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Exempt from fees pursuant
to *Government Code § 6103*

7 Attorneys for Plaintiff/Petitioner, THE PEOPLE
8 OF THE CITY OF CALIFORNIA

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11
12 PEOPLE OF THE STATE OF CALIFORNIA,
13 ex rel., MARK D. HENSLEY, City Attorney
for the City of Monterey Park,
14 Plaintiff/Petitioner,

15 v.

16 CENTER INT'L INVESTMENTS, INC., a
17 California corporation, and
18 DOES 1 through 25, inclusive,
19 Defendants/Respondents.

Case No.: BC605788

*Assigned for All Purposes to:
Hon. Mel Red Recana – Dept. 45*

**DECLARATIONS AND
COMPENDIUM OF EVIDENCE
AND EXHIBITS IN SUPPORT
PLAINTIFFS' EX PARTE
APPLICATION TO SPECIALLY
SET MOTION TO ENFORCE
SETTLEMENT AGREEMENT
PURSUANT TO CCP § 664.6**

[Application and Points & Authorities
filed Concurrently]

DATE: May 9, 2022

TIME: 11:00 a.m.

DEPT: 45

Res. #: 308635144412

Complaint Filed: Dec. 31, 2015

1 **TO THE COURT:**

2 Attached hereto is the evidence submitted in support of the Application submitted by
3 Plaintiff the City of Monterey Park on behalf of the People of the State of California, for an
4 Abatement Warrant in impose emergency measures towards mitigation of hillside erosion and
5 failure at the property located at 1668 West Garvey in the City of Monterey Park, California.

6
7 1. Declaration of Assistant City Attorney Timothy E. Campen

8 a. Exhibit A – Settlement Agreements between the People of the State of California
9 and Property Owner Center Int'l Investments, Inc.

10 b. Exhibit B – City of Monterey Park Resolution 12255

11 c. Exhibit C – Letters Breach and Default from City of Monterey Park to Center Int'l
12 Investments, Inc.

13 d. Exhibit D –Photos of 1668 West Garvey from December 8 and 9, 2021

14 e. Exhibit E – Selections of the Monterey Park Municipal Code

15 2. Declaration of Acting City Planner Jonathon H. Turner, P.E..

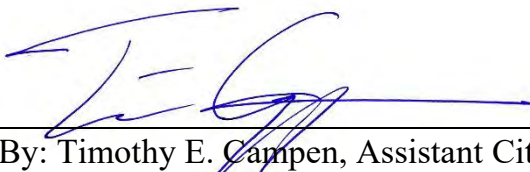
16 a. Exhibit F – Approved Winterization Plan for Property

17 b. Exhibit G – Letters of Noncompliance from Acting City Planner to Center Int'l
18 Investments, Inc.

19 c. Exhibit H – Photos of 1668 West Garvey from October 20 and November 10, 2021.

20
21
22 DATED: December 14, 2021

Respectfully submitted,
Karl H. Berger, City Attorney
HENSLEY LAW GROUP

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26 By: Timothy E. Campen, Assistant City Attorney
27 Attorneys for Plaintiff, CITY OF MONTEREY
28 PARK ON BEHALF OF THE PEOPLE OF THE
STATE OF CALIFORNIA

Declaration of
Timothy E. Campen,
Esq.

1 **DECLARATION OF TIMOTHY E. CAMPEN, ESQ.**

2 I, TIMOTHY E. CAMPEN, hereby declare as follows:

3 1. I am an attorney at law duly licensed to practice before all courts in the State of
4 California. I am an attorney at Hensley Law Group, which is appointed City Attorney for the
5 City of Monterey Park, including all enforcement actions taken on behalf of the People of
6 California. I have been appointed Assistant City Attorney for the City of Monterey Park. I
7 have personal knowledge of the facts stated in this Declaration, unless stated on information
8 and belief, in which case, I believe the facts to be true, and if called as a witness, I could and
9 would competently testify thereto.

10 2. This Declaration is made in support of the City of Monterey Park on Behalf of
11 the People of California's ("City") *ex parte* Application for an Abatement Warrant for the
12 property commonly known as 1688 W. Garvey in the City of Monterey Park, California 91754
13 (APN 5254-002-031) (the "Property").

14 3. Based on information and belief, the Property consists of 6.22 acres of
15 undeveloped land on a hillside along West Garvey Avenue located at 1688 West Garvey,
16 Monterey Park, California (APN 5254-002-031). The hillside rises approximately 150 feet
17 above West Garvey Avenue to a graded plateau where a residential development approved in
18 the late 1970s was to be built. Over the years, the hillside on the Property has become
19 increasingly unstable, with the City and the People taking various enforcement actions over
20 40 years against successive property owners including, without limitation, the Property owners
21 to perform remedial measures.

22 4. Based on information and belief, in or about 1979, the Monterey Park City
23 Council approved a 31 residential dwelling unit project on Property. That development project
24 commenced, but was never completed.

25 5. Based on information and belief, in or about 2009, CII purchased the Property
26 ostensibly for the purpose of a residential development involving 16 luxury homes. Because
27 the People determined that the Property owner is unable to perform its obligations pursuant
28 the Settlement Agreement as to permanent abating the public nuisance identified in the

1 Settlement Agreement, that development project is currently stalled indefinitely.

2 6. On December 31, 2015, the People initiated an action against CII in the Los
3 Angeles County Superior Court captioned *The People of the State of California, ex rel., Mark*
4 *D. Henlsey, City Attorney for the City of Monterey Park v. Center Int'l Investments, Inc.*, Case
5 No. BC605788 (“Action”). In this Action, the People sought to permanently abate the public
6 nuisance on the Property. Specifically, the Property is unsafe, unsightly and dangerous for all
7 of the reasons stated in the Action including, without limitation, geologic instability of the
8 hillside.

9 7. In April of 2017, that Action resulted in a settlement agreement between the
10 parties (“Original Agreement”), wherein, *inter alia*, CII agreed to a number of terms and
11 conditions, including the following:

- 12 a. Complete a “Restoration Plan” to permanently stabilize the hillside and
13 obtain a Permit to execute that plan “with all due speed”.
- 14 b. Complete the hillside restoration by December 31, 2017.
- 15 c. Pending the completion of the Restoration Plan, regularly monitor and
16 maintain the hillside with “winterization measures” according to plans
17 approved by the City of Monterey Park.

18 The parties further stipulated in writing to the Court’s retention jurisdiction under Code of
19 Civil Procedure § 664.6 to ensure enforcement of the Settlement Agreement (the
20 “Stipulation”). In particular, the agreed upon Stipulation states:

21 [T]he Parties to this Action request and agree that the Court shall
22 retain jurisdiction over the Parties and this Action to enforce this
23 settlement pursuant to Code of Civil Procedure section 664.6 until
24 there is full performance of all terms of the written Settlement
25 Agreement.

26 True and accurate copies of the Original Settlement Agreement and its Amendments as
27 referenced herein is attached hereto as Exhibit A.

28 8. In the event of CII’s failure to perform the abatement of the public nuisances,
which is specifically part of the Original Agreement, the People could commence its own
abatement action – at CII’s cost – to remove the public nuisances. Should the People determine

1 the need to assume abatement of the public nuisance, CII voluntarily waived any judicial or
2 administrative right to notice or hearings including, without limitation, abatement warrants:

3 CII hereby agrees to waive any and all rights of notice and hearing,
4 except as otherwise expressly provided herein, that it may under
5 the principles of *Rooney v. Vermont* (1973) 10 Cal.3d 351...

6 See Exhibit A.

7 9. In March of 2019, and after no action had been taken to permanently stabilize
8 the hillside, the People and CII entered into a First Amended and Restated Settlement
9 Agreement (“First Amended Agreement”). The First Amended Agreement included two
10 courses of action CII could take to abate the public nuisances upon the Property: “Plan A”
11 would involve CII seeking discretionary land use approvals from the City of Monterey Park
12 (which consented to participated in the Settlement Agreement as to processing such land use
13 approvals) for a residential development of the Property that would incorporate the abatement
14 of the public nuisances identified in the Settlement Agreement; and “Plan B” which provides
15 for abatement of the public nuisances only if CII failed to obtain the approvals for Plan A or
16 failed to implement Plan A if it were approved by the City of Monterey Park. Should CII fail
17 to implement Plan A or Plan B voluntarily, then the People would assume control over Plan B
18 to abate the public nuisances identified in the Settlement Agreement (at CII’s cost)..

19 10. Whether CII implemented Plan A or Plan B, the First Amended Agreement
20 included a timeline with specific, intermediate deadlines towards completion of Plan B by
21 November 25, 2020. Among the timeline requirements of the First Amended Agreement is for
22 CII to have winterization measures completed not later than September 30, 2019, and properly
23 maintain said winterization measures.

24 11. In June 2020, the People and CII entered into a Second Amended and Restated
25 Settlement Agreement (“Second Amended Agreement”) which, *inter alia*, accommodated
26 CII’s desire to obtain a new timeline to stabilize the hillside after it failed to comply with the
27 timeline of the First Amended Agreement.¹ Section H of the Second Amended Agreement

28 ¹ This was, in part, because of the COVID-19 Pandemic’s interference with the anticipated timelines for processing the Plan A considerations.

1 further requires as follows:

2 During the time that Plan A is considered by CITY, CII must
3 construct and maintain erosion control and slope stabilization
4 plans approved by CITY to temporarily abate the Nuisance
5 ("Interim Maintenance Program"). The Interim Maintenance
6 Program must be completed at CII's cost and will be monitored by
7 CITY (also at CII's cost) to ensure compliance.

8 12. Additionally, CII has agreed in section 2.B.v. of the Second Amended
9 Agreement that “[i]n the event Plan B is not underway by the deadline set forth in the Amended
10 Project Schedule, CITY may (1) enter the Property, abate the Nuisance, and/or complete Plan
11 B...” (Campen Dec., Para. 12.) This term is complimentary to a related provision in the First
12 Amended Agreement, which states:

13 Should CITY be required to implement Plan B, CII grants CITY
14 an irrevocable license to enter onto the Property to abate the
15 Nuisance in accordance with this Agreement. CII agrees that
16 neither Plaintiff nor CITY will be required to obtain an abatement
17 warrant in accordance with applicable law in order to exercise
18 Plaintiff’s rights, by and through CITY, to implement Plan B.
19 Accordingly, CII specifically waives any rights it may have to
20 prevent CITY’s access to the Property under applicable law should
21 it fail to voluntarily perform Plan B in accordance with the Project
22 Schedule.

23 13. On June 16, 2021, the Monterey Park City Council approved CII’s requested
24 Plan A. Separately, the Monterey Park City Council adopted Resolution No. 12255. (Campen
25 Dec., Para. 13.) With Resolution No. 12255, the City Council found and declared that an
26 “emergency exists as to abating the Property which constitutes an imminent threat to public
27 health and safety that requires immediate action.” (Campen Dec., Para. 13.) The City Council
28 further directed that if CII failed to “commence substantial progress” towards abatement of
the hillside by August 1, 2021, then the City, on behalf of the People, was authorized to itself
commence with “Plan B” permanent remediation of the hillside – consistent with the Second
Amended Agreement. (Campen Dec., Para. 13.) Resolution No. 12255 restated the Second
Amended Agreement in that the determination of “substantial progress” was in the “the sole
discretion of the City Manager.” (Campen Dec., Para. 13.) CII representatives were present at

1 this City Council meeting on June 16, 2021, and were fully informed of these terms. A true
2 and accurate copy of Resolution 12255 is attached hereto as Exhibit B.

