspection, the Applicant shall install all proposed irrigation and landscaping, including irrigation controllers, staking, and mulching, to the satisfaction of the Director of Community Development.

37. Prior to occupancy, the Applicant shall submit a letter from the project landscape architect certifying that all landscape material and irrigation has been installed and is functioning according to the approved landscape plans.

38. The Final Map shall be prepared in accordance with the approved Tentative Map and shall be filed within 24 months from the date of approval by the City, unless, prior to expiration of the 24 months period, the Planning Division has received a request from the subdivider for an extension of time in writing and receives approval by the City.

The subdivider and successors shall be responsible for the maintenance of the site drainage system, sidewalk, parkways, street trees and other landscaping, including irrigation, within and along the adjacent public right-of-way. Such responsibilities shall be enumerated and specified in the project "Conditions, Covenants and Restrictions (CC&Rs)". A recorded copy of said document shall be provided to the City's Planning Division Office.

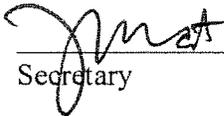
Section 13. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: March 13, 2008



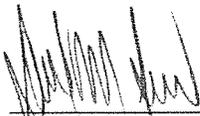
Noah Furie
Chairman of the Planning Commission
of the City of Beverly Hills

ATTEST:



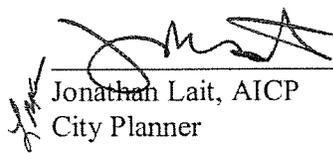
Secretary

Approved as to form:

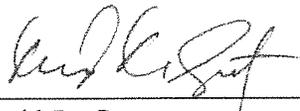


David M. Snow
Assistant City Attorney

Approved as to content:



Jonathan Lait, AICP
City Planner



David D. Gustavson
Director of Public Works and Transportation

EXHIBIT A

**CITY OF BEVERLY HILLS
STANDARD CONDITIONS LIST FOR THE PLANNING COMMISSION**

ENGINEERING, UTILITIES AND RECREATION & PARKS:

1. The applicant shall remove and replace all defective sidewalks surrounding the existing and proposed buildings.
2. The applicant shall remove and replace all defective curb and gutter surrounding the existing and proposed buildings.
3. The applicant shall comply with all applicable statutes, ordinances and regulations concerning the conversion of residential rental units into condominiums, including, but not limited to, the requirement that the applicant pay the City of Beverly Hills the condominium conversion tax of \$5,638.80, if a certificate of occupancy is issued prior to approval of the final subdivision map by the City Council. (The tax figure is adjusted annually.)
4. The applicant shall remove all unused landings and driveway approaches. These parkway areas, if any, shall be landscaped and maintained by the adjacent property owner. This landscape material cannot exceed six to eight inches in height and cannot be planted against the street trees. Care shall be taken to not damage or remove the tree existing tree roots within the parkway area. Remove and replace all defective alley and driveway approaches surrounding the existing and proposed buildings.
5. The applicant shall protect all existing street trees adjacent to the subject site during construction of the proposed project. Every effort shall be made to retain mature street trees. No street trees, including those street trees designated on the preliminary plans, shall be removed and/or relocated unless written approval from the Recreation and Parks Department and the City Engineer is obtained. (See attached Trees and Construction document.)

Removal and/or replacement of any street trees shall not commence until the applicant has provided the City with an improvement security to ensure the establishment of any relocated or replaced street trees. The security amount will be determined by the Director of Recreation and Parks, and shall be in a form approved by the City Engineer and the City Attorney.
6. The applicant shall provide that all roof and/or surface drains discharge to the street. All curb drains installed shall be angled at 45 degrees to the curb face in the direction of the normal street drainage flow. The applicant shall provide that all groundwater discharges to a storm drain. All ground water discharges must have a permit (NPDES) from the Regional Water Quality Control Board. Connection to a storm drain shall be accomplished in the manner approved by the City Engineer and the Los Angeles County Department of Public Works. No concentrated discharges onto the alley surfaces will be permitted.
7. The applicant shall provide for all utility facilities, including electrical transformers required for service to the proposed structure(s), to be installed on the subject site. No such

installations will be allowed in any City right-of-way.

8. The applicant shall underground, if necessary, the utilities in adjacent streets and alleys per requirements of the Utility Company and the City.
9. The applicant shall make connection to the City's sanitary sewer system through the existing connections available to the subject site unless otherwise approved by the City Engineer and shall pay the applicable sewer connection fee.
10. The applicant shall make connection to the City's water system through the existing water service connection unless otherwise approved by the City Engineer. The size, type and location of the water service meter installation will also require approval from the City Engineer.
11. The applicant shall provide to the Engineering Office the proposed demolition/construction staging for this project to determine the amount, appropriate routes and time of day of heavy hauling truck traffic necessary for demolition, deliveries, etc., to the subject site.
12. The applicant shall obtain the appropriate permits from the Civil Engineering Department for the placement of construction canopies, fences, etc., and construction of any improvements in the public right-of-way, and for use of the public right-of-way for staging and/or hauling certain equipment and materials related to the project.
13. The applicant shall remove and reconstruct any existing improvements in the public right-of-way damaged during construction operations performed under any permits issued by the City.
14. During construction all items in the Erosion, Sediment, Chemical and Waste Control section of the general construction notes shall be followed.
15. Condensate from HVAC and refrigeration equipment shall drain to the sanitary sewer, not curb drains.
16. Water discharged from a loading dock area must go through an interceptor/clarifier prior to discharging to the storm drain system. A loading dock is not to be confused with a loading zone or designated parking space for loading and unloading.
17. Organic residuals from daily operations and water used to wash trash rooms cannot be discharged to the alley. Examples are grocery stores, mini markets and food services.
18. All ground water discharges must have a permit (NPDES) from the Regional Water Quality Control Board. Examples of ground water discharges are; rising ground water and garage sumps.

Exhibit A

City of Beverly Hills

19. Storm water runoff from automobiles going into a parking garage shall be discharged through a clarifier before discharging into the storm drain system. In-lieu of discharging runoff through a clarifier, parking lots can be cleaned every two weeks with emphasis on removing grease and oil residuals which drip from vehicles. Maintain records of cleaning activities for verification by a City inspector.
20. After completion of architectural review of a new or modified commercial structure, and prior to issuance of the certificate of occupancy, the applicant is required to comply with the Public Art Ordinance. An application is required to be submitted to the Fine Art Commission for review and approval of any proposed art piece or, as an alternative, the applicant may choose to pay an in-lieu art fee.

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.
CITY OF BEVERLY HILLS)

I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1508 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on March 13, 2008, and thereafter duly signed by the Secretary of the Planning Commission, as indicated; and that the Planning Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

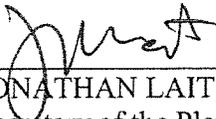
AYES: Commissioners Bosse, Cole, and Chair Furie.

NOES: Vice Chair Reims.

RECUSED: Commissioner Yukelson.

ABSTAIN: None.

ABSENT: None.



JONATHAN LAIT, AICP
Secretary of the Planning Commission/
City Planner
City of Beverly Hills, California

Attachment 4

RESOLUTION NO. 1613

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS APPROVING A ONE-YEAR TIME EXTENSION FOR A DENSITY BONUS PERMIT, AN R-4 PERMIT AND DEVELOPMENT PLAN REVIEW FOR A THIRTY-UNIT CONDOMINIUM PROJECT LOCATED AT 309-325 SOUTH ELM DRIVE.

The Planning Commission of the City of Beverly Hills hereby finds, resolves and determines as follows:

Section 1. Tentative Tract Map No. 69145 and its associated Development Plan Review, Density Bonus Permit, and R-4 Permit which proposes a thirty unit condominium project (the Project) were originally approved by Resolution No. 1508, adopted on March 13, 2008.

Pursuant to Beverly Hills Municipal Code (BHMC) Section 10-3-207, Development Plan Review Permits are valid for an initial period of three years, and can be extended by the Planning Commission for up to seven (7) years beyond the original approval date, if they were approved in conjunction with a Tentative Map. Pursuant to BHMC Section 10-2-206, Tentative Maps are valid for an initial period of two years and can be extended for up to three (3) years beyond the expiration date.

Two state laws have been enacted to automatically extend the life of previously approved Tentative Maps: Senate Bill 1185 and Assembly Bill 333. These automatic extensions do not apply to associated discretionary entitlements, and those entitlements may be extended consistent with local ordinance.

Based on the original approval date, the Development Plan Review, R-4 Permit and Density Bonus Permit would have expired on March 13, 2011 and the Tentative Tract Map would have expired on March 13, 2010. To date, no time extensions for the project's entitlements have been granted by the Planning Commission.

The Tentative Tract Map, based on its original approval date of March 13, 2008 and original expiration date of March 13, 2010, qualifies for the extensions provided for by the recent legislation and therefore is valid until March 13, 2013 and not a part of this request.

The time extension does not amend the conditions of approval or make other substantive revisions to Resolution No. 1508 and no changes to the project are proposed at this time. The Planning Commission's original decision to approve the Project was subject to numerous conditions of approval to ensure that project and construction-related impacts would be appropriately mitigated.

Section 2. Pursuant to Sections 10-3-207 of the Beverly Hills Municipal Code, the Development Plan Review, R-4 Permit and Density Bonus Permit rights granted under Planning Commission Resolution No. 1508 expire if not exercised within thirty-six (36) months of the date of adoption, unless extended by the Planning Commission. Section 10-3-207 of the Beverly Hills Municipal Code allows the Planning Commission to extend these approvals for up to seven years from the date of the initial entitlement approval.

Section 3. This project was previously assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City, and a Negative Declaration was adopted. There have been no changes to the project and no substantial changes to the environment that would cause the project to significantly impact the environment. Therefore,

there is no substantial evidence that the approval of the requested extension may have any significant environmental impact. The original Negative Declaration continues to represent the independent judgment of the City, and no additional environmental review is required under CEQA.

Section 4. On May 26, 2011, the Planning Commission held a duly noticed public hearing to consider the request for an extension of the Development Plan Review, R-4 Permit and Density Bonus Permit. Evidence, both oral and written, was presented at said hearing.

Section 5. Based on the foregoing, the Planning Commission hereby finds and determines as follows:

1. There have been no changes to the Project or any substantial change to the surrounding environment since the initial Project approval.
2. The rights granted under Resolution No. 1508 shall be extended for one year.
3. Except as specifically modified by this Resolution, all conditions of Resolution No. 1508 shall remain in full force and effect.

Section 6. Based on the foregoing, the Planning Commission hereby extends the entitlements granted under Resolution 1508 through and including March 13, 2012, subject to all conditions set forth in that Resolution, and the following project-specific conditions:

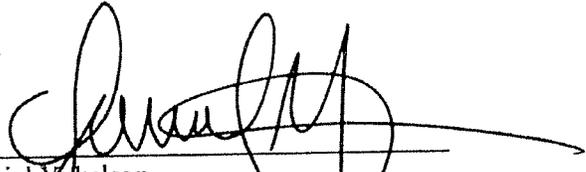
1. This resolution granting the requested time extension shall not become effective until the owner of the Project site records a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth

in this resolution. The covenant shall include a copy of this resolution as an exhibit. The Applicant shall deliver the executed covenant to the Department of Community Development **within 60 days** of the Planning Commission decision. At the time that the Applicant delivers the covenant to the City, the Applicant shall also provide the City with all fees necessary to record the document with the County Recorder. If the Applicant fails to deliver the executed covenant within the required 60 days, this resolution approving the Project **shall be null and void and of no further effect**. Notwithstanding the foregoing, the Director of Community Development may, upon a request by the Applicant, grant a waiver from the 60 day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state or local law that would affect the Project.

Section 7. If this Resolution is invalidated for any reason, all rights granted under Resolution No. 1508 shall lapse and expire and be of no further effect.