3 14. On August 25, 2021, City Manager Ron Bow served CII with written Notice of
4 Breach and Opportunity to Cure regarding its failure to commence substantial progress
5 towards fulfillment of Plan B, namely to obtain a grading permit. The Notice of Breach further
6 informed CII of the City’s intent to carry out Plan B on its own. In a show of good faith, the
7 City provided CII with an additional five day grace period, until August 31, 2021, to obtain
8 the grading permit necessary to demonstrate commencing with substantial progress. CII failed
9 to submit all the required documentation for the permit in that time. A true and accurate copy
10 of the August 25, 2021, Notice of Default is attached hereto as Exhibit C.

11 15. On October 13, 2021, City Manager Ron Bow served CII with written Notice of
12 Default of the Settlement Agreement, noting that all the required documentation for the
13 grading permit had not been submitted until September 23, 2021 – a full 53 days after the
14 original deadline. Specifically, CII had not submitted the necessary storm water protection
15 plan information, which is legally required for the grading permit. The Notice of Default
16 further detailed a list of CII’s failures to live up to its obligations under the entire Settlement
17 Agreement and informed CII of the People’s intention to itself carry out Plan B to remediate
18 the hillside. A true and accurate copy of the October 12, 2021, Notice of Breach is attached
19 hereto as Exhibit C.

20 16. The failure of CII to commence with any physical progress towards abating the
21 hillside on the Property since litigation commenced in 2015 has left the City with no reasonable
22 expectation CII will ever complete this project. As a result, the City can no longer risk the
23 health and safety off the community and its residents on the baseless hope CII will finally meet
24 its obligations.

25 17. It will take several months for the City, through a qualified contractor, to initiate
26 Plan B. In the meantime, temporary measures, referred to in the Second Amended Agreement
27 as the “Interim Maintenance Program,” are necessary now to properly immediately winterize
28 the hillside.

1 18. On December 8 and 9, 2021, the People – through the efforts of the City –
2 commenced clearance of the Property to begin the temporary mitigation measures authorized
3 by the abatement warrant. (True and accurate photographs of the condition of the Property on
4 those dates, before and after clearance of the Property, are filed concurrently herewith as
5 Exhibit D.)

6 19. An abatement warrant is necessary for the City to protect the community from
7 the public nuisance of an unstable hillside in which temporary measures must be taken
8 immediately to mitigate the impact of water and weather impacting soils stability while the
9 City prepares to fully abate the hillside with new retaining walls and other long term erosion
10 control measures.

11 20. On December 14, 2021, at about 9:30 a.m., I sent via email, or caused to be sent
12 via email, written notice to the Alfred Fraijo Jr. of the law firm of Shepard Mullin, who is the
13 lead attorney on behalf of CII and with whom the People have been communicating with
14 regarding CII’s compliance with the terms of the Settlement Agreement, that on December 15,
15 2021 at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 45 of the
16 Stanley Mosk Courthouse, located at 111 N Hill St, Los Angeles, CA 90012, California,
17 plaintiff People of the State Of California, by the City Attorney for the City of Monterey Park,
18 , will apply *ex parte* for an order to specially set a hearing date on the People’s Motion to
19 Enforce Settlement pursuant to Code of Civil Procedure § 664.6, as set forth in this declaration,
20 the declaration of Jonathan Turner, P.E., accompanying exhibits, on the supporting
21 memorandum served and filed herewith, on the records and file herein, and on such evidence
22 as may be presented at the *ex parte* hearing of the Application. I further caused the same to
23 be personally served on Mr. Fraijo at his office on December 14, 2021.

24
25 I declare under penalty of perjury under the laws of the State of California that the
26 foregoing is true and correct to the best of my knowledge.

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EXECUTED on this 14th day of December, 2021, at Monterey Park, California.



Timothy E. Campen

Exhibit A

People of the State of California v. Center Int'l Investments, Inc.,
Los Angeles County Superior Court, Case No. BC605788

Settlement Agreement and Mutual Release

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

I. PARTIES

The parties to this SETTLEMENT AGREEMENT AND MUTUAL RELEASE (hereinafter "Agreement") are Plaintiff the People of the State of California (the "People") and Defendant Center Int'l Investments, Inc. ("CII"). The People and CII are sometimes referred to individually herein as a "Party" and may be referred to collectively herein as the "Parties."

II. RECITALS

1. On December 31, 2015, the People commenced an action against CII in the Superior Court of the County of Los Angeles entitled *The People of the State of California, ex rel., Mark D. Hensley, City Attorney for the City of Monterey Park v. Center Int'l Investments, Inc., and Does 1 through 25*, Los Angeles County Superior Court, Case No. BC605788 (hereinafter the "Action").

2. In the Action, the People sought to abate a nuisance involving an unsafe, unsightly and dangerous condition of real property in the City of Monterey Park, including an unstable hillside, approximately located between 1600-1688 W. Garvey Avenue and more particularly described in the Complaint in this case ("Property"), and sought to recover the costs incurred by the People for abating such nuisance from CII, the owners of said real property.

3. CII has implemented a City-approved interim erosion control and slope stabilization plan to prevent erosion of the hillside until such time that the hillside can be permanently remediated in accordance with the terms of this Agreement.

4. CII on February 28, 2017, submitted to the City for review a geotechnical study with recommendations purporting to address all slope stability/public safety issues for the Property (the "Report") as well as site slope restoring improvement plans addressing the remediation of same, but the currently submitted plans are not adequate for development ("Restoration Plan").

5. The City estimates that the review of the Restoration Plan and the correction process between CII and the City will take approximately two months, and at that time CII will be granted a permit to begin slope restoration pursuant to the Restoration Plan ("Permit").

6. CII plans to develop the Property for residential use (the "Project"). The Parties acknowledge that the construction of the Project requires certain discretionary approvals by the City, including without limitation, a subdivision map to subdivide the Property into developable lots (the "Project Approvals").

7. Regardless of the status of the Project, CII will continue to process and finalize the Restoration Plan. CII, in consultation with the City, may submit revisions to the Restoration

Settlement Agreement and Mutual Release

Plan to be reviewed by the City to further address slope stability so long as such does not affect the deadline for restoration set forth below (the "Supplemental Plan"). The City estimates that the review and correction of the Supplemental Plan will require approximately two months.

8. The Parties now intend and desire to settle all claims alleged in the Action and to compromise the disputes now existing among them. The purpose of this Agreement is to set forth the terms and conditions of the settlement and compromise between the People, on the one hand, and CII, on the other hand.

III. TERMS AND CONDITIONS

In consideration of the execution of, and as a condition of, the Releases herein, the Parties agree to the following terms:

1. CII must comply with the following tasks below:
 - a. Work in good faith with the City to complete the review and correction process of the Restoration Plan (as may be amended by the Supplemental Plan) and obtain a Permit with all due speed;
 - b. Following the City's approval of the Restoration Plan, or any amendment thereto approved by the City under the Supplemental Plan, CII shall complete the hillside restoration before December 31, 2017; for good cause shown, such as a delay in permit issuance caused by the City or inclement weather impeding construction, the City Attorney will extend the time for completing construction past the December 31, 2017 date, and such good cause shall be determined in the exercise of his reasonable discretion. The progress of the Project shall not be deemed good cause because the obligation to complete the hillside restoration is independent from the City's obligation to process the Project in the normal course of business.
 - c. No later than May 31, 2017, CII will submit applications to the City for the Supplemental Plan and Project Approvals;
 - d. By May 5, 2017, CII must obtain and provide to the People Performance Bonds, in substantially the form of Exhibit A attached to this Agreement and incorporated by this reference into this Agreement, totaling \$1 Million Dollars (\$1,000,000), such Bonds to be to the benefit of the People and to guarantee the remediation of the hillside on the Property pursuant to the Restoration Plan or the Supplemental Plan approved by City acting on the People's behalf; the Performance Bonds must further provide that:
 - i. The Performance Bonds amount may be reduced and/or partially cancelled by CII with the People's written consent, such consent

Settlement Agreement and Mutual Release

- not to be unreasonably withheld, if the actual bid by contractors for the remediation of the Property pursuant to approved plans is less than \$1 million;
- ii. Subject to the limitations set forth herein, if CII defaults on its obligation to remediate the Property, the People may use all or part of the Performance Bonds to remediate the Property through any means determined by City, acting on behalf of the People;
 - iii. The Performance Bonds will be cancelled once CII remediates the hillside on the Property and such remediation is accepted by the People as may be evidenced by a certificate of completion recorded by City on the People's behalf;
 - iv. As the remediation proceeds, the Performance Bonds amount may be reduced or cancelled by CII with the People's written consent, such consent not to be unreasonably withheld, in an amount commensurate to the amount that the People would need to complete the remediation if CII abandoned the work.
- e. If the estimated cost of the remediation of the Property by the City once the Restoration Plan is approved is reasonably estimated by the City to be more than \$1 million, the Performance Bonds amount must be increased by CII to an amount reasonably required by the People to cover the costs of remediation by the City;
 - f. As part of its obligations, CII must regularly monitor and maintain all of the following until the permanent remediation of the slope pursuant to approved Restoration Plan (as may be amended by the Supplemental Plan), as the case may be, is complete as determined by the People:
 - 1. Maintain winterization measures and temporary erosion control plan in place as shown on City-approved plans or as approved in the slope remediation construction Permit;
 - 2. Maintain and remove vegetation such that it does not become overgrown and become a fire hazard;
 - 3. Expeditiously remove debris in the public right-of-way that may slough off of the unstable hillside; and
 - 4. Remove graffiti within two business days of notice by the People.
 - g. On or before April 15, 2016, CII paid the City the sum of \$35,000.00 to reimburse the City for the costs incurred by the People for the prosecution

Settlement Agreement and Mutual Release

of this abatement action up until that point. On or before April 28, 2017, CII must reimburse the People an additional \$22,600.00 for additional costs incurred as a result of prosecuting this action since that time.

2. If CII fails to perform the obligations described in the preceding paragraph number 1, CII will be in default of this Agreement. In the event of CII's default, the People may lodge with the Court for immediate entry against CII the Stipulated Judgment which is attached to this Agreement as Exhibit B.

3. Notwithstanding the foregoing, nothing herein shall obligate the People or the City to exercise its discretion in any particular manner with respect to the alternative Restoration Plan, and any exercise of discretion reserved hereunder or required by law, shall not be deemed to constitute a breach of the People's duties under this Agreement.

4. CII hereby agrees to waive any and all rights of notice and hearing, except as otherwise expressly provided herein, that it may have under the principles of *Rooney v. Vermont Investment Corp.*, 10 Cal.3d 351 (1973), or otherwise concerning the Stipulated Judgment. CII does further agree hereby to forever waive the right to move for a new trial, to request findings of fact and conclusions of law, and/or to appeal from the Stipulated Judgment.

5. The Parties expressly agree that this Agreement is admissible to enforce this settlement pursuant to Evidence Code section 1123.

6. Pursuant to Code of Civil Procedure section 664.6, the Parties request and agree that the Court retain jurisdiction over the Parties to enforce this Agreement until there is full performance of the terms herein.

7. Attached to this Agreement as Exhibit C is a Stipulation Re: Dismissal, [Proposed] Order. Upon the People's receipt of the fully-executed Agreement and the fully-executed Stipulation Re: Dismissal from CII, the People will cause to be filed the Stipulation re Dismissal in the Action.