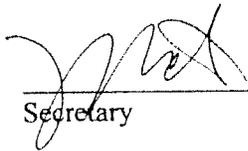
Section 8. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: May 26, 2011



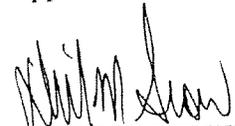
Daniel Yukelson
Chair of the Planning Commission of the
City of Beverly Hills, California

Attest:



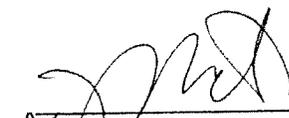
Secretary

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



Jonathan Lait, AICP
City Planner

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS.
CITY OF BEVERLY HILLS)

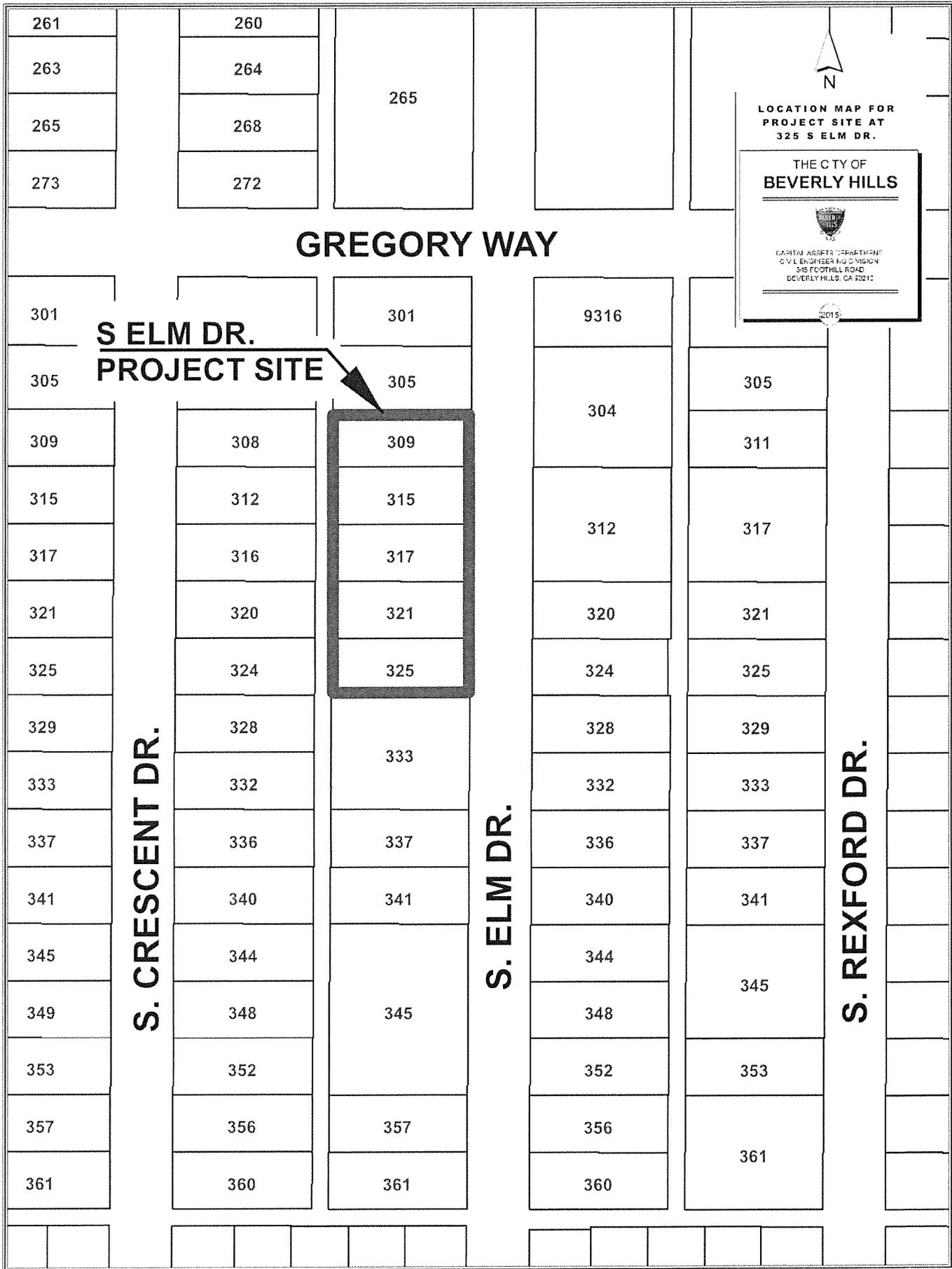
I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1613 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on May 26, 2011, and thereafter duly signed by the Secretary of the Planning Commission, as indicated; and that the Planning Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

AYES: Commissioners Furie, Rosenstein, Cole, and Vice Chair Corman.
NOES: None.
RECUSED: Chair Yukelson.
ABSENT: None.



JONATHAN LAIT, AICP
Secretary of the Planning Commission /
City Planner
City of Beverly Hills, California

Attachment 5



N
 LOCATION MAP FOR
 PROJECT SITE AT
 325 S ELM DR.
 THE CITY OF
 BEVERLY HILLS
 CAPITAL ASSETS DEPARTMENT
 CIVIL ENGINEERING DIVISION
 345 FOOTHILL ROAD
 BEVERLY HILLS, CA 90212
 2015

GREGORY WAY

**S ELM DR.
PROJECT SITE**

S. CRESCENT DR.

S. ELM DR.

S. REXFORD DR.

261
263
265
273

260
264
268
272

265

301
305
309
315
317
321
325
329
333
337
341
345
349
353
357
361

308
312
316
320
324
328
332
336
340
344
348
352
356
360

301
305
309
315
317
321
325
333
337
341
345
357
361

9316
304
312
320
324
328
332
336
340
344
348
352
356
360

305
311
317
321
325
329
333
337
341
345
353
361

Attachment 6



CITY OF BEVERLY HILLS
COMMUNITY DEVELOPMENT DEPARTMENT
MEMORANDUM

To: Samer Elayyan, PE, Civil Engineer
From: Ryan Gohlich, Assistant Director of Community Development /
City Planner
Date: November 24, 2015
Subject: Approval of Final Tract Map No. 69145 (309-325 S. Elm Drive)

Planning has completed its review of Resolution No. 1508, adopted by the Planning Commission on March 13, 2008, which approved the above cited Tentative Tract Map.

Planning Commission Resolution 1508 includes Conditions 1 through 38, as well as Standard Conditions 1 through 20. This memo serves to confirm that all applicable conditions of approval pertaining to adoption of a Final Map for the project have been satisfied at this time.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Gohlich".

Ryan Gohlich, Assistant Director of Community
Development / City Planner

Attachment 7

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, CA 90210

APN: _____

NO FEE REQUIRED PURSUANT TO:
Government Code Sections 6103 and 27383

[Space above this line for Recorder's Use Only]

SUBDIVISION IMPROVEMENT AGREEMENT

SUBDIVISION REFERENCE DATA

FINAL TRACT MAP NO. 69145 ("Final Map" herein)

BASED ON TENTATIVE TRACT MAP NO. 69145

PROPERTY LOCATION: 309-325 South Elm Drive

LEGAL DESCRIPTION OF
PROPERTY: See Exhibit A – Legal Description of Property
(the "Property" herein)

NAME AND ADDRESS OF
SUBDIVIDER: K Pacific Investments, LLC
c/o Sergey Kiselev
1970 Coldwater Canyon Drive
Beverly Hills, CA 90210-7030

PLANNING COMMISSION
RESOLUTION OF
APPROVAL NO.: 1508 ("Resolution of Approval" herein)

IMPROVEMENT PLANS: _____
(hereinafter "Improvement Plans," which include
all Subdivision specifications.)

IMPROVEMENTS: See Exhibit A – Schedule of Improvements and
Section 1.A below

ESTIMATED TOTAL COSTS OF IMPROVEMENTS:	PERFORMANCE	\$109,600
	PAYMENT	\$109,600
	WARRANTY	\$ 10,960

TOTAL: \$230,160
(hereinafter "Estimated Total Costs")

FORM OF IMPROVEMENT
SECURITY:

- Surety bonds
- Deposit of money
- Other: _____

NAME AND ADDRESS OF SURETY:

SURETY BOND NUMBERS:

Performance Bond No.: _____

Payment Bond No.: _____

Warranty Bond No.: _____

EFFECTIVE DATE OF AGREEMENT: _____, 2015

COMPLETION PERIOD: All Improvements of Subdivision shall be completed within two (2) years from the Effective Date of the Agreement (hereinafter, "Completion Period").

TABLE OF CONTENTS

	Page
1. SUBDIVIDER'S OBLIGATION TO CONSTRUCT IMPROVEMENTS.....	1
2. SOILS TESTING AND REPORT.....	3
3. SPECIFICATIONS FOR IMPROVEMENTS	4
4. INSPECTION OF WORK AND FINAL ACCEPTANCE.....	4
5. GUARANTEE AND WARRANTY OF THE IMPROVEMENTS	5
6. TIME EXTENSIONS.....	5
7. IMPROVEMENT SECURITY.....	6
8. REDUCTION OR RELEASE OF IMPROVEMENT SECURITY	7
9. INDEMNIFICATION OF CITY BY SUBDIVIDER	9
10. INSURANCE	11
11. OWNERSHIP OF THE IMPROVEMENTS	17
12. DEFAULT AND BREACH BY THE SUBDIVIDER AND REMEDIES OF THE CITY.....	17
13. RELATIONSHIP OF THE PARTIES.....	19
14. ASSIGNMENT.....	19
15. NOTICES	19
16. ENTIRE AGREEMENT.....	20
17. SEVERABILITY.....	20
18. INCORPORATION OF SUBDIVISION REFERENCE DATA AND RECITALS	20
19. GOVERNING LAW; VENUE	20
20. COUNTERPARTS.....	20
21. LIENS.....	20
22. EFFECTIVE DATE OF THE AGREEMENT.....	21
Exhibit A – Legal Description of Property	
Exhibit B – Schedule of Improvements for Subdivision	
Exhibit C – Form of Improvement Securities	
Exhibit D – Consent and Subordination Agreement	

THIS SUBDIVISION IMPROVEMENT AGREEMENT ("Agreement") is made and entered into by and between the City of Beverly Hills, a California municipal corporation (the "City"), and the Subdivider whose name and address is set forth above in the Subdivision Reference Data.

RECITALS

A. Subdivider has presented to the City for approval and recordation a Final Map, identified above in the Subdivision Reference Data, of a proposed subdivision pursuant to the Subdivision Map Act of the State of California and the City's ordinances and regulations relating to the filing, approval and recordation of subdivision maps (collectively referred to herein as the "Subdivision Laws").

B. A tentative tract map of the Subdivision was previously approved by the City, subject to the Subdivision Laws and to the City's standard requirements and conditions of approval contained in the Resolution of Approval, a copy of which is on file in the Office of the City Clerk and which is incorporated herein by this reference.

C. The Subdivision Laws establish, as a condition precedent to the approval of a Final Map, that the Subdivider comply with the Resolution of Approval and either: (i) complete, in compliance with City standards, all of the Improvements and land development work required by the Subdivision Laws and the Resolution of Approval; or (ii) enter into a secured agreement with the City to complete the Improvements and land development work within a period of time specified by the City.

D. In consideration of approval of the Final Map for the Subdivision by the City Council, the Subdivider desires to enter into this Agreement whereby the Subdivider promises to install and complete, at its sole expense, all public and private improvement work required by the City for the proposed Subdivision. The Subdivider has secured this Agreement by improvement security required by the Subdivision Laws and approved by the City, as set forth herein.

E. Improvement Plans, as designated above in the Subdivision Reference Data, for the construction, installation and completion of the improvements identified in Exhibit B hereto, have been prepared by the Subdivider, approved by the Director of Public Works or his/her designee (the "Director"), and are on file in the office of the Director. Said Improvement Plans are incorporated herein by this reference.

NOW, THEREFORE, in consideration of the approval and recordation by the City Council of the Final Map of the Subdivision, the Subdivider and the City agree as follows:

1. SUBDIVIDER'S OBLIGATION TO CONSTRUCT IMPROVEMENTS

A. Subdivider shall, at its sole cost and expense, and in compliance with the provisions of the Subdivision Laws, the Improvement Plans, all Conditions of the Resolution of Approval, and all applicable City standards and fees, and in a good and workmanlike fashion, furnish, construct, install and guarantee and warranty (as set forth in Section 5 of this Agreement) the Improvements generally described in Exhibit B and more

specifically described in the tentative map and in the Resolution of Approval relating thereto (collectively, the “Improvements”).

B. To the extent necessary to construct the Improvements, as determined by the Director, the Subdivider shall acquire and dedicate, or pay the cost of acquisition by the City of, all rights-of-way, easements and other interests in real property for the construction or installation of the Improvements, free and clear of all liens and encumbrances. The Subdivider’s obligations with regard to the acquisition by the City of off-site rights-of-way, easements and other interests in real property, if any, shall be subject to a separate agreement between the Subdivider and the City.

C. Subject to any time extensions granted in accordance with Section 6 of this Agreement, the Subdivider shall complete all Improvements within the Completion Period specified in the Subdivision Reference Data; provided, however, that if the Director reasonably determines in good faith that accelerated construction of the Improvements is essential in order to protect the public health, welfare and safety, the Director shall give Subdivider not less than fifteen (15) business days’ prior written notice to commence or accelerate installation and construction of such Improvements, or any portion thereof. The notice shall describe the work to be done by the Subdivider, the time within which the work will commence, the period within which the work will be completed, and the reasons that such early commencement is essential in order to protect the public health, welfare and safety. All or any portions of said Improvements may be required to be commenced and/or completed at a specified time, providing the foregoing criteria are met. If the Subdivider objects to acceleration of the schedule as specified by the Director, the Subdivider may appeal the decision of the Director to the City Council. Any such appeal shall be filed with the City Clerk within ten (10) days after the effective date of the written notice from the Director.

D. If the Improvements to be constructed by Subdivider include monumentation, such monumentation shall be installed not later than thirty (30) days after the City’s acceptance of all other Improvements pursuant to Section 4 of this Agreement. As used herein, “monumentation” shall mean the setting of survey monuments and tie points in accordance with the Subdivision Laws, and the delivery to the Director of tie notes for said points.

E. Subdivider shall, at its sole expense, replace or repair all public improvements, public property, public utility facilities, and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this Agreement or any work related to the Subdivision. Any such replacement or repair shall be subject to the approval of the Director.

F. In addition to, and separate from, the indemnity obligations contained in Section 9 of this Agreement, and without limiting the City’s remedies under general construction defect law, Subdivider shall be responsible for the care, repair and maintenance of the Improvements, and shall bear all risks of loss or damage to the Improvements, until the later of the following time periods: (i) the category of Improvements as set forth on Exhibit B is accepted by the City; or (ii) the expiration of the required one-year guarantee and warranty period as specified herein; or (iii) the expiration of any applicable period of time specified in any other agreement or obligation imposed on the

Subdivider regarding the Subdivider's obligation to maintain the Improvements. Neither the City, nor its officers, officials, employees, agents nor volunteers, shall have any liability for any accident, loss or damage to the Improvements prior to their completion and acceptance by the City.

G. In addition to, and separate from: (1) the indemnity obligations contained in Section 9 of this Agreement, (2) the care, repair and maintenance provisions under Subsection F of this Section 1 of this Agreement; and (3) the warranty and guarantee provisions of Section 5 of this Agreement, the Subdivider shall repair and correct, or be liable to the City for any cost to repair and correct, any defect in the construction of the Improvements that is identified by City within ten (10) years after City's acceptance of the Improvement, provided the City provides notice to Subdivider of the existence of the defect within that time period, and the defect is caused directly or indirectly by the design, construction, functionality, installation, assembly or workmanship of the Subdivider. Nothing contained in this Subsection is intended to limit or otherwise waive any right or cause of action under applicable construction defect law that City may assert against the Subdivider.

H. The Subdivider shall, at its sole expense, obtain all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices, and pay all taxes required by law. Additionally, the Subdivider shall pay all fees and costs required by the City's ordinance or resolution, as set forth in the applicable fee ordinance or resolution as adopted by the City Council from time to time, and required for the development of the Subdivision, including but not limited to, building permit fees, final map filing fee, final map plan check fees, final map monumentation fees, grading permit fees, plan check and review fees, encroachment permit fees, and inspection fees.

I. Not less than fifteen (15) days prior to commencement of work on the Improvements, the Subdivider shall give written notice to the Director of the date fixed for such commencement of work so that the Director shall have adequate time to schedule all necessary inspections.

J. Subdivider shall provide the City with final Record Drawings of all plans developed for the Subdivision, showing all changes and as built conditions as specified in the Resolution of Approval prior to the acceptance of Improvements and release of bonds or other security.

2. SOILS TESTING AND REPORT

A. In the event the Director determines that soil testing is required for the Improvements, the Subdivider shall employ and pay for a Soils Engineer acceptable to the Director of the City, and the Soils Engineer shall perform materials testing, construction control testing, interpretation of test results, and design for the Improvements in accordance with the requirements set forth in the Improvement Plans, and to the extent applicable, the APWA Standard Specifications for Public Works Construction (Southern California Chapter) (popularly known as, and hereinafter, the "Greenbook"), as approved by City.

B. The Soils Engineer shall provide the City the reports containing the results of the testing, the interpretation of the results and the Improvement design done in connection with the Improvement Plans and this Agreement. With the last report filed, the

Soils Engineer shall include a certificate that the testing, interpretation, and design have been done properly in accordance with the applicable provisions of the Greenbook, as approved by the City, and good engineering practices. All reports and the certificates shall be mailed or delivered to the City.

C. The street portion of the Improvements shall be constructed in accordance with the pavement design, and any modification thereto, that is approved by the Director.

3. SPECIFICATIONS FOR IMPROVEMENTS

Subdivider shall construct, at Subdivider's own expense, all of the Improvements in compliance with the drawings, plans and specifications set forth below, which drawings, plans and specifications are incorporated herein by this reference and made a part of this Agreement as though set forth at length herein: Improvement Plans, as designated above in the Subdivision Reference Data, on file in the office of the Director.

Consistent with the offers of dedication shown on the Final Map, Subdivider irrevocably offers the public Improvements within City right of way and property, to City for public use.

4. INSPECTION OF WORK AND FINAL ACCEPTANCE

A. Subdivider shall at all times maintain proper facilities and safe access for inspection of the Improvements by the Director and other City personnel and inspection consultants.

B. Upon completion of the work on all of the Improvements specified in Exhibit B, the Subdivider may request, in the form of a written letter, a final inspection by the Director. Within forty-five (45) days of receipt of the written letter request, the Director shall inspect the Improvements and provide written notice to Subdivider of the list of items which have been found to be incomplete and the list of items which have been found to be complete. If the Director determines that all of the Improvements have been completed in accordance with this Agreement and in compliance with the Improvement Plans and all applicable City standards, then the Director shall certify that determination in a report to the City Council. If the Improvements that are completed are to be dedicated to or owned by the City, the Director's certification shall be submitted to the City Council for final acceptance by the City, unless such power to accept has been delegated by the City Council to the Director or some other official of the City, in which case the final acceptance shall be subject to the approval of that specified official. If the Improvements that are completed are to be dedicated to or owned by a public entity other than the City, the Subdivider's written request shall be submitted to the applicable public entity or other owner, for final acceptance. Subdivider shall bear all costs of inspection and certification for completeness in accordance with the City's formally adopted fees and rates.

C. Acceptance of all of public Improvements by the City Council (or other specified official) shall be made upon recommendation and certification of the Director following inspection of said public Improvements pursuant to Subsection B above. The City Council (or other specified official) shall act upon the Director's recommendation that such public Improvements have been completed within thirty (30) days following certification by

the Director. Acceptance by the City Council (or other specified official) of the Improvements, or by the governing body of the entity that is to accept dedication or ownership of all or part of the Improvements, shall not constitute a waiver by the City or such other public entity of any defects in the Improvements.

5. GUARANTEE AND WARRANTY OF THE IMPROVEMENTS

A. Within the period commencing on the date all of the Improvements are accepted by the City, if any Improvements or part of any Improvements furnished, installed or constructed by the Subdivider, any of the materials comprising the Improvements, or any of the work performed under this Agreement, fails to comply with any requirements of this Agreement, or the Subdivision Laws, or the Improvement Plans, the Subdivider shall, without delay and without cost to the City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Improvements. This guarantee and warranty on behalf of the Subdivider shall be separate from and in addition to the Improvement Security defined and described in Section 7A(3) of this Agreement.

B. Should the Subdivider fail or refuse to act promptly or in accordance with Subsection A above, or should the exigencies of the situation require repair, replacement, or reconstruction to be undertaken before the Subdivider can be notified and can perform the necessary work, then the City may, in its discretion, make the necessary repairs or replacements or perform the necessary reconstruction. The City shall provide a bill to the Subdivider of the total costs of such repair, replacement, or reconstruction, and the Subdivider shall immediately reimburse the City for those total costs. If the Subdivider does not immediately pay the total costs incurred, the City may opt to tender on the Subdivider's Improvement Securities as defined in Subsection 7A, and/or take any other lawful actions to recover any nonpayment or deficiency.

6. TIME EXTENSIONS

A. Upon a showing by the Subdivider of good cause, the duration of the Completion Period for any or all of the Improvements may be extended by the Director. As used herein, "good cause" may include, without limitation: delay resulting from acts of God or force majeure, strikes, boycotts or similar job actions by employees or labor organizations which prevent the conduct of the work; findings made by a governmental entity that the site of a particular Improvement is of archeological significance; actions or failure to act by the native American monitors(s); and the order of any court or the City.

B. A time extension may be granted without notice to any surety or sureties of the Subdivider and shall not affect the validity of this Agreement nor release the surety or sureties on any bond given as an Improvement Security pursuant to this Agreement.

C. As a condition of any time extension provided for herein, the Director may require the Subdivider to furnish new or modified Improvement Security guaranteeing performance of this Agreement, as extended, in an increased amount as necessary to compensate for any projected increase in the Estimated Total Costs, as determined by the Director.

7. IMPROVEMENT SECURITY

A. Prior to the City's execution of this Agreement, the Subdivider shall provide as security to the City the following (collectively, "Improvement Securities" and individually, an "Improvement Security"):

1. For Performance: Performance Security in an amount equal to one hundred percent (100%) of the Estimated Total Costs, as set forth in the Subdivision Reference Data. With this Performance Security, the Subdivider assures faithful performance under this Agreement, as demonstrated by the City's acceptance, in accordance with the Resolution of Approval and Improvement Plans.

2. For Payment: Payment Security in an amount equal to one hundred percent (100%) of the Estimated Total Costs, as set forth in the Subdivision Reference Data. With this Payment Security, the Subdivider guarantees payment to all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the agreement and referred to in Part 6 (commencing with Section 8000) of Division 4 of the California Civil Code.

3. For Warranty: Warranty Security in an amount equal to ten percent (10%) of the Estimated Total Costs, as set forth in the Subdivision Reference Data, must be provided before final completion and the acceptance of any category of Improvements by the City. With this Warranty Security, the Subdivider guarantees the Improvements for one (1) year after the completion and acceptance of the last of such Improvements, against any defective workmanship or materials or any unsatisfactory performance, pursuant to Section 5 hereof.

B. Each Improvement Security shall be a bond issued by a California admitted surety insurer or insurers having a Best rating of A or AA in substantially the form set forth in Exhibit C, attached to this Agreement and incorporated by this reference, and shall be subject to the approval and acceptance by the City Attorney and the City Council. If, in the opinion of the City, any surety or sureties thereon (i) become insolvent or liquidated, or any bond cannot be tendered upon for the full penal sum for any reason; (ii) the surety's bond rating is downgraded; (iii) the surety declares bankruptcy; or (iv) the surety is no longer deemed to be an admitted surety in California by the California Department of Insurance, the Subdivider shall renew or replace any such surety bond with a valid surety bond from a solvent surety or sureties in the amount of the full penal sum within thirty (30) days after receiving from City written demand therefor.

C. Each Improvement Security shall be kept on file with the City Clerk. If a surety bond is replaced by another approved bond, the Subdivider shall submit the replacement bond to the City Clerk, and upon acceptance by the City Attorney, the replacement Improvement Security shall be deemed to have been made a part of and incorporated into this Agreement. Upon approval by the City Attorney of a replacement bond, the former Improvement Security shall be released.

D. If specified in Schedule A, in lieu of payment and performance bonds, DEVELOPER may furnish CITY either cash, a Letter of Credit, or an Agreement of Deposit or other security satisfactory to City Attorney as security for performance (see

Schedule B). Said security shall be in an amount not less than 100% of the cost estimate and, in addition, for payment of those furnishing materials, labor or equipment in an amount not less than 100% of the cost estimate. Said security agreements shall be on forms furnished by CITY. No alterations or substitution of said forms shall be allowed. The obligations of DEVELOPER shall not be limited by the amount of the security required. No interest shall be paid to DEVELOPER on any cash deposit made pursuant to this paragraph.

E. The Subdivider shall automatically increase the amount of each Improvement Security by an amount equal to ten percent (10%) of the deposited security every year, subject to the provision that the Director may at any time determine that a greater increase in the amount of the Improvement Security is necessary due to a greater increase in the cost of construction of the Improvements or any of them. In such event, the Subdivider shall provide the additional Improvement Security within thirty (30) days after receiving demand and justification therefor.

F. Modifications of the Improvement Plans and the Improvements, not exceeding ten percent (10%) of the original Estimated Total Costs, shall not relieve or release any Improvement Security furnished by Subdivider pursuant to this Agreement. If any such modifications exceed ten percent (10%) of the Estimated Total Costs, Subdivider shall furnish additional Improvement Securities for performance, payment, and guarantee as required by Subsection A above, for one hundred percent (100%) of the revised Estimated Total Cost of the Improvements. Alternatively, the Subdivider may provide official notice from the surety company that it acknowledges receipt of the modified Improvement Plans and that the existing bonds have been amended to reflect the new penal sum, which shall be in the amount of the revised Estimated Total Costs, and that the existing bonds shall therefore apply to warrant the Project as revised.

G. All Improvements shall be completed within the Completion Period listed in the Subdivision Reference Data. Subject to any time extensions granted in accordance with Section 6 herein, if the Subdivider has not completed the Improvements within this specified time, the Subdivider shall be in default.

H. Alternatively, in the event of a default by the Subdivider pursuant to Section 12, and after written notice to Subdivider and reasonable opportunity to cure, the City, at its sole option, shall have the right, without limiting any other rights and remedies available to the City at law or in equity, to draw upon or utilize any or all Improvement Securities furnished herewith to construct and install the Improvements itself.

8. REDUCTION OR RELEASE OF IMPROVEMENT SECURITY

A. Performance Security shall be released in full upon the occurrence of both of the following:

1. All "Public Improvements" (Improvements that are to be owned or dedicated to the City or other public entity as distinguished from those owned by individual property owners or a private community association) shall be first completed, certified completed by the Director and then accepted as complete by the City Council.

2. All private Improvements (Improvements that are to be owned by individual property owners or a private community association and not dedicated or owned by the City or other public entity) shall be first completed and then certified as complete by the Director.