IV. RELEASES

1. The People's Release. The People hereby forever and fully release, acquit, and discharge CII, its predecessors, principals, parents, heirs, successors, assigns, subsidiaries, affiliates, commonly controlled entities, companies, enterprises, ventures, partners, insurers, investors, attorneys, officers, shareholders, directors, agents, representatives employees, clients, administrators, executors, personal representatives, and each of them, of and from any and all claims, demands, actions, causes of action, suits, liens, debts, obligations, promises, agreements, costs, damages, liabilities, and judgments of any kind, nature, or amount whether in law or equity, whether known or unknown, anticipated or unanticipated, liquidated or unliquidated, including any and all claimed or unclaimed compensatory damages, consequential damages, interest, costs, expenses and fees (including reasonable or actual attorneys' fees), arising out of or related to the Action and the claims raised therein.

Settlement Agreement and Mutual Release

2. CII's Release. CII hereby forever and fully releases, acquits, and discharges the People, and the City of Monterey Park, their predecessors, principals, parents, heirs, successors, assigns, subsidiaries, affiliates, commonly controlled entities, companies, enterprises, ventures, partners, insurers, investors, attorneys, officers, shareholders, directors, agents, representatives employees, clients, administrators, executors, personal representatives, and each of them, of and from any and all claims, demands, actions, causes of action, suits, liens, debts, obligations, promises, agreements, costs, damages, liabilities, and judgments of any kind, nature, or amount whether in law or equity, whether known or unknown, anticipated or unanticipated, liquidated or unliquidated, including any and all claimed or unclaimed compensatory damages, consequential damages, interest, costs, expenses and fees (including reasonable or actual attorneys' fees), arising out of or related to the Action and the claims raised therein.

3. Unknown Claims. The releases contained in this Article IV, RELEASES, release all claims, demands, actions, causes of action, suits, liens, debts, obligations, promises, agreements, costs, damages, liabilities, and judgments of any kind whether known, unknown, unforeseen, patent or latent which any of the Parties may have against any other Party, arising out of or relating directly or indirectly to the Action, except those obligations otherwise set forth in this Agreement, notwithstanding Section 1542 of the California Civil Code which provides that:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

The Parties understand and acknowledge the significance and consequence of such a specific waiver of Section 1542 and hereby assume full responsibility for any injuries, damages and losses which they may incur from or by reason of any of the above-mentioned matters.

4. Voluntary Release. The releases contained in this Article IV, RELEASES, are freely and voluntarily executed by the Parties after having been apprised of all relevant information and data. Each Party, in executing this Agreement, has not relied on any inducements, promises or representations made by any Party hereto or his agents or attorneys except as expressly set forth in this Agreement.

5. Covenant Not to Sue. Each Party further agrees, promises and covenants that neither the Party, nor any person, organization or any other entity acting on its behalf will file, charge, claim, sue or cause or permit to be filed, charged or claimed, any action for damages or other relief (including injunctive, declaratory, monetary relief or other) against any other Party for any claim released by the respective Party in this Article IV, RELEASES, including, but not limited to, any matter occurring in the past up to the date of this Agreement or involving any continuing effects of actions or practices which arose prior to the date of this Agreement.

Settlement Agreement and Mutual Release

V. MISCELLANEOUS

1. Attorney Fees, Injunctive Relief. In the event legal action arises by reason of any controversy claimed in a dispute relating to this Agreement, the interpretation thereof, or the failure of any Party to perform the terms of this Agreement, the prevailing party in such action is entitled, in addition to damages, to injunctive relief or other relief, to reasonable costs and expenses not limited to taxable costs, and reasonable attorney fees to be fixed by the court.

2. Entire Agreement. This Agreement contains the entire agreement between the Parties whose signatures are affixed hereto relating to the rights and obligations contained herein and any representations, negotiations or agreements between the Parties are merged into this Agreement. No subsequent modification or amendment between the Parties shall be effective unless in writing signed by all Parties to this Agreement.

3. No Admission of Liability. This Agreement is the compromise of the above-mentioned disputed claim and shall never be treated as an admission of liability by any Party for any purpose.

4. Binding Effect. This Agreement and each and every provision hereof, shall bind and shall inure to the benefit of the respective heirs, personal representatives, successors-in-interest, and assigns of the Parties hereto.

5. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original for all purposes.

6. Time is of the Essence. Time is of the essence for performance of all obligations under this Agreement.

7. Law Applicable. This Agreement is entered into in the State of California and all questions concerning the validity, interpretation or performance of any of its terms or provisions or of any rights or obligations of the Parties hereto, are governed by and resolved in accordance with the laws of the State of California. If it becomes necessary for the court to interpret this Agreement, the Agreement shall be considered to have been jointly drafted by all the Parties hereto and the court shall not construe any ambiguities in the Agreement in favor of any Party.

VI. EXECUTION

1. Each Party hereto acknowledges that it has been represented by counsel in the negotiation and preparation of this Agreement, that it has read the Agreement; that it is fully aware of its contents and of its legal effect, that the preceding paragraphs recite the sole consideration for this Agreement, that all agreements and understandings among the Parties are embodied and expressed herein; and that it has entered into this Agreement freely, without coercion, and based on its own judgment and not in reliance on representations or promises not contained in this Agreement or on a release other than the Mutual Releases contained herein.

Settlement Agreement and Mutual Release

2. Each Party represents and warrants that it has the sole right and exclusive authority to execute this Agreement (and the Releases contained herein), that it is not restricted in doing so, and that it has not made or suffered any assignment, transfer, conveyance, encumbrance, hypothecation or other disposition, voluntary or involuntary, of any claim or demand relating to any matter covered by this Agreement (and the Releases contained herein).

3. Each Party whose signature appears below has read the Agreement in its entirety, and understands, and agrees to, and will perform each and every one of its provisions and conditions.

4. The effective date of this Agreement shall be April 24, 2017 ("Effective Date").

Signatures on next page

People of the State of California v. Center Int'l Investments, Inc.
Los Angeles County Superior Court Case No. DC 605783

Settlement Agreement and Mutual Release

Dated: April 25, 2017

Plaintiff the People of the State of California

By: *Elizabeth M. Carlson*
Elizabeth M. Carlson
Asst. City Atty
for

Dated: April 25, 2017

Defendant Center Int'l Investments, Inc.

By:

Justin Fong
Justin Fong

Willis Do
Willis Do

Approved as to form:

Dated: April 25, 2017

Counsel for Defendant

Robert W. Chung
Robert W. Chung

1 **FIRST AMENDED AND RESTATED SETTLEMENT AGREEMENT BETWEEN**
2 **THE CITY OF MONTEREY PARK AND**
3 **CENTER INTERNATIONAL INVESTMENTS, INC.**

4 THIS FIRST AMENDED AND RESTATED SETTLEMENT AGREEMENT (this
5 “Agreement”) is entered into this _____ day of March 2019 by and between the CITY OF MONTEREY
6 PARK, a general law city and municipal corporation (“CITY”) acting on behalf of Plaintiff, the People
7 of the State of California, *ex rel.* Mark D. Hensley, City Attorney (“Plaintiff”), and CENTER INT’L
8 INVESTMENTS, INC., a California Corporation (“CII”) (collectively, the “Parties”). Each of the
9 undersigned representatives certifies that he or she is fully authorized to enter into the terms and
10 conditions of this Agreement, and to execute and bind to this Agreement the entity which he or she
11 represents.

12 **1. RECITALS.** The Parties enter into this Agreement with reference to the following facts and
13 objectives:

- 14 **A.** On December 31, 2015, Plaintiff commenced an action against CII captioned *People of*
15 *the State of California, ex rel., Mark D. Hensley, City Attorney for the City of Monterey*
16 *Park v. Center Int’l Investments, Inc., and Does 1 through 25*, Los Angeles County
17 Superior Court, Case No. BC605788 (the “Action”).
- 18 **B.** In the Action, Plaintiff sought to abate a nuisance involving an unsafe, unsightly and
19 dangerous condition of real property in the City of Monterey Park, including an
20 unstable hillside (the “Nuisance”), located approximately between 1600-1688 West
21 Garvey Avenue and more particularly described in the Complaint in this case
22 (“Property”), and sought to recover the costs incurred by Plaintiff for abating such
23 nuisance from CII, the owners of said real property.
- 24 **C.** Because Plaintiff does not have land use authority within CITY’s jurisdiction, CITY has
25 agreed to act on Plaintiff’s behalf in order to resolve the Action in accordance with this
26 Agreement. Plaintiff believes that such action is in the public interest and consents to
27 CITY’s implementation of this Agreement on Plaintiff’s behalf.
- 28 **D.** The Parties previously executed a Settlement and Mutual Release dated April 25, 2017

1 (the “Original Agreement”). The Parties intend for the Original Agreement to be
2 merged and consolidated by reference into this Agreement. To the extent, however,
3 there is a conflict between the Original Agreement and this Agreement, the terms and
4 conditions of this Agreement will prevail.

- 5 **E.** CII seeks to develop the Property for residential uses. CII’s plan requires certain
6 discretionary approvals from CITY including, without limitation, a development
7 agreement and subdivision map. To implement its plan and resolve the Action, CII also
8 proposes to abate the Nuisance as part of its residential project (collectively, “Plan A”).
- 9 **F.** To resolve the Action, however, Plaintiff requires that CII also prepare a separate plan
10 that, if required to be implemented, only abates the Nuisance regardless of any
11 residential development (“Plan B”). Plan B may be voluntarily implemented by CII if
12 Plan A is not pursued by CII or approved by CITY by the deadline set forth in the
13 Project Schedule, as described below in Section 1(H) and attached as Exhibit “A,” and
14 incorporated by reference (the “Project Schedule”). Plan B may also be imposed by
15 Plaintiff and CITY under the circumstances contemplated in this Agreement.
- 16 **G.** During the time that Plan A is considered by CITY, CII must construct and maintain
17 erosion control and slope stabilization plans approved by CITY to temporarily abate the
18 Nuisance (“Interim Maintenance Program”). Such Winterization Measures must be
19 completed at CII’s cost and will be monitored by CITY (also at CII’s cost) to ensure
20 compliance.
- 21 **H.** The Project Schedule attached as Exhibit “A,” and incorporated by reference, provides
22 the critical path schedule for Plan A and Plan B as contemplated in this Agreement. CII
23 understands and agrees that absent good cause, as determined by CITY in its sole
24 discretion (and contemplated below), the Project Schedule will not be altered.
- 25 **I.** The Parties also understand and agree that a separate instrument dated December 11,
26 2018 and entitled “Planning and Processing Agreement” by and between CITY and CII
27 will govern the manner of processing Plan A and also how CII will reimburse CITY for
28 all costs associated with abating the Nuisance (“Processing Agreement”).

1 **2. SPECIFIC TERMS OF AGREEMENT AND RELEASES.** For and in consideration of the above-
2 referenced recitals and the promises and covenants contained in this Agreement, the Parties agree as
3 follows:

4 **A.** CII agrees to:

- 5 i. Abate the Nuisance as contemplated in this Agreement including, without
6 limitation, the Project Schedule, at its sole cost. While CII may abate the
7 Nuisance pursuant to Plan A and the Project Schedule, it must perform Plan B
8 should it fail to obtain CITY's approval for Plan A. CII's failure to voluntarily
9 perform Plan A (if approvals are granted) or Plan B will result in CITY
10 implementing Plan B on Plaintiff's behalf at CII's cost.
- 11 ii. Maintain the Interim Maintenance Program in accordance with CITY approved
12 plans and permit at CII's cost.
- 13 iii. Implement weed abatement measures in accordance with applicable law
14 including, without limitation, the Monterey Park Municipal Code, and at the
15 direction of CITY's Fire Marshal.
- 16 iv. Promptly remove debris in the public right-of-way that may slough off of the
17 Property. If CITY notification is required, within two business days after being
18 notified.
- 19 v. Remove graffiti within two business days after notification by CITY.
- 20 vi. Provide Plaintiff, in CITY'S name, a performance bond in a penalty amount set
21 forth in an operational memorandum, ancillary to this Agreement, to secure
22 performance of Plan B. The Parties understand that the penalty amount is an
23 engineering estimate based upon the industry-standard cost of plans and
24 specifications for Plan B. The actual cost for constructing Plan B may be more.
25 If the penalty amount of the performance bond is expended, CII will be liable to
26 Plaintiff and CITY for any excess costs associated with completing Plan B.
27 Upon determining the actual cost of the performance bond, CII must deliver to
28 the CITY an executed performance bond in a form prescribed in these

1 documents as security for the performance of Plan B. The surety issuing the
2 performance bond, and the form of the performance bond, are subject to the
3 approval of the CITY.

4 vii. CII grants to CITY an irrevocable license to enter onto the Property to inspect
5 and monitor compliance with this Agreement. CITY's authorized
6 representatives, including the Project Manager, may enter onto the Property as
7 reasonably required. CII agrees to hold CITY harmless and to defend and
8 indemnify CITY to the extent contemplated below for any claim or cause of
9 action arising from entry onto the Property. CITY will strive to provide 24-hour
10 notice to CII for any such entry onto the Property.

11 viii. Should CITY be required to implement Plan B, CII grants CITY an irrevocable
12 license to enter onto the Property to abate the Nuisance in accordance with this
13 Agreement. CII agrees that neither Plaintiff nor CITY will be required to obtain
14 an abatement warrant in accordance with applicable law in order to exercise
15 Plaintiff's rights, by and through CITY, to implement Plan B. Accordingly, CII
16 specifically waives any rights it may have to prevent CITY's access to the
17 Property under applicable law should it fail to voluntarily perform Plan B in
18 accordance with the Project Schedule.

19 ix. Indemnify and hold CITY harmless from and against any claim, action, damages,
20 costs (including, without limitation, attorneys' fees), injuries or liability arising
21 from and directly related to CITY's approval of Plan A or Plan B. Should CITY
22 be named in any suit, or should any claim be brought against it by suit or
23 otherwise, whether the same be groundless or not, arising out of CITY approval
24 of Plan A or Plan B, CII agrees to defend CITY (at CITY's request and with
25 counsel satisfactory to CITY) and will indemnify CITY for any judgment
26 rendered against it or any sums paid out in settlement or otherwise. For purposes
27 of this Section, "CITY" includes Plaintiff, CITY's elected officials, appointed
28 officials, officers and employees.

- 1 **B.** CITY agrees to:
- 2 i. Process Plan A as contemplated by and according to the Project Schedule.
- 3 ii. Provide a project team to process Plan A, the Interim Maintenance Program, and
- 4 (if required) implement Plan B (the project team is collectively referenced as
- 5 “Project Manager”). The cost of such project team will be borne solely by CII.
- 6 iii. For good cause shown, such as a delay in CITY reviewing CII’s proposed
- 7 development plans, CITY processing or issuing a grading or building permit, or
- 8 because of unusual inclement weather impeding construction, the Project
- 9 Manager may extend the time set forth in the Project Schedule by a period of
- 10 time equal to the length of the delay. Such an extension of time must be in
- 11 writing, executed by both Parties, and included as an operational memorandum
- 12 ancillary to this Agreement.

13 **3. DEFAULT; COURT ORDER.**

- 14 **A.** If CII fails to perform its obligations under this Agreement, it will be in default. CITY
- 15 may, but is not required to, provide CII with a five day notice to cure its default. In the
- 16 event of CII’s default, Plaintiff may lodge with the Court for immediate entry against
- 17 CII the Stipulated Judgment attached as Exhibit “B,” and incorporated by reference.
- 18 **B.** Nothing in this Agreement obligates CITY to exercise its discretion in any particular
- 19 manner with respect to Plan A. Any exercise of CITY’s discretion regarding Plan A in
- 20 accordance with applicable law cannot be deemed to constitute a breach of Plaintiff’s
- 21 duties under this Agreement.
- 22 **C.** CII waives any and all rights of notice and hearing, except as otherwise expressly
- 23 provided by this Agreement that it may have under the principles of *Rooney v. Vermont*
- 24 *Investment Corp.* (1973) 10 Cal.3d 351 or otherwise concerning the Stipulated
- 25 Judgment. CII also agrees to forever waive the right to move for a new trial, to request
- 26 findings of fact and conclusions of law, and/or to appeal from the Stipulated Judgment.
- 27 **D.** The Parties expressly agree that this Agreement is admissible to enforce this settlement
- 28 pursuant to Evidence Code § 1123.

1 **E.** Pursuant to Code of Civil Procedure § 664.6, the Parties request and agree that the
2 Court retain jurisdiction over the Parties to enforce this Agreement until there is full
3 performance.

4 **4. MUNICIPAL POWERS.** Nothing in this Agreement is intended to, nor can it, act as a limitation
5 on CITY's present or future exercise of municipal powers in accordance with the California Constitution
6 and applicable law.

7 **5. LEGAL ADVICE.** Each Party warrants and represents that in executing this Agreement, each Party
8 sought legal advice from the attorney of its choice, that the terms of this Agreement and its consequences
9 were completely read and explained to each Party by that attorney, and that each Party fully understands the
10 terms of this Agreement.

11 **6. FULL DISCLOSURE.** Each Party acknowledges and represents that each Party was apprised of all
12 relevant information and data relevant to this Agreement, including, without limitation, future risks,
13 complications, and costs. Each Party further acknowledges and represents that, in executing this Agreement,
14 the Party has not relied on any inducements, promises, or representations made by the other Party or any
15 representative of the other Party.

16 **7. WAIVER.** CITY's acceptance of payment from CII under this Agreement or the Processing
17 Agreement and CII's acceptance of approval for Plan A by the City Council will not be construed to
18 operate as a waiver of any rights the Parties may have under this Agreement or of any cause of action
19 arising from their performance. A waiver by either Party of any breach of any term, covenant, or
20 condition contained in this Agreement will not be deemed to be a waiver of any subsequent breach of
21 the same or any other term, covenant, or condition contained in this Agreement, whether of the same or
22 different character.

23 **8. WAIVER OF APPEAL.** Notwithstanding any other part of this Agreement or applicable law, under
24 no circumstances may CII appeal the design, cost, construction, or any other implementation of the
25 Interim Maintenance Measures or Plan B by CITY to any of CITY's legislative bodies or to any court
26 of competent jurisdiction. CII specifically waives any rights it may have to perfect such appeals in order
27 to compromise and settle the Action through this Agreement and, specifically, to induce Plaintiff and
28 CITY to consider Plan A as an alternative to abating the Nuisance.

1 **9. NOTICES.** All communications to either Party by the other Party must be in writing and will be
2 deemed made when received by such Party at its respective name and address as follows:

3 CITY

4 Karl H. Berger, Assistant City Attorney
5 City of Monterey Park
6 320 W. Newmark Ave
7 Monterey Park, CA 91754

CII

Center Int'l Investments, Inc.
Attn: Karrie On
Chief Executive Officer
501 West Garvey, Suite 207
Monterey Park, CA 91754

8 With copies to:

9 Sheppard Mullin Richter & Hampton LLP
10 Attn: Alfred Fraijo Jr.
11 333 South Hope Street, 43rd Floor
12 Los Angeles, CA 90071-1422

13 Any such written communications by mail will be conclusively deemed to have been received by the
14 addressee upon deposit thereof in the United States Mail, postage prepaid and properly addressed as
15 noted above. In all other instances, notices will be deemed given at the time of actual delivery.

16 Changes may be made in the names or addresses of persons to whom notices are to be given by giving
17 notice in the manner prescribed in this Section.

18 **10. INTERPRETATION.** This Agreement was drafted in and will be construed in accordance with
19 the laws of the State of California, and exclusive venue for any action involving this Agreement will be
20 in Los Angeles County.

21 **11. ENTIRE AGREEMENT.** This Agreement sets forth the entire understanding of the Parties. There
22 are no other understandings, terms or other agreements, expressed or implied, oral or written.

23 **12. RULES OF CONSTRUCTION.** Each Party had the opportunity to independently review this
24 Agreement with legal counsel. Accordingly, this Agreement will be construed simply, as a whole, and
25 in accordance with its fair meaning; it will not be interpreted strictly for or against either Party.

26 **13. SEVERABILITY.** If any portion of this Agreement is declared by a court of competent
27 jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent
28 necessary in the opinion of the court to render such portion enforceable and, as so modified, such
portion and the balance of this Agreement will continue in full force and effect.

14. ELECTRONIC SIGNATURES. This Agreement may be executed by the Parties on any number
of separate counterparts, and all such counterparts so executed constitute one agreement binding on all

1 the Parties notwithstanding that all the Parties are not signatories to the same counterpart. In
2 accordance with Government Code §16.5, the Parties agree that this Agreement, agreements ancillary
3 to this Agreement, and related documents to be entered into in connection with this Agreement, will be
4 considered signed when the signature of a party is delivered by electronic transmission. Such
5 electronic signature will be treated in all respects as having the same effect as an original signature.

6 **15. CAPTIONS.** The captions of the Sections of this Agreement are for convenience of reference only
7 and will not affect the interpretation of this Agreement.

8 **16. TIME IS OF ESSENCE.** Time is of the essence for each and every provision of this Agreement.
9

10 **Plaintiff the People of the State of California**

11 Dated:

By: Karl H. Berger for ex rel., Mark D. Hensley, City Attorney

13 **City of Monterey Park**

14 Dated:

Ron Bow, City Manager

16 **Defendant Center Int'l Investments, Inc.**

17 Dated: 3/22/19

Karrie On
By: Karrie On, Chief Executive Officer

1 the Parties notwithstanding that all the Parties are not signatories to the same counterpart. In
2 accordance with Government Code §16.5, the Parties agree that this Agreement, agreements ancillary
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6 **15. CAPTIONS.** The captions of the Sections of this Agreement are for convenience of reference only
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8 **16. TIME IS OF ESSENCE.** Time is of the essence for each and every provision of this Agreement.