B. Partial releases or reductions in the Subdivider's Performance Security may be authorized prior to the City's acceptance of all Improvements required hereunder, as follows:

1. At the time that the Subdivider believes that the obligation to perform the work for which security was required is complete, the Subdivider may notify the City in writing of the completed work, including a list of work completed. Upon receipt of the written notice, the Director shall review and comment or approve the completion of the required work within forty-five (45) days. If the Director does not agree that all work has been completed in accordance with the plans and specifications for the improvements, the Director shall supply a list of all remaining work to be completed within this forty-five (45) day period.

2. Within forty-five (45) days of receipt of the list of remaining work from the Director, the Subdivider may then provide cost estimates for all remaining work for review and approval by the Director. Upon receipt of the cost estimates, the Director shall then have forty-five (45) days to review, comment, and approve, modify, or disapprove those cost estimates. The City shall not be required to engage in this process of partial release more than once between the start of work and completion and acceptance of all work; however, nothing in this Section prohibits the City from allowing for a partial release as the Director otherwise deems appropriate.

3. If the Director approves the cost estimate, the Director shall release all Performance Security except for security in an amount up to two hundred percent (200%) of the cost estimate of the remaining work. The process allowing for a partial release of Performance Security shall occur when the cost estimate of the remaining work does not exceed twenty percent (20%) of the total original Performance Security unless the Director allows for a release at an earlier time. Substitute bonds or other security may be used as a replacement for the Performance Security, subject to the approval of the Director. If substitute bonds or other security is used as a replacement for the Performance Security released, the release shall not be effective unless and until the Director receives and approves that form of replacement security. A reduction in the Performance Security, authorized under this Section, is not, and shall not be deemed to be, an acceptance by the City of the completed improvements, and the risk of loss or damage to the improvements and the obligation to maintain the improvements shall remain the sole responsibility of the Subdivider until all required Public Improvements have been accepted by the City and all other required improvements have been fully completed in accordance with the plans and specifications for the Improvements.

4. The Subdivider shall complete the works of improvement until all items are accepted by the City.

5. Upon the completion of the work on all of the Improvements specified in Exhibit B, the Subdivider, or his or her assigns, shall request in writing a final

inspection in accordance with Subsection 4B, and within forty-five (45) days of the Director's certification that the project is complete, the release of any remaining performance security shall be placed upon the agenda of the City Council for approval of the release of any remaining performance security.

C. Payment Security shall, after passage of the time within which claims of lien are required to be recorded pursuant to Part 6 (commencing with Section 8000) of Division 4 of the California Civil Code and after acceptance of the work, be reduced to an amount equal to the total claimed by all claimants for whom claims of lien have been recorded and notice thereof given in writing to the City Council, and if no claims have been recorded, the security shall be released in full.

D. The partial release provisions of this Section 8 shall not apply to any required guarantee and warranty period required by Section 66499.9 of the California Government Code for the guarantee or warranty nor to the amount of the Warranty Security deemed necessary by the City for the guarantee and warranty period nor to costs and reasonable expenses and fees, including reasonable attorneys' fees. Security furnished to guarantee and warrant the Improvements against any defective work or labor done or defective materials furnished, shall be released within sixty (60) days after the completion of the one-year period following completion and acceptance of all Improvements.

E. If Subdivider's obligations relating to any Improvements are subject to the approval of another governmental agency, the City shall not release the improvement Performance Security therefor until the obligations are performed to the satisfaction of such other governmental agency. Such agency shall have two (2) months after the Subdivider's performance of the obligation to register its satisfaction or dissatisfaction. If at the end of that period it has not registered its satisfaction or dissatisfaction, it shall be conclusively deemed that the Subdivider's performance of the obligation was done to its satisfaction, and such Improvement Security shall be promptly released.

F. In the event the time periods for action by the City or other governmental agency specified in this Section conflict with a shorter or longer time period for such actions as provided in California Government Code Section 66499.7 or 66499.8, the time periods in Government Code Section 66499.7 and 66499.8 shall control.

9. INDEMNIFICATION OF CITY BY SUBDIVIDER

A. Neither the City, nor its officers, officials, employees, agents and volunteers (collectively, "City Personnel"), shall be liable or responsible for any accident, injury, loss or damage to either property or person attributable to or arising out of the construction, functionality, installation, assembly or improper maintenance, including, without limitation, the use of defective or inferior methods, materials, workmanship, or design (collectively, "Subdivider's Faults"), of the Improvements by Subdivider, its officers, employees, contractors, subcontractors and agents. Subdivider shall indemnify, hold harmless and defend the City and City Personnel from and against any and all losses, claims, costs, expenses, liabilities, damages, actions, causes of action and judgments, including attorneys' fees, arising directly or indirectly out of or attributable to Subdivider's Faults, including Subdivider's acts or failure to act.

B. Subdivider's obligations under this Section 9 are not conditioned or dependent upon whether the City, or City Personnel, prepared, supplied or reviewed any Improvement Plans in connection with the Subdivision or the Improvements, or has insurance or other indemnification covering any of these matters.

C. Subdivider's obligation to indemnify, hold harmless and defend the City and City Personnel shall extend to injuries to persons and damages to or alleged taking of property resulting from the Subdivider's Faults, including without limitation, design or construction of the Subdivision, and the Improvements required herein, and shall likewise extend to claims asserted by adjacent property owners based upon the diversion of waters caused by the Subdivider's design or construction of Improvements. Except for a City Directive as defined below, the City's acceptance of the Improvements shall not constitute an assumption by the City of any responsibility or liability for any damage or alleged taking of property referenced herein. The City shall not be responsible or liable for the design or construction of the Subdivision or the Improvements constructed or installed pursuant to the approved Improvement Plans or the Final Map, regardless of any act or omission by the City in approving the Improvement Plans or the Final Map, unless the particular Improvement design was required by the City over the written objection of the Subdivider, which objection stated that the Improvement design was potentially dangerous or defective and set forth an alternative design (a "City Directive"). After the City's acceptance of the Improvements, the Subdivider shall remain obligated to correct or eliminate all dangerous conditions created by defects in design or construction or Subdivider's Faults (other than those required by a City Directive). The Subdivider's indemnity obligations hereunder shall remain in effect for ten (10) years following acceptance of the respective Improvement(s) by the City Council. Subdivider acknowledges and agrees that Subdivider shall be responsible and liable for the Subdivider's Faults with respect to the Improvements and other work done pursuant to this Agreement, unless the same is due to a City Directive. The City shall not be liable for any acts or omissions in approving, reviewing, checking, correcting or modifying any Improvement Plans, or in inspecting, reviewing or approving any work or construction of Improvements, unless the same is due to a City Directive. The Subdivider's Improvement Security shall not be required to secure the Subdivider's obligations under this Subsection C beyond the one-year guarantee and warranty period set forth in Subsection 7(A)(3) of this Agreement.

D. Subdivider shall pay and satisfy any judgment, award or decree that may be rendered against City and City Personnel to the extent of the indemnity provided above, in any such suit, action, or other legal proceeding, provided the City gives the Subdivider prompt written notice of such claim.

E. Subdivider's obligation to indemnify shall not be restricted to Insurance proceeds, if any, received by the City and City Personnel.

F. Subdivider, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the City and City Personnel to the extent of the indemnity above provided.

10. INSURANCE

A. The following coverages shall be obtained and maintained by Subdivider on behalf of City and in accordance with the requirements set forth herein. If Subdivider performs construction activities through a general contractor, some or all of these insurance requirements for the period of construction may be satisfied by the general contractor's insurance coverages. In such case, Subdivider shall maintain during this same construction period, and after the construction period, the coverages shown below as "Insurance After Construction." In addition, Subdivider may elect to obtain, for all or any portion of the Project, an "Owner-Controlled Wrap Up" insurance policy in satisfaction of the insurance requirements for general contractors and subcontractors provided it satisfies all of the insurance requirements below for general contractors and subcontractors. Throughout these specifications, the word "Subdivider" refers to the Party responsible to provide the coverages as specified and, depending on context, may refer either to Subdivider or to a separate General Contractor. Subdivider may satisfy insurance requirements contained herein by Subdivider's master insurance policies covering other operations and locations.

B. Insurance During Construction

Subdivider shall obtain and maintain the following insurance during construction of the Improvements. Insurance requirements may be met through insurance provided by Subdivider's General Contractor:

1. Commercial General Liability Insurance

Commercial General Liability Insurance (primary) shall be provided on Insurance Services Offices ("ISO") ISO-CGL Form No. CG 00 01 or equivalent coverage, including provisions for defense of additional insureds. Policy limits shall be no less than one million dollars (\$1,000,000) per occurrence for all coverages and two million dollars (\$2,000,000) general aggregate. City and City Personnel shall be added as additional insureds using ISO Form CG 20 10 11 85, or other revision of the CG 20 10 form if available from the insurer and reasonably acceptable to the City, not limiting coverage for the additional insured to "ongoing operations" or in any way excluding coverage for completed operations. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any City Personnel. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall contain no contractors' limitation or other endorsement limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

2. Umbrella Liability Insurance

Umbrella Liability Insurance (or, at Subdivider's election, Excess Liability Insurance) (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum. Coverage shall be at least as broad as any underlying coverage. There shall be no cross liability exclusion and no contractor's limitation endorsement. Policy limits shall be not less than five million dollars (\$5,000,000) per occurrence and in the aggregate, including any limits required in the underlying policies. The policy shall have a starting date no later than and an ending date no earlier than those of the underlying coverages. The Named Insured (Subdivider or General Contractor as appropriate) may determine the layering of

primary and excess liability insurance provided that if such layering differs from that described here, the actual coverage program meets the minimum total required limits and complies with all other requirements listed here.

3. Business Auto Coverage

Business Auto Coverage shall be written on ISO Business Auto Coverage Form CA 00 01 or the equivalent, including symbol (1) (any Auto). If Subdivider (or Contractor) does not own any vehicles, this requirement may be satisfied by a non-owned vehicle endorsement to the general and umbrella liability policies. Limits shall be no less than one million dollars per accident. This policy shall be scheduled as underlying insurance to the umbrella policy required above for a total limit of no less than five million dollars (\$5,000,000) each accident. City and City Personnel shall be added as additional insureds using a form reasonably acceptable to the City.

4. Workers' Compensation/Employer's Liability

Workers' Compensation/Employer's Liability shall provide workers' compensation statutory benefits as required by law. Employer's liability limits shall be no less than one million dollars (\$1,000,000) per accident or disease. Employer's liability coverage shall be scheduled under the umbrella or excess liability policy described above. This policy shall be endorsed to waive any right of subrogation with respect to City, its officers, employees or agents.

5. Builder's Risk Insurance

Builder's Risk Insurance covering all real and personal property for "all risks" of loss or "comprehensive perils" coverage including but not limited to the perils of earth movement, including earthquake (if required by Subdivider's lender or if available at commercially reasonable rates) and flood for all Improvements.

C. Insurance After Construction

Upon completion of construction of the Improvements, and for the required guarantee and warranty period (unless such longer period of time is specified herein), Subdivider at Subdivider's expense shall obtain and maintain or cause to be maintained the following insurance:

1. Commercial Property Insurance

Commercial Property Insurance covering the Improvements. Coverage shall be at least as broad as the ISO broad causes of loss form CP 10 20, and reasonably approved of in writing by the City. Coverage shall be sufficient to insure one hundred percent (100%) of the replacement value and there shall be no coinsurance provisions. The policy shall include an inflation guard endorsement, contents coverage, coverage for personal property of others, ordinance or law and increased cost of construction coverage. Subdivider also agrees to provide builder's all-risk insurance using an inland marine form during the period of any major alteration or improvement, using the broadest form available. This

requirement may be satisfied through a combination Builders' Risk and Property Insurance master policy at Subdivider's option.

The insurance coverage for the peril of earthquake required for this project is subject to availability on the open market at commercially reasonable premium cost, as determined by mutual agreement between Subdivider and City. If such earthquake insurance coverage should, after diligent effort be Subdivider, be unobtainable at such mutually determined commercially reasonable premium cost, then Subdivider shall obtain the maximum insurance reasonably obtainable at commercially reasonable premium cost (if any) and give notice to City of the extent of Subdivider's inability to obtain, in full, the required insurance, and in such event, Subdivider's obligation to procure and maintain such insurance as unobtainable shall be excused. Subdivider and City agree that a premium cost of earthquake insurance coverage of up to one hundred percent (100%) of the premium cost paid by Subdivider for such coverage on the Effective Date (to be adjusted over time based on the Consumer Price Index,) shall constitute a commercially reasonable premium cost. Non-availability at commercially reasonable premium cost must be documented by a letter from Subdivider's insurance broker or agent indicating a good faith effort to place the required insurance and showing, at a minimum, the names of the insurance carriers and the declinations or quotations received from each.

2. Commercial General Liability Insurance

Commercial General Liability Insurance (primary) shall be provided on ISO-CGL form No. CG 00 01 or equivalent coverage, including provisions for defense of additional insureds. Policy limits shall be no less than one million dollars (\$1,000,000) per occurrence for all coverages and two million dollars general aggregate. City and City Personnel shall be added as additional insureds using ISO Form CG 20 10 11 85, or other revision of the CG 20 10 form if available from the insurer and reasonably acceptable to the City, not limiting coverage for the additional insured to "ongoing operations" or in any way excluding coverage for completed operations. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any City Personnel.