9
10 **Plaintiff the People of the State of California**

11 Dated: 3/22/2019

12 
By: Karl H. Berger for *ex rel.*, Mark D. Hensley, City Attorney

13 **City of Monterey Park**

14 Dated:

15 
Ron Bow, City Manager

16 **Defendant Center Int'l Investments, Inc.**

17 Dated:

18 _____
By: Karrie On, Chief Executive Officer

Option 2(A) Timeline¹:

Residential Development (Plan A) with Slope Stabilization (Plan B)

17 SFD's/14 Condos – Complying w/R3 Zoning

Updated 4-1-19

- 01/29/19 – First oversight meeting with Project Manager² [CII/City] (*Complete*)
- 02/22/19 – Temporary winterization abatement to be confirmed [CII/City].
- 02/22/19 – Investors' review and comments regarding onsite street design and building footprints [CII]
- 02/25/19 – Rejection of Plan B documents as incomplete and unusable. CII has until 3/18/2019 to submit usable Plan B documents or City will design Plan B at CII's cost. [CII/City]
- 02/25/19 – Commencement of new site grading and preliminary wall analysis per new building footprints and onsite street profile [CII]
- 03/07/19 – CII's geotechnical consultant to complete its portion of work on Plan B [CII]
- 03/11/19 – Applicant commences drafting IS/EIR for City review [CII]
- 03/18/19 – Either usable Plan B documents submitted by CII or City commences design of Plan B documents at CII cost. [CII/City]
- 03/18/19– Meeting re Preliminary Residential Development design status and Plan B with Project Manager [CII/City]
- 03/18/19 – Completion of new site grading and preliminary wall analysis per new building footprints and onsite street profile [CII]
- 03/19/19 - Commencement of MSE wall, upper retaining wall preliminary designs, and update of soil report (incorporate cross sections) [CII]
- 03/28/19 - Either usable revised Plan B documents submitted by CII by 5pm or City commences design of Plan B documents at CII cost. [CII/City]
- 04/08/19 – Proposed Residential Development Design meeting with Project Manager [CII/City]
- 04/28/19 – Plan B Document Review Completed by City [City]
- 04/30/19 – Project Application documents status meeting with Project Manager [CII/City]
- 05/13/19 – File Project application with City [CII]

¹ Substantial compliance required; Project Manager may determine reasonableness of any proposed alteration by CII.

² City Project Manager may determine check-in meetings in his discretion.

³ Schedule assumes no DRB will be required, this process will be folded into the Planning Commission hearing.

05/13/19 – File tentative map (TM) application with City [CII]

05/13/19 - Screencheck IS/EIR submitted to City [CII]

05/21/19 – City determination regarding Project application completeness [City]

05/21/19 – NOP issued for 30-Day Review of Initial Study [City]

06/24/19 - City returns comments on Screencheck IS/EIR [City]

06/30/19 – Submit draft Development Agreement (DA) to City [CII]. Discussions and revisions between City and CII re DA to be completed no later than 03/13/20. [CII/City]

08/08/19 – Draft EIR submitted to City [CII] (Tony Locacciato)

09/12/19 – City returns comments on Draft EIR [City]

9/30/19 – Winterization stabilization complete [CII]

10/10/19 – Applicant submits revised Draft EIR in response to City comments [CII]

11/14/19 – Completion of City review of Draft EIR [City]

11/15/19 – Publish DEIR/Notice of Availability/Notice of Completion for Circulation (30 days) [City]

01/31/20 – Prepare response to comments on DEIR [CII]

02/7/20 – Submit Final EIR with Draft EIR comments addressed [CII]

03/6/20 – City completes review of Final EIR [City]

03/13/20 – City staff approval of TM/DA/Final EIR [City]

04/14/20 – Planning Commission public hearing [City]³

05/06/20 – City Council hearing: first reading (Plan A-DA ordinances) [City]

05/06/20 – *If City Council denies Residential Development Project (Plan A) – Plan B Slope Stabilization Mobilization commences [CII/City]*

05/20/20 – City Council: second reading (Plan A) [City]

05/21/20 – File Notice of Determination – 30 Day Period [City]

06/22/20 – Horizontal permits issued and Horizontal improvements commence [City/CII]

06/22/20 – Prepare Building Design package for submittal for Residential Development Project (Plan A) Building Permits [CII]

11/25/20 – *If no go for Plan A: Plan B Slope Stabilization complete per City approved plan [CII]*

11/30/20 – Submit Building Design package for approval for Building Permits [CII]

12/30/20 – Completion of City review of Architectural Design Package – Project ready for Building Permits [City]

03/31/21 – Stabilization complete for the overall Residential Development Project [CII]

07/20/21 – Project complete – Horizontal Improvements [CII]

TBD – Construction of Homes Commences – Phase 1

1 **SECOND AMENDED AND RESTATED SETTLEMENT AGREEMENT BETWEEN**
2 **THE CITY OF MONTEREY PARK AND**
3 **CENTER INTERNATIONAL INVESTMENTS, INC.**

4 THIS SECOND AMENDED AND RESTATED SETTLEMENT AGREEMENT (this
5 “Agreement”) is entered into this 8th day of June 2020 by and between the CITY OF MONTEREY
6 PARK, a general law city and municipal corporation (“CITY”) acting on behalf of Plaintiff, the People
7 of the State of California, *ex rel.* Mark D. Hensley, City Attorney (“Plaintiff”), and CENTER INT’L
8 INVESTMENTS, INC., a California Corporation (“CII”) (collectively, the “Parties”). Each of the
9 undersigned representatives certifies that he or she is fully authorized to enter into the terms and
10 conditions of this Agreement, and to execute and bind to this Agreement the entity which he or she
11 represents.

12 **1. RECITALS.** The Parties enter into this Agreement with reference to the following facts and
13 objectives:

- 14 **A.** On December 31, 2015, Plaintiff commenced an action against CII captioned *People of*
15 *the State of California, ex rel., Mark D. Hensley, City Attorney for the City of Monterey*
16 *Park v. Center Int’l Investments, Inc., and Does 1 through 25*, Los Angeles County
17 Superior Court, Case No. BC605788 (the “Action”).
- 18 **B.** In the Action, Plaintiff sought to abate a nuisance involving an unsafe, unsightly and
19 dangerous condition of real property in the City of Monterey Park, including an
20 unstable hillside (the “Nuisance”), located approximately between 1600-1688 West
21 Garvey Avenue and more particularly described in the Complaint in this case
22 (“Property”), and sought to recover the costs incurred by Plaintiff for abating such
23 nuisance from CII, the owners of said real property.
- 24 **C.** Because Plaintiff does not have land use authority within CITY’s jurisdiction, CITY has
25 agreed to act on Plaintiff’s behalf in order to resolve the Action in accordance with this
26 Agreement. Plaintiff believes that such action is in the public interest and consents to
27 CITY’s implementation of this Agreement on Plaintiff’s behalf.
- 28 **D.** The Parties previously executed a Settlement and Mutual Release dated April 25, 2017

1 (the "Original Agreement"). The Parties then entered into the *First Amended and*
2 *Restated Settlement Agreement Between the City of Monterey Park and Center*
3 *International Investments, Inc.* (the "First Amended Agreement") on March 22, 2019.
4 The Parties intend for the Original Agreement and the First Amended Agreement to be
5 merged and consolidated by reference into this Agreement. To the extent, however,
6 there is a conflict between the Original Agreement, the First Amended Agreement, and
7 this Agreement, the terms and conditions of this Agreement will prevail.

- 8 **E.** As previously stated in the Original Agreement and the First Amended Agreement, CII
9 seeks to develop the Property for residential uses. CII's plan requires certain
10 discretionary approvals from CITY including, without limitation, a development
11 agreement and subdivision map. To implement its plan and resolve the Action, CII also
12 proposes to abate the Nuisance as part of its residential project ("Plan A").
- 13 **F.** To resolve the Action, however, Plaintiff required that CII also prepare a separate plan
14 that, if required to be implemented, only abates the Nuisance regardless of any
15 residential development ("Plan B"). Under the Original Agreement and the First
16 Amended Agreement, Plan B could be voluntarily implemented by CII if Plan A was
17 (1) not pursued by CII or (2) not approved by CITY by the deadline set forth in the
18 Project Schedule that had been attached to the First Amended Agreement.
- 19 **G.** Since the execution of the First Amended Agreement, CII has made progress toward the
20 implementation of Plan A. However, due to additional delays, the Parties are entering
21 into this Agreement to, among other things, amend the Project Schedule as described
22 below in Section 1(l) and attached as **Exhibit "A,"** and incorporated by reference (the
23 "Amended Project Schedule"). As in both the Original Agreement and the First
24 Amended Agreement, Plan B may also be implemented by Plaintiff and CITY under the
25 circumstances contemplated in this Agreement.
- 26 **H.** During the time that Plan A is considered by CITY, CII must construct and maintain
27 erosion control and slope stabilization plans approved by CITY to temporarily abate the
28 Nuisance ("Interim Maintenance Program"). The Interim Maintenance Program must be

1 completed at CII's cost and will be monitored by CITY (also at CII's cost) to ensure
2 compliance.

3 I. The Amended Project Schedule attached as Exhibit "A," and incorporated by reference,
4 provides the critical path schedule for Plan A and Plan B as contemplated in this
5 Agreement. CII understands and agrees that absent Good Cause, as determined by
6 CITY in its sole discretion (and contemplated below), the Amended Project Schedule
7 will not be altered. "Good Cause" shall mean demonstrated progress and effort by CII
8 in its performance, delays attributable to the CITY's review of Plan A project materials,
9 CITY processing or issuing a grading or building permit, or because of unusual
10 inclement weather impeding construction.

11 J. The Parties also understand and agree that a separate instrument dated December 11,
12 2018 and entitled "Planning and Processing Agreement" by and between CITY and CII
13 will govern the manner of processing Plan A and also how CII will reimburse CITY for
14 all costs associated with abating the Nuisance ("Processing Agreement").

15 **2. SPECIFIC TERMS OF AGREEMENT AND RELEASES.** For and in consideration of the above-
16 referenced recitals and the promises and covenants contained in this Agreement, the Original Agreement,
17 and the First Amended Agreement (to the extent not altered by this Agreement), the Parties agree as
18 follows:

19 A. CII agrees to:

20 i. Cause liens to be recorded, in favor of CITY, on real property that is valued in
21 the amount of at least \$ 6.8 million (the "Liens"). The Parties understand that the
22 amount of the Liens (\$6.8 million) is an engineering estimate based upon the
23 industry-standard cost of work for Plan B. The Liens shall be documented
24 through a Performance Deed of Trust on each of the real properties that CII is
25 using to satisfy its obligations. A form of the Performance Deed of Trust is
26 attached hereto as Exhibit "B."

1 ii. Complete either Plan A or Plan B by the dates set forth in the Amended Project
2 Schedule and proceed in accordance with the interim deadlines contained
3 therein.

4 **B.** CII, CITY and Plaintiff agree that:

5 i. CII shall follow the Amended Project Schedule attached hereto as Exhibit "A,"
6 which hereby supersedes any prior Project Schedules attached to the Original
7 Agreement and/or the First Amended Agreement. The Amended Project
8 Schedule may be amended by agreement between CII, CITY, and Plaintiff
9 without further need to amend this Settlement Agreement.

10 ii. The scope and/or timing and implementation of Plan B may change subject to
11 the Parties mutual agreement and CITY approval.

12 iii. The document attached hereto as Exhibit "C" is a true and correct copy of the
13 project that will be implemented as Plan A and such project will serve to abate
14 the Nuisance at the Property.

15 iv. Staff for the City have reviewed Plan A and have accepted the plan as complete
16 for purposes of taking final action upon completion of the environmental study.

17 v. In the event that Plan B is not underway by the deadline set forth in the
18 Amended Project Schedule, CITY may (1) enter the Property, abate the
19 Nuisance, and/or complete Plan B, and (2) foreclose on the Liens recorded in its
20 favor pursuant to Section 2(A)(i) to recover the cost of completing Plan B. In
21 the event that the actual completion cost is less than the amounts recovered by
22 CITY through the foreclosure of the Liens, CITY will return all sums recovered
23 exceeding the actual cost of completion of Plan B to CII.