3. Umbrella Liability Insurance

Umbrella Liability Insurance (or, at Subdivider's election, Excess Liability Insurance) (over primary) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum. Coverage shall be at least as broad as any underlying coverage. Coverage shall be provided on a "pay on behalf" basis. There shall be no cross liability exclusion. Policy limits shall be not less than five million dollars (\$5,000,000) per occurrence and in the aggregate, including any limits required in the underlying policies. The policy shall have a starting date no later than and an ending date no earlier than those of the underlying coverages. Subdivider may determine the layering of primary and excess liability insurance provided that if such layering differs from that described here, the actual coverage program meets the minimum total required limits.

4. Workers Compensation Insurance

Workers' Compensation/Employer's Liability shall provide workers' compensation statutory benefits as required by law. Employer's liability limits shall be no less than one million dollars (\$1,000,000) per accident or disease. Employer's liability coverage shall be scheduled under any umbrella or excess liability policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects City, its employees or agents.

5. Business Auto Coverage

Business Auto Coverage for vehicles owned, operated or maintained in any way connected with the project, shall be written on ISO Business Auto Coverage form CA 00 01 or the equivalent, including symbol (1) (any Auto). If Subdivider (or Contractor) does not own any vehicles, this requirement may be satisfied by a non-owned vehicle endorsement to the general and umbrella liability policies. Limits shall be no less than one million dollars (\$1,000,000) per accident. This policy shall be scheduled as underlying insurance to the umbrella or excess liability policy required above for a total limit of no less than five million dollars (\$5,000,000) each accident. City and City Personnel shall be added as additional insureds using a form reasonably acceptable to the City.

D. Provisions Pertaining to Insurance Provided by Subdivider

1. All insurance coverage and limits provided pursuant to this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to City or its operations limits the application of such insurance coverage.

2. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any Party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

3. All general or auto liability insurance coverage provided pursuant to this Agreement, or any other agreements pertaining to the performance of this Agreement, shall not prohibit Subdivider, and Subdivider's employees, or agents, from waiving the right of subrogation prior to a loss. Subdivider waives its right of subrogation against City.

4. None of the policies required herein shall be in compliance with these requirements if they include any limiting endorsement that has not been first submitted to City and approved in writing by the City.

5. Unless otherwise approved by City, Subdivider's insurance and insurance provided by any contractor or subcontractor relating to the construction of the Improvements shall be written by insurers authorized to do business in the State of California and with a minimum "Best's" Insurance Guide rating of at least "A-.VII." Self-

insurance will not comply with these insurance specifications unless expressly approved in writing by the City.

6. In the event any policy of insurance required under this Agreement does not comply with these requirements and Subdivider does not cure the non-compliance within thirty (30) days after written notice from City (or Subdivider does not provide reasonable evidence of such cure within such period), or if the insurance is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Subdivider.

7. Subdivider agrees to provide evidence of the insurance required herein, satisfactory to City, consisting of certificate(s) of insurance evidencing all of the coverages required and an additional insured endorsement to Subdivider's general liability policies using ISO Form CG 20 10 11 85 or other revision of the CG 20 10 form if available from the insurer and reasonably acceptable to the City. Certificate(s) are to reflect that the insurer will provide 30 days notice of any cancellation of coverage and policies are to have a "cancellation endorsement" to the same effect. Subdivider agrees to provide complete copies of all required insurance policies, including without limitation, any endorsements modifying coverage in any way, upon request from City.

8. Subdivider shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such evidence shall be in the form of a certificate of insurance.

9. Any actual or alleged failure on the part of City or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of City or any additional insured, in this or any other regard.

10. Subdivider agrees to require all subcontractors or other parties (but not including a general contractor) hired for this project to construct the Improvements to purchase and maintain insurance for general liability (minimum limit \$1,000,000 per occurrence), automobile liability (\$1,000,000 per accident) and workers' compensation (statutory benefits). The requirement for general liability may be satisfied by Subdivider through the procurement of an OCIP policies covering some or all of the subcontractors. Prior to the issuance of the Certificate of Completion for each Phase, Subdivider shall, upon request by City, provide the City with copies of all insurance policies, certificates and endorsements related to such Phase.

11. Subdivider agrees to monitor and review all coverage required by this Section and assumes all responsibility for ensuring that such coverage is provided as required here. Subdivider agrees to obtain certificates evidencing such coverage. Subdivider agrees that upon request, all certificates of insurance obtained in compliance with this Section will be submitted to City for review upon request by City. Failure of City to request copies of such documents will not impose any liability on City, or its employees.

12. Subdivider agrees to require that no contract used by any general contractor or subcontractor in connection with construction of the Improvements, or

contracts Subdivider enters into on behalf of City, will reserve the right to charge back to City the cost of insurance required by this Agreement.

13. Where appropriate (such as in the case of automobile insurance coverages), coverage will not be limited to the specific location designated as the Property.

14. Subdivider agrees to provide notice to City of any claim or loss against Subdivider that includes City as a defendant promptly after Subdivider receives written notice or obtains knowledge thereof. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City. City agrees to provide similar notice to Subdivider of any such claims it is notified of respecting the Property.

15. Subdivider agrees not to attempt to avoid its defense and indemnity obligations to City, and City Personnel by using as a defense Subdivider's statutory immunity under workers' compensation and similar statutes.

16. Subdivider agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and that there will be no cross liability exclusions that preclude coverage for suits between Subdivider and City or between City and any other insured or Named Insured under the policy, or between City and any Party associated with City or its employees.

17. If Subdivider or any contractor or subcontractor is a Limited Liability Company, general liability coverage must apply so that the Limited Liability Company and its Managers, Members, Affiliates, and their employees are insureds.

18. Subdivider shall require General Contractor to maintain commercial general liability, and if necessary, commercial umbrella liability insurance with a limit of not less than five million dollars (\$5,000,000) for each occurrence, until the warranty period specified in this Agreement expires.

19. Subdivider agrees to obtain and provide to City evidence of professional liability coverage for Architects, Engineers or other design professionals working on the Improvements. The limit of liability required is subject to City approval, but in no event to be less than one million dollars (\$1,000,000) per claim and in the aggregate, and Subdivider shall use reasonable efforts to require and cause such professionals to maintain such coverage with respect to each occurrence for at least three years following substantial completion of the work and, in the event Subdivider is unable to do so, Subdivider shall promptly inform the City of the scope of such efforts and the reasons that it was unable to do so. If Subdivider requests that the City approve a lower limit for any particular design professional Subdivider seeks to employ on the Improvements, City will evaluate each such request based on City's perception of liability exposure associated with the work that would be performed by that design professional.

20. To the extent a particular coverage or policy form or specification is not reasonably available from Subdivider's insurer or would result in an additional premium that is extraordinary or unreasonably disproportionate to the premium

for the policy as a whole, then Subdivider shall provide substantially similar coverage reasonably acceptable to City for which the cost is not extraordinary or unreasonably disproportionate.

11. OWNERSHIP OF THE IMPROVEMENTS

A. Ownership of all or any category of the Improvements constructed and installed by the Subdivider pursuant to this Agreement and shown on the Map to be dedicated to the public shall vest, as applicable, in the City (or other specified governmental agency) upon acceptance of said Improvements by the City Council (or other specified governmental agency). The acceptance of the Improvements shall either be shown by a certificate on the Final Map or by subsequent resolution accepting the Improvements adopted by the City Council pursuant to Government Code Section 66477.2 and recorded with the County Recorder.

B. The Subdivider shall at all times prior to the acceptance of the Improvements by the City, give good and adequate warning to the public of each and every dangerous and defective condition caused by the construction of the Improvements and shall take all steps necessary to protect the public from such dangerous or defective conditions. The Subdivider agrees and understands that until acceptance of the Improvements by the City, each Improvement that is offered for dedication shall be under the charge of the Subdivider, and the Subdivider may close all or a portion of any street or area whenever necessary to protect the public during the construction of the Improvements.

12. DEFAULT AND BREACH BY THE SUBDIVIDER AND REMEDIES OF THE CITY

A. Upon the occurrence of any of the following events, the Subdivider shall be deemed to be in default under this Agreement:

1. Subject to any time extensions granted in accordance with Section 6 of this Agreement, failure to complete construction and installation of the Improvements or any of them by the Completion Date;

2. Failure to promptly correct or cure any defect in the Improvements or any of them (other than a City Directive) during the guarantee and warranty period required by Subsection 5(A) of this Agreement, or failure to commence correction or cure of any such defect or failure to diligently prosecute same to completion, in each instance following written notice that such defect exists;

3. Subject to any time extensions granted in accordance with Section 6 of this Agreement, failure to perform substantial work on the Improvements or on any of them, after commencement of work on same, for a period of thirty (30) days after written notice thereof from the City;

4. Insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, whether voluntary or involuntary, and such is not cured or discharged within a period of thirty (30) days;

5. Commencement of a foreclosure action against the Subdivision or any portion thereof, or any conveyance by the Subdivider in lieu or in avoidance of foreclosure, within thirty (30) days after written notice thereof from the City; or

6. Failure to perform any other obligations in accordance with the terms and provisions of this Agreement within the time period specified in the Agreement for the performance of that obligation, or if no time is specified, within thirty (30) days after written notice thereof from the City.

B. The City reserves to itself all remedies available to it at law or in equity for any breach of the Subdivider's obligations under this Agreement. After written notice to the Subdivider of alleged default and failure by the Subdivider, and failure by Subdivider to promptly commence the cure of any alleged default and diligently prosecute such cure to completion, the City shall have the right, without limitation of other rights or remedies, to tender against, draw upon or utilize any or all Improvement Securities furnished hereunder to complete the Improvements, or request said surety take over and complete the Improvements, or otherwise mitigate the City's damages in the event of the Subdivider's default.

C. The Subdivider acknowledges that the Estimated Total Costs and Improvement Security amounts set forth herein may not reflect the actual cost of construction or installation of the Improvements, and, consequently, the City's damages for Subdivider's default shall be measured by the actual cost of completing the required Improvements. If the damages incurred by the City in taking over and completing the Improvements exceeds the principal amount of the improvement security, then the Subdivider shall reimburse the City in the amount of such excess damages.

D. Following the written notice of alleged default and failure by the Subdivider to promptly commence the cure of any alleged default and to diligently prosecute such cure to completion, the City may, without liability for so doing, take possession of, and utilize in completing the Improvements, such materials, appliances, plant and other property belonging to the Subdivider as may be on the site of the work and necessary for the performance of the work. The Subdivider hereby consents to such entry by the City and its representatives, including employees, agents, and contractors, upon any real property in the Subdivision owned by the Subdivider or by any assignee of this Agreement, in the event the City elects to maintain or complete the work on the Improvements following the Subdivider's default.

E. The Subdivider acknowledges and agrees that, upon approval of the Final Map for the Subdivision, the City will confer substantial rights upon the Subdivider, including the right to sell, lease or finance lots or units within the Subdivision, and that such approval constitutes the final act necessary to permit the division of land within the Subdivision. As a result, the City will be damaged to the extent of the cost of construction or installation of the Improvements upon Subdivider's failure to perform its obligations under this Agreement, which failure is not promptly remedied by sureties or by the Subdivider.

F. The City's failure to take an enforcement action with respect to a default, or to declare a default or breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of the Subdivider.

G. If any legal action or other proceeding, including action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, experts' fees, and other costs, in addition to any other relief to which the party may be entitled. If City sues to compel Subdivider's performance of this Agreement, or to recover damages or costs incurred in completing or maintaining the work on the Improvements, Subdivider agrees to pay all attorneys' fees and other costs and expenses of litigation incurred by the City in connection therewith, even if Subdivider subsequently resumes and completes the work.

13. RELATIONSHIP OF THE PARTIES

Neither the Subdivider, nor any of the Subdivider's contractors, subcontractors, employees or agents, are or shall be deemed to be, agents of the City in connection with the performance of the Subdivider's obligations under this Agreement. The Subdivider shall not, at any time or in any manner, represent or allow representation by its contractors, subcontractors, employees or agents that any of them are contractors, subcontractors, employees or agents of the City.

14. ASSIGNMENT

A. Subdivider shall not assign this Agreement, or any portion thereof without the prior written consent of the City. Any attempted or purported assignment in violation of this Subsection A shall be null and void and shall have no force or effect.

B. The sale or other disposition of the Subdivision shall not relieve the Subdivider of its obligations hereunder. If the Subdivider intends to sell the entire Subdivision to any other person or entity, the Subdivider may request a novation of this Agreement and a substitution of Improvement Securities. Upon the City's approval of the novation and substitution of Improvement Securities, the Subdivider may request a release or reduction of the Improvement Securities furnished pursuant to this Agreement.

15. NOTICES

All notices required or provided for in this Agreement shall be in writing and delivered in person or be given by certified United States Mail, return receipt requested, or by nationally recognized overnight courier, addressed as follows:

If to the City: City of Beverly Hills
455 North Rexford Drive
Beverly Hills, CA 90210
Attn: City Engineer

With a copy to: Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101
Attn: David Snow, Esq.

If to the Subdivider: To the address set forth above in the Subdivision Reference Data, or to such other address as may subsequently be designated in written notice to the City.