24 **C.** CITY agrees to:

25 i. CITY consents to the cancellation of the performance bond in the amount of
26 \$1,000,000 that CII previously secured with respect to the slope stabilization
27 work.
28

EXHIBIT A

Option 2(A) Timeline:

Residential Development (Plan A) with Slope Stabilization (Plan B/B2)

Updated 06/01/20

- 05/22/20 – File Plan A Project Application with City [CII] **Received**
- 05/22/20 – File Plan A vesting tentative map (VTM) application with City [CII] **Received (6/1)**
- 05/29/20 – Submit Specific Plan to City [CII] **Received**
- 05/29/20 – Screencheck IS/EIR submitted to City [CII] **Received**
- 05/29/20 – NOP issued for 30-Day Review of Initial Study [City] **Draft Received**
- 06/22/20 – City determination regarding Project application completeness [City]
- 07/10/20 – Submit Draft EIR [CII]
- 07/10/20 – Publish DEIR/Notice of Availability/Notice of Completion for Circulation (30 days) [City]
- 08/21/20 – Submit Final EIR with Draft EIR comments addressed [CII]
- 09/28/20 – City staff approval of VTM/DA/Final EIR/Specific Plan [City]
- 10/13/20 – Planning Commission Hearing [City]
- 11/04/20 – City Council hearing: first reading [City]
- 11/05/20 – *If City Council denies Residential Development Project – Plan B2 Slope Stabilization Mobilization commences [CII/City]*
- 12/02/20 – City Council hearing: second reading [City]
- 01/02/21 – Ordinance Effective [City]
- 01/15/21 – Horizontal permits issued [City]
- 02/02/21 – Final Map Recorded [City]
- 03/02/21 – File Writ Period Ends [City]
- 03/08/21 – Mobilize for Horizontal Improvements [CII]
- 04/05/22 – *If no go for Residential Development Project: Plan B2 Slope Stabilization complete per City approved plan [CII]*
- 09/08/22 – Stabilization complete for the overall Residential Development Project [CII]

Exhibit B

RESOLUTION NO. 12255

A RESOLUTION ADOPTED PURSUANT TO PUBLIC CONTRACTS CODE § 20168 FINDING THAT AN EMERGENCY EXISTS WITHIN THE CITY AND AUTHORIZING CONTRACTING WITHOUT THE NEED FOR BIDDING PURSUANT TO § 22050 AND MONTEREY PARK MUNICIPAL CODE (“MPMC”) CHAPTER 2.52.

The City Council does resolve as follows:

SECTION 1: The City Council finds and declares as follows:

- A. Pursuant to Public Contracts Code (“PCC”) § 20168, the City Council may, upon a four-fifths vote, declare that public interest and necessity demand the immediate expenditure of public money to safeguard life, health, or property because of an emergency.
- B. In accordance with PCC §§ 20168 and 22050, the City Council may repair or replace a public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services, and supplies for those purposes, without giving notice for bids to let contracts.
- C. Real property located at 1688 West Garvey Avenue (the “Property”) constitutes a public nuisance as set forth in a lawsuit filed December 31, 2015 by the City Attorney (*People ex rel. Mark D. Hensley, City Attorney v. Center International Investments, Inc.*, LASC Case No. BC605788). A more complete background of the Property including, without limitation, the City’s previous installation of infrastructure is set forth in attached Exhibit “A,” which is incorporated by reference (the “History”).
- D. On April 25, 2017, the City entered into an initial settlement agreement with the property owner which includes a plan for a long-term solution to the Property. This was amended on March 22, 2019 and again on June 8, 2020 (collectively, the “Settlement Agreement”). In short, the Settlement Agreement requires the owner of the Property to stabilize the hillside through a series of retaining walls and other geotechnical solutions (the “Project”).
- E. On June 16, 2021, the City Council considered a proposed residential development (the “Goodviews Development”) that would, in part, abate the public nuisance by utilizing the Project. The Settlement Agreement requires that the Project be completed by April 5, 2022 if the Goodviews Development is not approved by the City Council; the Project must be completed not later than September 8, 2022 if the Goodviews Development is approved by the City Council.

- F. In an abundance of caution, the City Council believes it is in the public interest to ensure that the Project is complete as required by the Settlement Agreement. If the Property owner fails to take substantive efforts to complete the Project by the deadlines set forth in the Settlement Agreement, then the City will assume responsibility for completing the Project at the Property owner's cost (as set forth in the Settlement Agreement). Accordingly, the City Council finds it to be in the public interest to authorize the City Manager to take the actions set forth in this Resolution.
- G. Standard formal bidding to procure a contractor to complete the Project by April 5, 2022 or, at the latest, September 8, 2022 would take up to three months to complete and potentially further delay completion of the Project. The temporary measures identified in the Settlement Agreement that are intended to maintain the Property's stability have been in place since early 2016. These must be replaced with permanent solutions. Further delay will exacerbate the public nuisance already present on the Property as set forth in the Settlement Agreement and further described in the History. This constitutes an emergency as contemplated by Public Contracts Code § 20168.
- H. Under such conditions, the City Council finds that the delay resulting from public bidding would imperil essential public services needed to protect public health and safety and it is in the public's interest to complete procurement of a new contractor in the most expedient fashion.

SECTION 2: Environmental Assessment. The environmental assessment set forth in the Resolution certifying the *Final Environmental Impact Report 1688 West Garvey Avenue Project* (State Clearinghouse No. 2020070419), adopted June 16, 2021, is incorporated by reference. Further, the City Council's actions are exempt from additional CEQA review as they are being made to protect public and private property and necessary to maintain services essential to the public, health and welfare (see *Ca/Beach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4th 529: CEQA findings regarding an anticipated imminent emergency are valid).

SECTION 3: Declaration of Emergency; Authorization. In adopting this Resolution, the City Council takes the following actions:

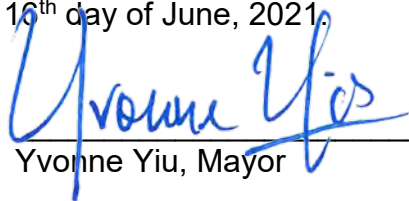
- A. Based upon the entirety of the administrative record including, without limitation, the staff report and presentation for the Goodviews Development, the City Council finds that an emergency exists as to abating the Property which constitutes an imminent threat to public health and safety that requires immediate action.
- B. If, based upon the sole discretion of the City Manager, the Property's

owner fails to commence substantive progress toward completing the Project as required by the Settlement Agreement by August 1, 2021, then the City Council authorizes the City Manager to bid the Project in accordance with MPMC Chapter 3.100; to select an appropriate contractor based upon the bid results; and execute a contract, in a form approved by the City Attorney, with the best qualified contractor. While MPMC Chapter 3.100 should be used for competitive selection of an appropriate contractor, all contracts may be awarded and executed in accordance with PCC § 22050 and MPMC Chapter 2.52.

- C. The City Manager and City Attorney are authorized to undertake all actions required to recover the City's costs related to the Project as authorized by the Settlement Agreement and applicable law.

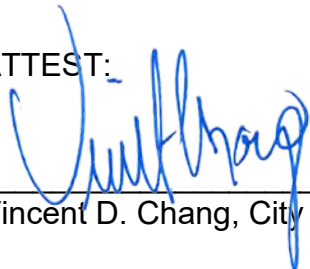
SECTION 4: This Resolution will become effective immediately upon adoption and remain effective unless superseded by a subsequent resolution.

PASSED AND ADOPTED this 16th day of June, 2021



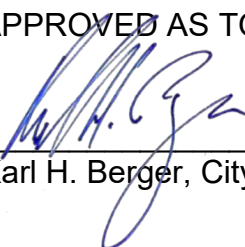
Yvonne Yiu, Mayor

ATTEST:



Vincent D. Chang, City Clerk

APPROVED AS TO FORM:



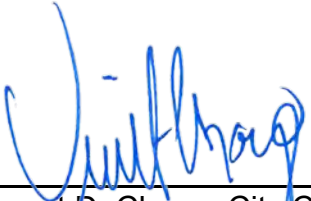
Karl H. Berger, City Attorney

State of California)
County of Los Angeles) §.
City of Monterey Park)

I, Vincent D. Chang, City Clerk of the City of Monterey Park, California, do hereby certify that the foregoing Resolution No. 12255 was duly and regularly adopted by the City Council of the City of Monterey Park at a regular meeting held on the 16th day of June, 2021, by the following vote:

Ayes: Council Members: Chan, Liang, Sornoso, Lo, Yiu
Noes: Council Members: None
Absent: Council Members: None
Abstain: Council Members: None

Dated this 16th day of June 2021.



Vincent D. Chang, City Clerk
Monterey Park, California

Exhibit A

1688 West Garvey Nuisance Abatement

The Project site was originally approved for development in 1978 and 1979 for 31 residential dwelling unit. That original project was developed by the Good Views Land Development Company. Consequently, during the 40 years since that time, the Project site is commonly referenced as the “Good Views” property.

The Good Views property is historically unstable. In 1983, Garvey Avenue was damaged and blocked by a slope failure resulting in the City taking emergency action to construct various soil stabilization and drainage infrastructure. In 1986, the City entered into an agreement with the Good Views developer to construct permanent structures intended to stabilize the hillside that was to be completed by December 5, 1986. In 1987, 1988, and 1989, a number of City consultants advised the City regarding what measures were required to stabilize the hillside. The Good Views property owner failed to implement any of those recommendations. As a result, the City in 1991 issued a notice of violation to Good Views that the Project site constituted a public nuisance requiring abatement.

After providing notice on an annual basis, the City in 1994 was unable to contact Good Views representatives. It is unclear what happened to Good Views by that time. In 1997, the City Council declared the property to be a public nuisance and commenced abating the property. Among other things, it installed a gate on the abandoned private road. The City took additional abatement action in 2000 and 2002. In sum, the City expended an estimated \$200,000 to \$300,000 to abate nuisances on the property in the years before 2013.

Starting in 2013, the City again undertook various code enforcement actions against the new property owner¹ of 1600-1688 West Garvey Avenue. Among other things, the City directed the property owner to submit an erosion plan; remove trash, junk and debris; abate weeds and overgrown vegetation; and maintain slope drainage. Between 2013 and 2015, the City issued six different administrative citations regarding the property in response to various issues related to the property including, without limitation, a tree that fell onto West Garvey Avenue in 2014 that both blocked the street and brought down power lines owned by Southern California Edison.

Concerned that the El Niño storms in 2015 would result in significant slope failure at the property, the City filed a civil lawsuit against the property owner to abate the nuisances on the property.² That lawsuit allowed the City to immediately take action to temporarily stabilize the hillside. Those efforts, however, did not constitute a permanent solution to the overall issue of hillside stability.

¹ Center International Investments, Inc. or “CII.”

² *People ex rel. Mark D. Hensley, City Attorney v. Center International Investments, Inc.* (filed December 31, 2015) LASC Case No. BC605788.

On April 25, 2017,³ the City entered into a settlement agreement with the property owner which includes a plan for a long-term solution to the hillside. In short, the Settlement Agreement requires the property owner to stabilize the hillside through a series of retaining walls and other geotechnical solutions. This can be accomplished in one of two ways. “Plan A” is for the hillside stabilization to occur via developing the site with residential homes. Under Plan A, the hillside stabilization would be incorporated into the overall design and construction of that residential development. Any such development, however, requires the discretionary approval of the City Council.

“Plan B” is the hillside stabilization project without the residential development. This must be accomplished regardless of whether the City Council approves the Plan A residential project and must be completed in 2022. If the property owner fails to complete Plan B voluntarily, then the City will complete that project at the property owner’s cost; the City secured \$6,800,000 from the property owner to ensure the City is reimbursed.

³ This was amended on March 22, 2019 and again on June 8, 2020.

Exhibit C

CITY OF MONTEREY PARK

320 West Newmark Avenue • Monterey Park • California 91754-2896
www.montereypark.ca.gov



City Council

Yvonne Yiu
Henry Lo
Fred Sornoso
Hans Liang
Peter Chan

City Clerk

Vincent D. Chang

City Treasurer

Joseph Leon

August 25, 2021

Sent via First Class U.S. Mail and Certified Mail

Center Int'l Investments, Inc.
Attn: Karrie On, Chief Executive Officer
501 West Garvey, Suite 207
Monterey Park, CA 91754

Re: **Notice of Breach – Opportunity to Cure**
1688 Garvey Avenue aka the “Goodviews” project

Dear Ms. On:

As you are aware, on June 16, 2021 the City Council adopted Resolution No. 12255. Section 3 of that Resolution delegated authority to me for determining whether CII was making substantive progress toward completing Plan B as required by the Settlement Agreement. CII's deadline was August 1, 2021.

Despite repeated efforts by the City's representatives, CII's team failed to even obtain a grading permit to commence work on Plan B. Indeed, the City still has not received all of the plans needed to issue permits. It is apparent that CII is in breach of the Settlement Agreement. Consequently, I am selecting a contractor to complete the Plan B construction on the City's behalf in accordance with Resolution No. 12255.

Since the selection of a contractor will take a few days, the City is offering CII a five day opportunity to cure. Accordingly, all required documents must be filed with the City – and a grading permit must be issued – not later than end of business on August 31, 2021.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ron Bow".

Ron Bow
City Manager

C: Honorable Mayor, Mayor Pro Tem, and City Councilmembers
Karl H. Berger, City Attorney
Mr. Alfred Fraijo, Jr., Esq.

CITY OF MONTEREY PARK

320 West Newmark Avenue • Monterey Park • California 91754-2896
www.montereypark.ca.gov



City Council
Yvonne Yiu
Henry Lo
Fred Sornoso
Hans Liang
Peter Chan

City Clerk
Vincent D. Chang

City Treasurer
Joseph Leon

October 13, 2021

Sent via First Class U.S. Mail and Certified Mail

Center Int'l Investments, Inc.
Attn: Karrie On, Chief Executive Officer
501 West Garvey, Suite 207
Monterey Park, CA 91754

Re: **Notice of Default**
Assumption of Nuisance Abatement Project
1688 Garvey Avenue aka the "Goodviews" project

Dear Ms. On:

This letter is to inform you that Center Int'l Investments, Inc.'s ("CII") is in **DEFAULT** of its Settlement Agreement with the City. Consequently, the City is exercising its ability to complete the nuisance abatement project identified as "Plan B." Additionally, the City will be separately and independently settling the lawsuit identified as *Save Our Slopes v. City of Monterey Park, et al.* (filed July 21, 2021) LASC Case No. 21STCP02365 (the "Writ Action"). This letter outlines the "next steps" regarding this matter and CII's options.

As to CII's default:

- On August 25, 2021, CII was informed that it was in breach of the Settlement Agreement and given a five-day opportunity to cure. To cure the breach, CII was required to obtain a grading permit not later than end of business on August 31, 2021. That did not occur. Indeed, CII did not submit all documentation required for grading permits until September 23, 2021.
- As a result of the August 25th letter, CII's counsel and the City Attorney engaged in several phone conversations. The City Attorney was assured by CII's counsel that the City would receive a payment schedule demonstrating CII's ability to compensate its proposed contractor for completing Plan B. Despite written assurance on September 8, 2021 from CII's counsel that this information would be forthcoming "soon," it is now more than a month later with no further communication regarding the matter.

Confirmation Services	Package ID: 9489009000276351235715	Electronic Certified
	Destination ZIP Code: 91754	First Class Letter
	Customer Reference:	PBP Account #: 17749797
	Recipient: <u>Ath-Karrie On - Center Int'l Investments</u>	Serial #: 0378191
	Address: <u>501 W. Garvey Ave, Ste. 207</u>	OCT 14 2021 1:52 PM
	<u>Monterey Park, CA 91754</u>	

- On July 20, 2021, the City tendered the defense and indemnification in the Writ Action. The City Attorney specifically asked “[i]f you need something on letterhead, please let me know.” No such request was made and the City proceeded with the understanding that CII would honor its obligations under the Settlement Agreement and the Development Agreement (DA-21-01) approved for the 1688 West Garvey Avenue project (aka “Plan A”). On or about September 20, 2021, CII’s counsel informed the City Attorney’s office that CII had NOT assumed the defense of this matter. By correspondence dated September 21, 2021, CII’s counsel asserted that it would determine whether that could occur using CII’s law firm. There has been no subsequent communication regarding this matter.
- CII is obligated to pay all costs related to the Settlement Agreement including, without limitation, consultant, contractor, and legal costs. A review of the City’s accounts shows that CII is in arrears by \$126,932.74 as of today’s date.

Note that this is not a comprehensive list of CII’s breaches of the Settlement Agreement; there are multiple breaches. It is the culmination of such breaches that makes it apparent that the City must take the actions identified in this letter to abate the nuisances identified in the Settlement Agreement.

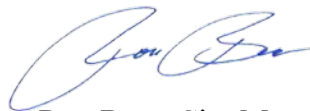
Because of CII’s default, the City is assuming control over completing Plan B in accordance with the Settlement Agreement. CII is to take no further action regarding Plan B. The City will be selecting a contractor on or about October 28, 2021.

Additionally, take notice that the City is assuming control over all aspects of its separate settlement negotiations in the Writ Action. While CII remains obligated to reimburse the City’s legal costs in the Writ Action, the City Attorney’s office will complete a settlement of the matter on the City’s behalf. Do not interfere with its efforts.

If CII wishes to avoid the City foreclosing on the properties identified in the Performance Deed of Trust, it may provide an alternative financing plan within 10 business days from the date of this letter. Such financing plan must reflect the total contract amount, plus contingency (10%), from the proposal selected by the City on or about October 28, 2021. Otherwise, the City will be filing the Stipulated Judgment (Exhibit B to the Settlement Agreement) with the Court (along with such modifications that are needed to reflect the current status of Plan B) and proceeding to foreclose on the properties in order to ensure that abatement costs associated with Plan B are reimbursed.

You may have your counsel contact the City Attorney if there are any questions.

Sincerely,



Ron Bow, City Manager

C: Honorable Mayor, Mayor Pro Tem, and City Councilmembers
Karl H. Berger, City Attorney
Mr. Alfred Fraijo, Jr., Esq.

Exhibit D





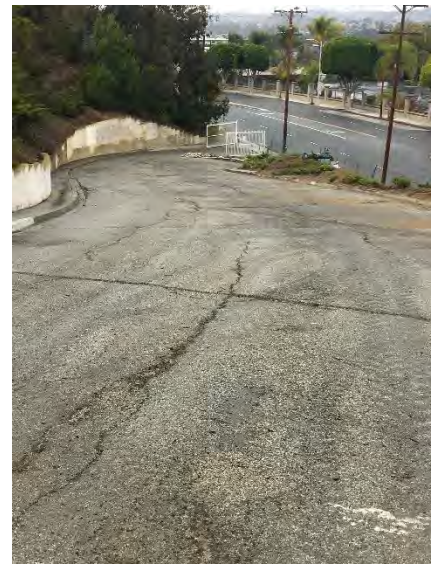


Exhibit E

PERTINENT SECTIONS OF THE MONTEREY PARK MUNICIPAL CODE

Section 4.10.010 General prohibition.

“(c) In addition to these criminal penalties, any condition caused or permitted to exist in violation of any of the provisions of this code is a public nuisance and may be abated in accordance with this code.”

Section 4.30.040 Public nuisance – Generally.

“Anything which is injurious to health, or is indecent, or offensive to the senses, or any obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use in the customary manner of any public park, square, street or highway, is a nuisance.”

Section 4.30.070 Abatement of nuisance.

“All or any part of a use or the condition of any property, including, without limitation, any use, or improvement, found to constitute a public nuisance, will be abated by rehabilitation, demolition, repair, cessation of use or a combination thereof, or in such other manner as designated in a nuisance abatement order, which is reasonably required to abate the public nuisance, pursuant to the procedures set forth in this chapter.”

4.30.090 Initiation of abatement proceedings.

"Whenever the city manager, or designee, reasonably believes a public nuisance exists, the city manager, or designee, may commence abatement proceedings under this chapter."

4.30.180 Urgency abatement.

"(a) Notwithstanding any other provision of this code, whenever the city manager, or designee, determines that a public nuisance exists and that such public nuisance constitutes an immediate threat or hazard or danger to persons or property, the city manager, without observing procedures set forth in this chapter with reference to public nuisance abatement, will forthwith immediately cause the abatement of such public nuisance in such manner as the city manager, or designee, determines is reasonably required.

(b) If the city manager, or designee, deems it feasible, the city manager, or designee, will attempt to give the owner and occupant, verbal notice of the existence of the public nuisance, and the proposed timing and method of abatement thereof. The city manager will, forthwith, report such circumstances to the city council.

(c) Except for abating unlawful fireworks, where abatement of a public nuisance is ordered by the city manager, the person abating such nuisance will, after completing the abatement of the public nuisance, comply with the provisions of this chapter.

(d) For abating fireworks that violate applicable law including, without limitation, Section 5.48.130 or 9.30.010 of this code; or California Fire Code Section 5614, as adopted by Section 17.02.130 of this code, the fire chief, or designee, may recover all costs incurred because of such abatement in accordance with Section 4.30.140 of this code. No additional notice is required."

4.30.130 City expenses—Record of costs.

The department director or designee will keep an account of the costs, including incidental expenses, of abating nuisance on each separate lot or parcel of land where the work is done. (Ord. 2129 § 6, 2016)

4.30.150 Nuisance abatement lien and special assessment procedures.

(a) Lien. Pursuant to Government Code Sections 38773, 38773.1, and 38773.5, and any successor statutes, persons failing to abate a public nuisance as ordered pursuant to this chapter, will be obligated to pay all city expenses of abating the nuisance and all administrative costs associated therewith. A nuisance abatement lien in favor of the city for such expenses of the city will be created and recorded, pursuant to this section, against the property on which the nuisance is maintained. The lien will specify the amount of the lien, the name of the city, the date of the abatement order, the street address, legal description and assessor's parcel number of the parcel on which the lien is imposed, and the name and address of the recorded owner of the parcel.

(b) Notice of Proposed Recordings. Notice will be sent by certified mail at least ten days before recording the lien, an itemized notice of the lien amount and proposed recording will be sent by certified mail to the property owner of record of the parcel of land on which the nuisance was abated by the city, based on the last equalized assessment roll or the supplemental roll, whichever is more current before recordation of the lien. The notice will be served in the same manner as a summons in a civil action in accordance with Code of Civil Procedure Section 415.10, et seq. If the owner of record, after diligent search, cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten days, and publication thereof in a newspaper of general circulation published in the county in which the property is located.

(c) Recording. The city's nuisance abatement lien will then be recorded in the Los Angeles County recorder's office, and from the date of recording, will have the force, effect, and priority of a judgment lien.