Notice shall be effective on the date that it is delivered in person, or, if sent by certified mail, shall be deemed effective on the date of delivery or attempted delivery shown on the return receipt, and notices given by overnight courier shall be deemed effective one (1) business day following delivery to the overnight courier. Any party may change its address for the service of notice by giving written notice of such change to the other party, as specified herein.

16. ENTIRE AGREEMENT

This Agreement, along with the conditions of approval and mitigation measures that were imposed previously by the City, constitutes a single, integrated written contract, expresses the entire agreement of the parties with respect to its subject matter, and supersedes all negotiations, prior discussions and preliminary agreements. All modifications, amendments, or waivers of any terms of this Agreement shall be in writing and signed by the duly authorized representatives of the parties. In the case of the City, the duly authorized representative, unless otherwise specified herein, shall be the Director.

17. SEVERABILITY

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect.

18. INCORPORATION OF SUBDIVISION REFERENCE DATA AND RECITALS

The Subdivision Reference Data, the Recitals, and Exhibits A and B, are attached hereto and incorporated into this Agreement.

19. GOVERNING LAW; VENUE

This Agreement shall be governed by the domestic laws of the State of California, without regard to its laws regarding choice of applicable law. Venue for any action relating to this Agreement shall be in the Los Angeles County Superior Court.

20. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

21. LIENS

Subdivider represents and warrants that Subdivider owns the Property, and that there are no encumbrances on the Property that would prohibit or interfere with this Agreement or the rights granted to City hereunder, and that there are no monetary liens

(except for property taxes and assessments not yet delinquent) affecting the Property except for (a) that certain deed of trust dated _____, recorded _____, in the office of the County Recorder of the County of _____, California, as document number _____, executed by _____ as trustor, in favor of _____, as beneficiary; and (b) that certain deed of trust dated _____, recorded _____, in the office of the County Recorder of the County of _____, California as document number _____, executed by _____ as trustor, in favor of _____, as beneficiary. Subdivider has obtained from each such beneficiary a consent and subordination in the form attached hereto as Exhibit D, duly executed by such lien holder and acknowledged, and has delivered it to the City for recordation. Final Map No. _____ shall not be recorded until such fully executed lien holder consent and subordination has been delivered to the City and has been recorded.

22. EFFECTIVE DATE OF THE AGREEMENT

This Agreement shall be and become effective as of the date that it is executed by a duly authorized officer or employee of the City, it being the intention of the parties that the Subdivider shall first execute this Agreement and thereafter submit it to the City. The City shall insert the effective date in the Subdivision Reference Data in all counterparts of this Agreement and shall transmit a fully executed counterpart to the Subdivider.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, thereunto duly authorized, as of the dates set forth below their respective signatures.

[Note: All signatures must be acknowledged by a notary public and the acknowledgement must be attached.]

K PACIFIC INVESTMENT, LLC
 "SUBDIVIDER"

By: Joe Peterson AGENT AT LAW
 Its: _____

"CITY"
 CITY OF BEVERLY HILLS

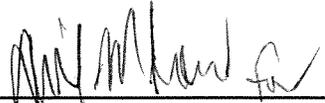
By: _____
 Julian A. Gold, Mayor

ATTEST:

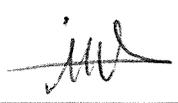
By: _____ (SEAL)
 Byron Pope, City Clerk

Date: _____

APPROVED AS TO FORM:

By: 
Laurence S. Wiener, City Attorney

APPROVED AS TO CONTENT:

By:  for MC
Mark Cuneo, City Engineer

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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 NOVEMBER 24, 2015 before me, GAIL ELEN, Notary Public
personally appeared JOE PETERSON

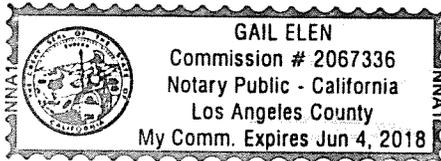
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity, and that by his/~~her/their~~ signature(s) on the instrument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

Place Notary Seal Above

Gail Elen
Signature of Notary Public



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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 _____

On _____ before me, _____, 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, and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) 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.

Place Notary Seal Above

Signature of Notary Public

EXHIBIT A
LEGAL DESCRIPTION

APN: _____

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PROPOSED TRACT NO. 69145, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING A PORTION OF THE FOLLOWING DESCRIBED LAND:

PARCEL 1:

LOTS 1602 AND 1603 OF TRACT NO. 6380, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 69, PAGES 11 THROUGH 20, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

LOT 1604 OF TRACT NO. 6380, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 69, PAGES 11 THROUGH 20, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 3:

LOT 1605 OF TRACT NO. 6380, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 69, PAGES 11 THROUGH 20, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 4:

LOT 1606 OF TRACT NO. 6380, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 69, PAGES 11 THROUGH 20, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT B

SCHEDULE OF IMPROVEMENTS FOR SUBDIVISION
FINAL TRACT MAP NO. 69145

CATEGORIES OF IMPROVEMENTS	<u>AMOUNT OF ESTIMATED TOTAL COST</u>	<u>AMOUNT OF PERFORMANCE SECURITY</u>	<u>AMOUNT OF PAYMENT SECURITY</u>	<u>AMOUNT OF WARRANTY SECURITY</u>
1) Removal and Replacement of Sidewalk and curb and gutter fronting the property	\$48,000	\$48,000	\$48,000	\$4,800
2) Re-pavement of the entire width of Elm Dr. fronting the property	\$28,000	\$28,000	\$28,000	\$2,800
3) Re-pavement of the alley in the rear of the property	\$22,400	\$22,400	\$22,400	\$2,240
4) Removal and Replacement of the alley gutter in the rear of the property	\$11,200	\$11,200	\$11,200	\$1,120
TOTAL	\$109,600	\$109,600	\$109,600	\$ 10,960
TOTAL PERFORMANCE SECURITY	\$109,600			
TOTAL PAYMENT SECURITY	\$109,600			
TOTAL WARRANTY SECURITY	\$ 10,960			

EXHIBIT C

Form of Improvement Securities

1. Performance Bond
2. Payment Bond
3. Warranty Bond

FAITHFUL PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

Whereas, the City Council of the City of Beverly Hills, State of California, and _____ (hereinafter designated as "Principal") have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20____, and identified as project _____, is hereby referred to and made a part hereof; and

Whereas, Principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the Principal and _____, as surety (hereinafter designated as "Surety"), are held and firmly bound unto the City of Beverly Hills in the penal sum of _____ dollars (\$_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded Principal, his, her, or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his, her, its or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City of Beverly Hills, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City of Beverly Hills in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Further, Surety hereby waives the provisions of California Civil Code Sections 2845 and 2849. The City of Beverly Hills is the principal beneficiary of this bond and has all rights of a party hereto.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of Principal and Surety being hereto affixed and these presents duly signed by Principal and by Surety's undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

"Principal"

"Surety"

By: _____
Its:

By: _____
Its:

(Seal)

(Seal)

APPROVED AS TO FORM:

CITY OF BEVERLY HILLS

By:

Laurence S. Wiener, City Attorney

Note: *This bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.*

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

Whereas, the City Council of the City of Beverly Hills, State of California, and _____ (hereinafter designated as "Principal") have entered into an agreement whereby the Principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20____, and identified as project _____, is hereby referred to and made a part hereof; and

Whereas, under the terms of the agreement, the Principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Beverly Hills to secure the claims to which reference is made in Part 6 (commencing with Section 8000) of Division 4 of the Civil Code.

Now, therefore, the Principal and _____, as corporate surety (hereinafter designated as "Surety"), are held firmly bound unto the City of Beverly Hills and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the agreement and referred to in Part 6 (commencing with Section 8000) of Division 4 of the Civil Code in the sum of _____ dollars (\$_____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City of Beverly Hills in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Part 6 (commencing with Section 8000) of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

Further, Surety hereby waives the provisions of California Civil Code Sections 2845 and 2849. The City of Beverly Hills is the principal beneficiary of this bond and has all rights of a party hereto.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of Principal and Surety being hereto affixed and these presents duly signed by Principal and by Surety's undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

"Principal"

"Surety"

By: _____

Its:

By: _____

Its:

(Seal)

(Seal)

Note: This bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.

APPROVED AS TO FORM:

CITY OF BEVERLY HILLS

By:

Laurence S. Wiener, City Attorney

Bond No. _____

WARRANTY BOND

KNOW ALL PERSONS BY THESE PRESENTS that:

Whereas, the City Council of the City of Beverly Hills, State of California, and _____ (hereinafter designated as "Principal") have entered into an agreement, dated _____, 20____, and identified as project _____, is hereby referred to and made a part hereof; and

Whereas, Principal is required under the terms of said agreement to furnish a bond for the good and sufficient warranty of all of the improvements installed pursuant to said agreement.

Now, therefore, we, the Principal and _____, as surety (hereinafter designated as "Surety"), are held and firmly bound unto the City of Beverly Hills in the penal sum of _____ dollars (\$_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that, if the hereby bounded Principal, his, her or its heirs, executors, administrators, successors or assigns, shall remedy, without cost to the City of Beverly Hills, any defects which may develop during a period of one (1) year from the date of the completion and acceptance of the last of the improvements installed under the agreement, caused by defective or inferior design, materials, workmanship or maintenance as determined by the City, and shall indemnify, defend and hold harmless the City of Beverly Hills, its officers, officials, employees, agents and volunteers for any and all claims, demands, causes of action, judgments, damages, injuries, liabilities, losses, costs or expenses, including attorneys' fees and costs of defense, which arise out of, pertain to, or relate to such defects or inferior design, materials, workmanship or maintenance or to the Principal's actions or inactions in remedying such defects or inferior design, materials, workmanship or maintenance, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

If suit is brought upon this bond, Surety further agrees to pay, in addition to the Penal Sum, all costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City of Beverly Hills in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

Further, Surety hereby waives the provisions of California Civil Code Sections 2845 and 2849. The City of Beverly Hills is the principal beneficiary of this bond and has all rights of a party hereto.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond,

and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original hereof, have been duly executed by Principal and Surety, on the date set forth below, the name of Principal and Surety being hereto affixed and these presents duly signed by Principal and by Surety's undersigned representative(s) pursuant to authority of its governing body.

Dated: _____

"Principal"

"Surety"

By: _____
Its: _____

(Seal)

By: _____
Its: _____

(Seal)

Note: This bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached.

APPROVED AS TO FORM:

CITY OF BEVERLY HILLS

By:

Laurence S. Wiener, City Attorney

EXHIBIT D

Consent and Subordination Agreement

CONSENT AND SUBORDINATION

The undersigned, _____, being the owner and holder of (a) that certain deed of trust dated _____, recorded _____ in the office of the County Recorder of the County of _____, California, as document number _____ (as now or hereafter increased, amended, modified, supplemented, consolidated, replaced, substituted, extended and/or renewed, the **"First Deed of Trust"**); and (b) that certain deed of trust dated _____, recorded _____, in the office of the County Recorder of the County of _____, California as document number _____ (as now or hereafter increased, amended, modified, supplemented, consolidated, replaced, substituted, extended and/or renewed, the **"Second Deed of Trust"**), encumbering the Property, hereby executes this Consent and Subordination to acknowledge its consent to the terms of the attached Subdivision Improvement Agreement ("Agreement") and to agree that the First Deed of Trust and the Second Deed of Trust will be subject and subordinate to the terms of the Agreement.

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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 _____

On _____ before me, _____, 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, and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) 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.

Place Notary Seal Above

Signature of Notary Public

Attachment 8

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AFFORDABLE HOUSING COVENANT AND REGULATORY AGREEMENT
(Condominium Units ____, ____ and ____ at 309-325 South Elm Drive, Beverly Hills)

THIS AFFORDABLE HOUSING COVENANT AND REGULATORY AGREEMENT (this "Agreement") is dated as of _____, 2015 and is entered into by and between the CITY OF BEVERLY HILLS (the "City"), and K PACIFIC INVESTMENTS, LLC, a California limited liability company (the "Developer").

RECITALS

A. Developer is the owner of condominium units in the City of Beverly Hills, California that are commonly known as Pacific Star and are described on Exhibit "A" attached hereto (the "Affordable Units").

B. The Affordable Units are part of a thirty unit condominium project at 309-325 South Elm Drive in Beverly Hills, California (the "Project").

C. A tentative tract map, density bonus permit and development plan review permit were approved by the Planning Commission of the City by Resolution No. 1508 subject to conditions, including (but not limited to) the condition that Developer record restrictions to ensure that each Affordable Unit be restricted for thirty (30) years after the earlier of the initial sale of the Affordable Unit by Developer to ownership and occupancy by lower income households (as defined in California Health & Safety Code Section 50079.5) at an affordable housing cost and not be leased or rented.

D. This Agreement constitutes those restrictions.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. **Definitions.** For purposes of this Agreement, the terms listed below shall have the meanings thereafter specified.

(a) **Affordable Housing Cost** means a housing cost which does not exceed the limits set forth in California Health and Safety Code Section 50052.5(b), as amended from time to time and the applicable regulations for such statute, and for the purposes hereof, the term "housing cost" shall include association fees and shall otherwise have the meaning ascribed to such term in Title 25 of the California Code of Regulations Section 6920, as such regulation may

be amended from time to time, and the term “Gross Income” shall have the meaning ascribed to such term in Title 25 of the California Code of Regulations Section 6914, as such regulation may be amended from time to time, or other applicable regulations.

(b) Homeowner means any person (or persons) who has (or have) purchased an Affordable Unit.

(c) Lower Income Household means a person, family or household meeting the income qualification limits set forth in California Health and Safety Code Section 50079.5 and Title 25 of the California Code of Regulations Section 6910, et seq., as the case or context may require, as such statutes and regulations may be amended from time to time, and any successor statutes and regulations thereto.

(d) Term means, with respect to each Affordable Unit, thirty (30) years from the initial sale of the Affordable Unit by Developer to a Lower Income Household at an Affordable Housing Cost.

2. **Restrictions on Sale, Lease, Transfer.** Neither the Developer nor any Homeowner shall lease any Affordable Unit. Neither the Developer nor any Homeowner shall sell, convey or transfer any of the Affordable Units or enter into an agreement to do so, except as expressly permitted by the terms of this Agreement. Additionally, with respect to the Affordable Units, Developer and each Homeowner shall comply with any and all written policies, rules and regulations of City regarding affordable residences that are hereafter adopted by City and all amendments thereto.

3. **Covenants to Maintain Affordability and Occupancy.** During the Term applicable to a particular Affordable Unit, any sale of the Affordable Unit shall be to a Lower Income Household at a sales price that results in an Affordable Housing Cost for that Lower Income Household, and the Affordable Unit sold may not be leased, but must be owner-occupied.

4. **Resale Price Controls and Procedures.**

(a) Developer or the Homeowner, as applicable, shall notify any proposed purchaser in writing prior to the proposed purchaser’s execution of escrow instructions, purchase and sale agreement or similar agreement, whichever is earliest, that the title to the Affordable Unit is and will be restricted in the manner described herein, and shall deliver a copy of this recorded Agreement to the purchaser at that time, and shall include in the deed for the sale an express requirement that the grantee comply with this Agreement. Developer or the Homeowner, as applicable, shall deliver to City a copy of such written notification and a copy of the deed.

(b) For the purpose of confirming with the City that a proposed purchaser is a Lower Income Household that will be paying a purchase price that is in compliance with the terms hereof, the Developer or Homeowner, as applicable, shall notify the City in writing of any offer from a prospective purchaser which the Developer or Homeowner, as applicable, intends to accept, and shall provide the City with the following:

- (c) Name and address of the purchaser.
- (d) Number of persons comprising the purchaser's household and their names and ages.
- (e) Proposed purchase price of the Affordable Unit, and any other consideration for the purchase of the Affordable Unit.
 - (i) Amount of down payment.
- (f) Terms of any loan that will be used by the purchaser to finance the purchase of the Affordable Unit, including, but not limited to, principal, interest rate, term, and loan fees.
 - (i) Closing date.
 - (ii) Aggregate annual income of the purchaser's household.
 - (iii) Most recent federal and state income tax returns of the purchaser and all other members of the purchaser's household for the preceding two (2) calendar years, and verification of the proposed purchaser's salary or wages from the purchaser's employer.
- (ix) Copy of any proposed purchase and sale agreement, escrow instructions, loan application, and other agreements between the Developer or Homeowner, as applicable, and the proposed purchaser relating to the sale of the Affordable Unit.
- (g) A written statement signed by the proposed purchaser that the Affordable Unit will be occupied by the purchaser and used as his or her primary residence, and that the Affordable Unit will not be leased.
- (h) The City shall have fifteen (15) days after delivery of all required documents and information to review the information. The City Manager may require the purchaser to submit other written documentation to verify the information set forth herein and to determine that the income and Affordable Housing Cost restrictions of this instrument shall be satisfied. If the City receives all such information, the City Manager shall determine whether the prospective purchaser is qualified to purchase the Affordable Unit as a Lower Income Household and shall thereafter notify the Developer or Homeowner, as applicable, in writing that the prospective sale is authorized and approved, or that the prospective purchaser does not qualify to purchase the Affordable Unit as a Lower Income Household or that the sales price does not constitute an Affordable Housing Cost.
- (i) If the City Manager notifies the Developer or Homeowner, as applicable, that the proposed sale is authorized and approved, the Developer or Homeowner, as applicable, shall proceed to complete the sale of the Affordable Unit within sixty (60) days after the date of such approval from the City and shall within such period send City a copy of the escrow instructions and purchase agreement.

(j) If the City Manager notifies the Developer or Homeowner, as applicable, that the proposed sale does not comply with this Agreement, then the sale shall not occur.

5. **Remedies of City.** In addition to all of its rights and remedies available for Developer's breach of this Agreement, upon a default by Developer or Homeowner under this Agreement, City may obtain specific performance of this Agreement and/or injunctive relief, and/or may revoke the certificate of occupancy for the applicable Affordable Unit. In addition, City shall be entitled to liquidated damages as described in Section 14 below, which are secured by a deed of trust recorded against the Affordable Unit.

6. **Successors and Assigns; Covenants to Run With the Land.** The covenants and restrictions contained herein shall run with the land for the term of this Agreement and shall be a burden upon the Property and each Affordable Unit and shall be enforceable by the City against the Developer, each Homeowner and the successors-in-interest of the Developer, and all lessees of an Affordable Unit.

7. **Independent and Severable Provisions.** In the event that any provision of this instrument is held by a court of competent jurisdiction to be unenforceable or invalid, such holding shall not render unenforceable any other provision hereof, each provision hereof being expressly severable and independently enforceable to the fullest extent permitted by law.

8. **Further Assurances.** Upon request of the City Manager, the Developer or a Homeowner or any successor-in-interest shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and agreements and do such further acts as may be necessary, desirable or proper to carry out the purposes of this Agreement.

9. **No Waiver.** No waiver by the City of its rights hereunder, or of any breach by the Developer or a Homeowner of any covenant, restriction, or condition herein contained, shall be effective unless such waiver is in writing, signed by the City and delivered to the Developer or the Homeowner, as applicable. Any waiver by the City of its power to terminate any covenant, restriction, or condition herein contained, or the failure by the City to exercise any right or remedy with respect to any breach or breaches, shall not constitute a waiver or relinquishment for the future of any rights regarding subsequent sales, or of any such covenant or condition nor bar any right or remedy of the City in respect of any subsequent breach.

10. **Notices.** All notices to be delivered to the parties pursuant to the terms hereof shall be in writing and shall be delivered in person or by certified mail, return receipt requested, or by reputable overnight delivery service (such as Federal Express) to the addresses listed below.

Any of the following addresses may for Developer or City (but not Homeowner) be changed by written notice given in accordance with this Section.

If to Developer:

K Pacific Investments, LLC
c/o Sergey Kiselev
1970 Coldwater Canyon Drive
Beverly Hills, CA 90210-7030

If to the City: City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210
Attn: City Manager

With a copy to: City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210
Attn: City Attorney

If to a Homeowner or a Tenant: To the applicable Affordable Unit

11. **Entire Agreement.** This instrument constitutes the entire agreement of the parties hereto, and the provisions hereof may be modified or amended only by a written instrument signed by the party to be charged.

12. **Attorneys' Fees.** In any action brought to declare the rights granted herein or to enforce or to interpret any of the terms of this Agreement, the prevailing party shall be entitled to an award of its attorneys' fees and costs.

13. **Representations and Warranties.** Developer hereby represents and warrants that as of the date hereof, it is the sole owner of the Affordable Units and no deed of trust or other lien (other than the holder of liens for property taxes and assessments not yet due) encumbers the Affordable Units, or that all holders of any deeds of trust or liens (other than the holder of liens for property taxes and assessments not yet due) have executed and delivered to City, duly acknowledged and in recordable form (for recording with this Agreement), a Subordination Agreement in the form attached hereto.

14. **Liquidated Damages; Deed of Trust.** Developer and City agree that in the event of a breach of this Agreement by Developer or a Homeowner, the damages to City would be extremely difficult, very impractical or impossible to determine; consequently, the parties and all Homeowners agree that City shall be entitled to the sum of \$5,000.00 per month for each month during which a breach of this Agreement occurs for each unit involved in the breach as liquidated damages for each such violation (which shall be paid to City within ten (10) days after written demand from City) and that if the breach involves both the Developer and Homeowner, or Homeowner and subsequent Homeowner, as applicable, both parties committing the violation shall be jointly and severally liable therefore. Said liquidated damages are secured by a first priority deed of trust in favor of City, as beneficiary, encumbering the applicable Affordable Unit (i.e., three deeds of trust in total, each securing all liquidated damages obligations with respect to a particular Affordable Unit). **City agrees to reasonably subordinate such a deed of trust for any Affordable Unit to a deed of trust securing purchase money financing for a purchase of that Affordable Unit that complies with this Agreement.** Developer and each Homeowner of an Affordable Unit shall comply with the deed of trust in favor of City encumbering such Affordable Unit.

DEVELOPER

CITY

K PACIFIC INVESTMENTS, LLC,
a California limited liability company

CITY OF BEVERLY HILLS

By: Joe Peterson AGENT AT LAW
Sergey Kiselev,
Managing Member

By: _____
Print Name: _____
Title: _____

Attest:

Byron Pope, City Clerk

Approved as to form:

David M. Snow
David M. Snow
Interim City Attorney

EXHIBIT "A"

DESCRIPTION OF AFFORDABLE UNITS

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PROPOSED TRACT NO. 69145, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING A PORTION OF THE FOLLOWING DESCRIBED LAND:

PARCEL 1:

LOTS 1602 AND 1603 OF TRACT NO. 6380, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 69, PAGES 11 THROUGH 20, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

LOT 1604 OF TRACT NO. 6380, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 69, PAGES 11 THROUGH 20, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 3:

LOT 1605 OF TRACT NO. 6380, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 69, PAGES 11 THROUGH 20, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 4:

LOT 1606 OF TRACT NO. 6380, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 69, PAGES 11 THROUGH 20, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

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 NOVEMBER 24, 2015, before me, GAIL ELEN, NOTARY PUBLIC,
(insert name and title of the officer)

Notary Public, personally appeared JOE PETERSON,
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.

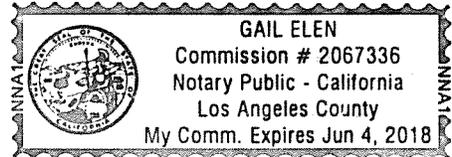
I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Gail Elen

(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.

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)

SUBORDINATION OF DEED OF TRUST

The undersigned (“Lender”) represents to the City of Beverly Hills that Lender is the sole owner and holder of that certain _____ dated _____ executed by _____, in favor of _____, which was recorded on _____ as Document No. _____ in the Official Records of Los Angeles County, California (the “Deed of Trust”).

Lender hereby subordinates said Deed of Trust to (i) the Affordable Housing Covenant and Regulatory Agreement (“Agreement”) dated _____, 2015 executed by K Pacific Investments, LLC, a California limited liability company, in favor of the City of Beverly Hills, recorded in the Official Records of Los Angeles County, California; and (ii) the following three deeds of trust in favor of City described in Section 15 of the Agreement: (a) deed of trust in favor of City dated _____ recorded as Document No. _____ in the Official Records of Los Angeles County; (b) deed of trust in favor of City dated _____ recorded as Document No. _____ in the Official Records of Los Angeles County; (c) deed of trust in favor of City dated _____ recorded as Document No. _____ in the Official Records of Los Angeles County.

BENEFICIARY/LIENHOLDER:

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)

Attachment 9

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210
Attention: City Clerk

APN: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST, ASSIGNMENT OF RENTS
SECURITY AGREEMENT AND FIXTURE FILING
(Condo Unit ____ at 309-325 South Elm Drive, Beverly Hills)

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the “**Deed of Trust**”) is dated as of November 24, 2015, and is executed by K PACIFIC INVESTMENTS, LLC, a California limited liability company (“**Trustor**”), having an address at 1970 Coldwater Canyon Drive, Beverly Hills, CA 90210-7030, to the CITY OF BEVERLY HILLS (“**Trustee**”), for the benefit of the CITY OF BEVERLY HILLS, a municipal corporation, having an address at 455 N. Rexford Drive, Beverly Hills, California 90210 (“**Beneficiary**”).

Recitals

A. Pursuant to Section 15 of that certain Affordable Housing Covenant and Regulatory Agreement dated November 24, 2015 between Beneficiary and Trustor (the “**Agreement**”), Trustor and its successors-in-interest have agreed that each violation of the Agreement shall entitle Beneficiary to liquidated damages in the amount of \$5,000.00 per month for each month during which a breach of the Agreement occurs for each unit involved in the breach (payable within ten (10) days after written demand by Beneficiary), and that the obligation to pay liquidated damages shall be secured by a first priority deed of trust on the Property.

NOW, THEREFORE, in consideration of the foregoing recitals and the aforesaid indebtedness, and in order to secure the payment of any liquidated damages, Trustor hereby transfers to Trustee, its successors and assigns, with power of sale and right of entry and possession, that certain property with regard to the Property (hereinafter described and defined) in the City of Beverly Hills, County of Los Angeles, State of California, described on Exhibit A attached hereto, together with all fixtures thereon and all goods and other personal property owned by Trustor and located on or used in connection with the ownership, operation or maintenance of said Property (collectively the “**Property**”).

To protect the security of this Deed of Trust, and with respect to the Property and the sums secured hereby, Trustor hereby covenants and agrees to perform and be bound by the following terms and provisions, to wit:

1. Trustor will pay the liquidated damages in accordance with Section 15 of the Agreement, and Trustor will pay any other sums payable by Trustor under this Deed of Trust when due. This Deed of Trust securs said obligations.

2. Trustor represents that no lien encumbers the Property that is prior to this Deed of Trust (except for liens for property taxes and assessment not yet due) and Trustor will not suffer any lien to be created hereafter upon the Property, or any part thereof, prior to the lien created herein, and will not do or suffer any act or omission whereby the value of the Property, or lien hereof or of any estate or title covered hereby, may be diminished or impaired in any way. Trustor shall timely make all required payments under any other deeds of trust or other encumbrances which may now or hereafter affect the Property and comply with all obligations thereunder. Should Trustor fail to make any such payment or comply with any such obligation, Beneficiary may, without notice to or authorization from Trustor, and without releasing Trustor from any obligation hereunder or under such other deed of trust or other encumbrance, pay any sum which may be owing under any other deed of trust or other encumbrance or otherwise cure any default of Trustor thereunder, and the sums so expended by Beneficiary shall be secured hereby and shall be immediately due and payable by Trustor to Beneficiary, and shall bear interest at the maximum rate permitted by law.

3. Trustor will keep the Property in good condition and repair, will not demolish the Property, and will not commit or permit any waste thereon. Should the Property, or any part thereof, require inspection, repair or protection, then, and in that event, Beneficiary may enter or cause entry to be made upon the Property for inspection, repair or protection thereof, and such repair may be made by Beneficiary and be made or done in such manner as fully to protect the interest of Beneficiary, and any and all sums expended by Beneficiary in doing or causing to be done any of the things above authorized are secured by this Deed of Trust and shall be paid by Trustor to Beneficiary on demand with interest at the maximum rate permitted by law. Trustor shall comply with all laws, ordinances, governmental regulations, covenants, conditions and restrictions affecting the Property or requiring any alteration or improvement thereof, and permit no violation, as to the Property, of any such law, ordinance, governmental regulation, covenant, condition or restriction affecting the Property.

4. Trustor covenants that Trustor is the sole owner of the Property as described in the granting clauses hereof and has good and indefeasible title to the same; that there are no liens or encumbrances on the Property other than those that are of record at the time this Deed of Trust is recorded and which are subordinate to this Deed of Trust; and Trustor forever will warrant and defend the title in the same to the Trustee against the claims and demands of all persons. Trustor covenants that at any time, upon the request of Beneficiary, Trustor will execute, acknowledge and deliver all further necessary assurances of title and such additional papers and instruments and do or cause to be done all such acts and things as may be properly or reasonably necessary for effectually carrying out the intent hereof or for better assuring or confirming unto Trustee the Property or any part thereof. If during the existence of this Deed of Trust there be commenced or pending any suit or action affecting the Property, or any part thereof, or the title thereto, or if any adverse claim for or against the Property, or any part thereof, be made or asserted, Trustee or Beneficiary may appear in such suit or action and retain counsel therein and defend the same or otherwise take such action therein as Trustee or Beneficiary may deem advisable, and may settle or compromise the same or such adverse claim, and in the behalf and for any of the such

purposes, may pay and expend such sums of money as Trustee or Beneficiary may deem to be necessary.

5. Trustor shall pay, satisfy and discharge and shall further deposit with Beneficiary evidence thereof, at least fifteen (15) days prior to delinquency, all taxes, assessments, charges, encumbrances, claims and liens of every nature (hereinafter collectively referred to as “**taxes**” or “**tax**”), which now are or hereafter shall be or appear to be a lien upon the Property, or any part thereof, or upon the debt secured hereby; and in default thereof, Beneficiary, without demand or notice, may pay, satisfy or discharge such taxes, and pay and expend such sums of money as Beneficiary may deem to be necessary therefor and Trustor shall reimburse Beneficiary for such sums upon written demand with interest at the maximum rate permitted by law.

6. From and after the execution of this Deed of Trust, Trustor shall indemnify, defend, protect, and hold harmless Beneficiary and any and all agents, employees and representatives of Beneficiary, from and against all losses, liabilities, claims, damages (including foreseeable or unforeseeable consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney’s fees) and demands of any nature whatsoever, related directly or indirectly to, or arising out of or in connection with:

- (i) relocation activities,
- (ii) any breach or default by Trustor hereunder or under the Agreement.

Trustor shall also defend, at its expense, including attorneys’ fees, the Beneficiary, and the Beneficiary’s council members, board members, officers, agents, attorneys, consultants, independent contractors, servants and employees in any legal action based upon items (i) or (ii) above. The Beneficiary may in its discretion, and at its own cost, participate in the defense of any such legal action. The provisions of this Section shall survive the reconveyance of this Deed of Trust.

7. This Deed of Trust is also intended to be and shall constitute both a Security Agreement and a “fixture filing” as defined in the California Commercial Code, the Trustor being the Debtor and the Beneficiary being the Secured Party. Trustor hereby grants Beneficiary a security interest in all fixtures, and in all goods which are or are to become fixtures on the Land, for the purpose of securing all indebtedness and other obligations of Trustor now or hereafter secured by this Deed of Trust. The products of such collateral are also covered hereby. This Deed of Trust, as a fixture filing, is to be recorded in the real estate records covering the real property covered hereby. Trustor authorizes Beneficiary to execute, deliver, file and record (as necessary) financing and continuation statements covering such property from time to time in such form as Beneficiary may require to perfect and continue the perfection of Beneficiary’s security interest with respect to such property, and to reimburse Beneficiary for any costs incurred in filing such financing statements and any continuation statements. Trustor shall not create or allow the creation of any other security interest in such property. Upon the occurrence of any default by Trustor hereunder, Beneficiary shall have the rights and remedies of a secured party under the California Commercial Code, as well as all other rights and remedies available at law or in equity or as provided herein, all at Beneficiary’s option. Trustor and Beneficiary agree

that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing this declaration and the hereby stated intention of the parties hereto that everything used in connection with the operation or occupancy of such property or the production of income therefrom is and, at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property encumbered by this Deed of Trust and fixture filing, irrespective of whether (a) any such item is physically attached to the buildings and improvements, (b) serial numbers are used for the better identification of certain equipment, or (c) any such item is referred to or reflected in any such financing statement so filed at any time. Such mention in the financing statement is declared to be for the protection of the Beneficiary in the event any court or judge shall at any time hold that notice of Beneficiary's priority of interest must be filed in the Uniform Commercial Code records to be effective against a particular class of persons, including, but not limited to, the federal government and any subdivisions or entities of the federal government.

8. Trustor hereby grants, transfers and assigns to Beneficiary the entire lessor's interest in and to any and all leases affecting the Property and rents therein reserved and any and all guarantees thereof which may now or hereinafter exist during the term of this Deed of Trust, together with all rents, income and profits arising from such lease and renewals thereof and together with all rents, income and profits for the use and/or occupation of the premises described in such lease or for the Property. This assignment is made for the purpose of securing the sums described in Section 1.

However, so long as there shall exist no default under this Deed of Trust, Trustor shall have the right to collect at the time of, but not prior to the date provided for the payment thereof, all rents, income and profits arising under all leases or from the property and to retain, use and enjoy the same.

Without limiting the foregoing, upon the occurrence and during the continuance of any default under this Deed of Trust, Beneficiary shall be entitled, as a matter of absolute right and without regard to the value or condition of any security for the amount due or the solvency of any person liable therefor, to the appointment of a receiver for the property upon ex parte application to any court of competent jurisdiction. Trustor waives any right to any hearing or notice of hearing prior to the appointment of a receiver. Such receiver and his agents shall be empowered (a) to take possession of the Property, and any businesses conducted by Trustor or any other person thereon and any business assets used in connection therewith to the fullest extent permitted by law and, if the receiver deems it appropriate, to operate the same, (b) to exclude Trustor and Trustor's agents, servants, and employees from the Property, (c) to collect the rents, issues, profits, and income therefrom, including security deposits, (d) to complete any construction which may be in progress, (e) to do such maintenance and make such repairs and alterations as the receiver deems necessary, (f) to use all stores of materials, supplies, and maintenance equipment on the Property and replace such items at the expense of the receivership estate, (g) to pay all taxes and assessments against the Property, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, (h) to lease or rent all or portions of the property on terms and conditions satisfactory to the Beneficiary and to undertake such refurbishment or repair as reasonably required for such leasing and to pay leasing commissions, if applicable, and (i) generally to do anything which Trustor could legally do if Trustor were in possession of the Property. All

expenses incurred by the receiver or his agents shall constitute a part of the indebtedness evidenced by the Note. Any revenues collected by the receiver shall be applied to the payment of or the account of the following, in such order as Beneficiary may determine:

- (a) To the payment of association fees;
- (b) To the payment of taxes, special assessments or insurance premiums now due or which may hereafter become due on the Property;
- (c) To the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements reasonably necessary for the continued operation of the property, and of placing the property in such condition as will, in the judgment of the Beneficiary, make it readily rentable;
- (d) To the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

Unless sooner terminated with the express consent of Beneficiary, any such receivership will continue until all amounts remaining due under the Note have been discharged in full, or until title to the property has passed after foreclosure sale and all applicable periods of redemption have expired, and in either case, the court has discharged the receiver.

9. No act done or omitted by Beneficiary pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Beneficiary of its rights and remedies under this Deed of Trust. This Deed of Trust is made and accepted without prejudice to any of the rights and remedies possessed by Beneficiary under the terms of the Agreement (i.e., injunctive relief).

10. Beneficiary, from time to time, may substitute another Trustee in place of the Trustee named herein, by written instrument.

11. Trustee, at any time, at Trustee's option, may commence and maintain suit in any court of competent jurisdiction and obtain the aid and direction of such court in the execution by it of the trusts, or any of them, herein expressed or contained, and, in such suit, may obtain the orders or decrees, interlocutory or final, of such court directing the execution of such trusts, and confirming and approving Trustee's act, or any of them, or any sales or conveyances made by Trustee, and adjudging the validity thereof, and directing that the purchasers of the property sold and conveyed be let into immediate possession thereof, and providing for orders of court or other process requiring the Sheriff of the county in which such property is situated to place and maintain such purchasers in quiet and peaceable possession of the property so purchased by them, and the whole thereof.

12. Acceptance by Beneficiary of any sum in payment of an indebtedness secured hereby, after the date when the same is due, or after the filing of a notice of breach and election to sell, shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums so secured, or to declare default as herein provided for failure to pay, or to proceed with a sale under any such notice of breach and election to sell for any unpaid balance of such indebtedness.

13. If any party hereto brings an action to enforce the terms hereof or declare its rights hereunder, the prevailing party in any such action shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the court. If Beneficiary, without fault, is made a party to any litigation instituted by or against Trustor in connection with this Deed of Trust, then Trustor shall defend Beneficiary against and save Beneficiary harmless from all costs and expenses including attorneys' fees incurred in connection with such litigation.

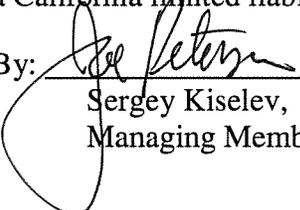
14. Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at Trustor's address as stated in the first paragraph of this Deed of Trust.

15. This Deed of Trust shall be governed by and construed in accordance with and pursuant to the laws of the State of California without regard to the choice of law rules for such state.

IN WITNESS WHEREOF, Trustor has executed this instrument as of the day and year first above written.

TRUSTOR:

K PACIFIC INVESTMENTS, LLC,
a California limited liability company

By:  AGENT AT LAW
Sergey Kiselev,
Managing Member

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 NOVEMBER 24, 2015, before me, GAIL ELEN, NOTARY PUBLIC,
(insert name and title of the officer)

Notary Public, personally appeared JOE PETERSON,
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 *Gail Elen*

(Seal)

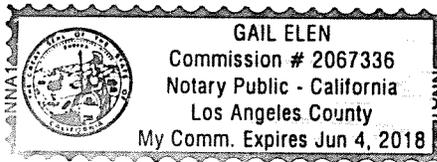


EXHIBIT "A"

DESCRIPTION OF PROPERTY

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PROPOSED TRACT NO. 69145, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING A PORTION OF THE FOLLOWING DESCRIBED LAND:

PARCEL 1:

LOTS 1602 AND 1603 OF TRACT NO. 6380, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 69, PAGES 11 THROUGH 20, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

LOT 1604 OF TRACT NO. 6380, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 69, PAGES 11 THROUGH 20, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 3:

LOT 1605 OF TRACT NO. 6380, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 69, PAGES 11 THROUGH 20, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 4:

LOT 1606 OF TRACT NO. 6380, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 69, PAGES 11 THROUGH 20, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.