(d) Special Assessment. The city's total costs described in this section may also be collected as a special assessment against the lot or parcel on which the nuisance existed. After recordation of the nuisance abatement lien the city may provide a copy of the notice of proposed recordation, proof of service, and the recorded lien to the tax collector and the tax collector will add the described special assessment payments to the next regular tax bill levied against the respective lots or parcels and the amounts will be collected and subject to the same penalties and the same procedure under foreclosure and sale as in the case of tax delinquencies. However, if any real property to which the cost of abatement relates has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrance for value has been created and attached thereon, before the date on which the first installment of the taxes would become delinquent, then the cost of abatement will not result in a lien against the real property but instead will be transferred to the unsecured roll for collection.

(e) Satisfaction. In the event that the lien or special assessment is discharged, released, or satisfied, either through payment or foreclosure, a notice of the discharge containing the information specified in the lien will be recorded by the city.

(f) Fees. Any fees incurred by the city for processing, recording of the lien and providing notice to the property owner may be recovered by the city as part of its foreclosure action to enforce the lien. (Ord. 2129 § 6, 2016)

Declaration of
Jonathan Turner, P.E.

DECLARATION OF JONATHON M. TURNER, P.E.

I, JONATHON M. TURNER, hereby declare as follows:

1. I am a credentialed civil engineer with the State of California, Credential No. CE60214, by State Board of Professional Engineers, Land Surveyors and Geologists, and have been so licensed since February 2000. I am also credentialed as a Qualified SWPPP (stormwater pollution prevention plan) Developer, Certificate 00807, with the California State Water Resources Control Board. I hold a Bachelor of Science degree in civil engineering from California Polytechnic State University, San Luis Obispo. I am the President and Principal Engineer for Phoenix Civil Engineering, Inc., based out of Santa Paula, California. I have extensive experience in the area of analyzing geotechnical reports, construction plans, and engineering plans regarding the stability and remediation of slopes, as well as project management and implementation of slope stability and remediation. I have prepared Storm Water Pollution Prevention Plans for numerous projects public and private and am well versed in the requirements of the SWRCB with respect to Best Management Practices (BMPs) implementation and maintenance. I have personal knowledge of the facts stated in this Declaration, unless stated on information and belief, in which case, I believe the facts to be true, and if called as a witness, I could and would competently testify thereto.

2. This Declaration is made in support of the City of Monterey Park on behalf of the People of the State of California's ("City") *ex parte* Application for an Abatement Warrant for the property commonly known as 1688 W. Garvey in the City of Monterey Park, California 91754 (APN 5254-002-031) (the "Property").

3. I have been duly appointed and authorized to act as the Acting City Planner on behalf of the City of Monterey Park concerning the slope abatement and proposed

1 development of the Property since January 2019.

2 4. The months of November through April account for the vast majority of average
3 annual rainfall in Los Angeles County. The dates of November through April are recognized
4 by the regulatory agencies as the rainy season for the purposes of implementation of storm
5 water “best maintenance practices” (“BMPs”) for construction sites.
6

7 5. Based on information and belief, the Property’s hillside has previously been
8 subject to catastrophic failure in 1984, requiring the City to remove soils debris from the
9 roadway and install a soils debris impact wall that is located along a portion of the Property
10 line along W. Garvey Avenue. There has been no substantive remediation to the hillside since
11 that time, and implementation of plans approved by the City of Monterey Park for new,
12 permanent retaining walls is necessary to secure the hillside.
13

14 6. Based on information and belief, the property owner had developed an approved
15 winterization plan for the parcel on or about May 2018, to be implemented until permanent
16 retaining walls are constructed. On or about September 2019, CII was required to update the
17 winterization plan for the Property, which was signed and submitted in November 2019. The
18 term “winterization” refers to measures taken to mitigate erosion and risk of slope failure due
19 to water infiltration from seasonal rain and weather. A true and accurate copy of the
20 winterization plan is attached hereto as Exhibit F.
21
22

23 7. On February 20, 2019, I issued to CII’s representative a letter of noncompliance
24 of the required winterization, noting that, among other things, soils debris from the hillside
25 had fallen onto W. Garvey Avenue. A year later on February 12, 2020, I issued another letter
26 of noncompliance of the required winterization of the hillside and warned CII that failure to
27 comply with the approved winterization plan could result in default of the Settlement
28

1 Agreement with the City. True and accurate copies of the letters of non-compliance are
2 attached hereto as Exhibit G.

3 8. On October 20 and November 10, 2021, I re-inspected the Property concerning
4 the condition and erosion mitigation of the hillside slope, of the Property facing Garvey
5 Avenue. I observed that plastic sheeting intended to minimize water intrusion into the slope
6 was blown apart in multiple locations. Sandbags have degraded to the point where the sand
7 is leaking out of the bags in multiple locations. The efforts intended to act as erosion and water
8 intrusion control measures have not been properly maintained since I have been appointed
9 Acting City Planner for the Property, which is contributing to exacerbate the potential failure
10 of the hillside slope. True and accurate photos of the condition of the Property on October 20
11 and November 10, 2021, attached hereto as Exhibit H.

14 9. The existing hillside plastic tarps need to be removed and replaced, as they have
15 reached their lifespan due to exposure and failure to be property secured.

17 10. All of the existing sandbags onsite need to be removed and replaced with gravel
18 filled bags to avoid sand migration and clean up issues after failure. The Property owner
19 appears to have placed more sandbags over the failed bags, which is an unacceptable practice.
20 Further, the existing sandbags direct the flow of water in an uncontrolled manner which results
21 in storm water flowing at a high velocity into the vehicle lanes on W. Garvey Avenue.

23 11. On November 10, 2021, I inspected the Property with a representative of Gothic
24 Landscape, whom the City intends to hire for winterization services concerning the Property.
25 Gothic Landscape is an established industry contractor that specializes in installation,
26 maintenance and removal of storm water BMPs for construction sites. I have provided Gothic
27 Landscape with the approved Erosion Control Plan that is to be employed for the hillside
28

1 stabilization project. The Erosion Control Plan (“Mitigation Plan”) is appropriate for the
2 hillside slope pending permanent remediation.

3 12. Fulfilling the Mitigation Plan will require hundreds of gravel-filled sandbags
4 strategically placed on the hillside. Further, approximately two acres of tarp will need to be
5 secured along the slope. It is anticipated this initial effort will take up to 10 working days.
6

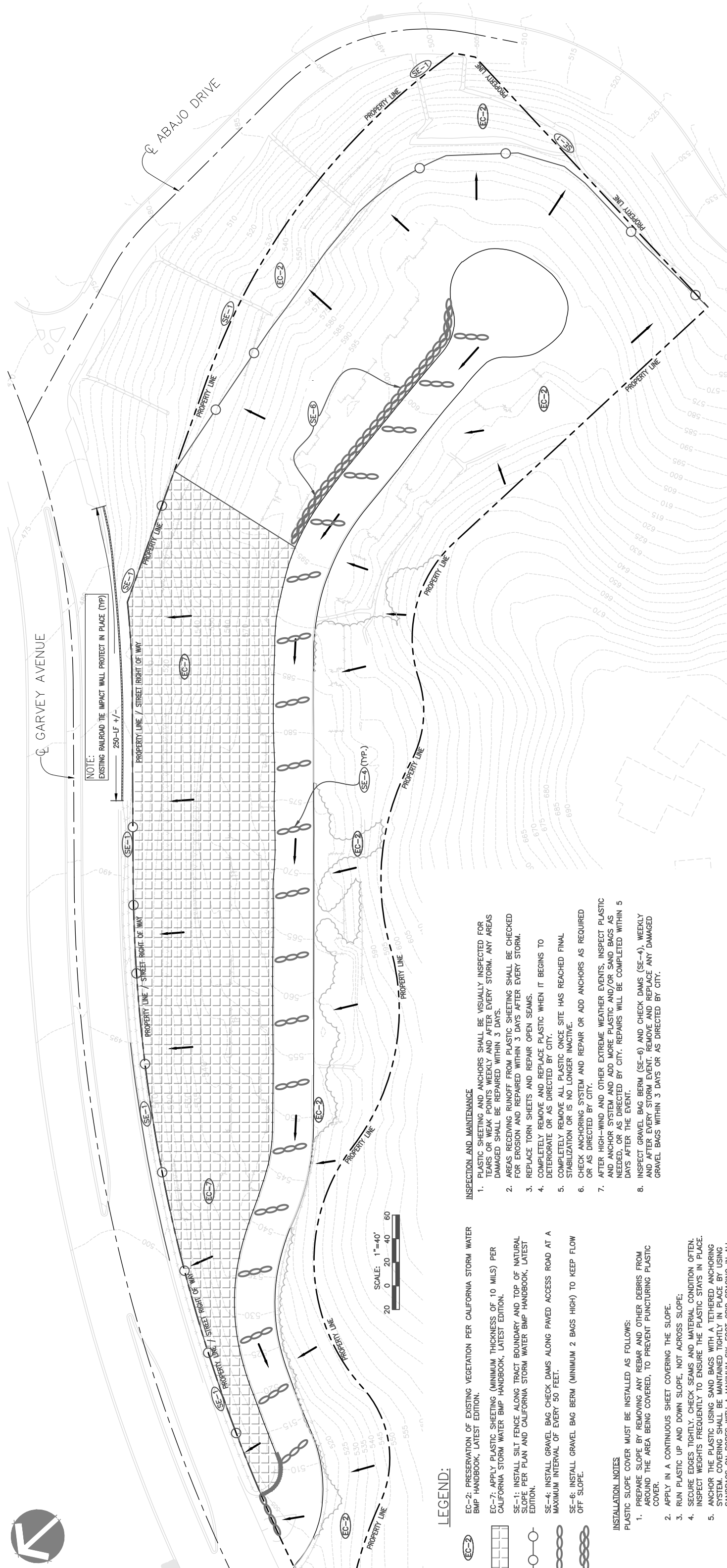
7 13. On going maintenance will require returning to the site on a weekly basis, or as
8 required by inclement weather, to ensure the integrity of the Mitigation Plan. Maintenance of
9 these temporary mitigation measures will cease once work begins by a grading contractor to
10 begin implementation of Plan B, at which time the grading contractor will assume
11 responsibility of the hillside. This is expected to occur anywhere between January and April
12 of 2022, at which time the need for this abatement warrant will not longer be necessary.
13
14

15
16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct to the best of my knowledge.
18

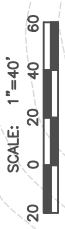
19 EXECUTED on this 15th day of November, 2020 at Santa Paula, California.
20

21
22 
23 _____
24 Jonathon M. Turner
25
26
27
28

Exhibit F



NOTE:
EXISTING RAILROAD THE IMPACT WALL PROTECT IN PLACE (TYP)
250'-LF +/-

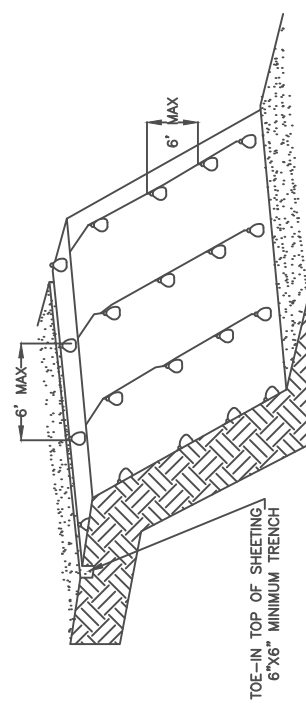


LEGEND:

- EC-2: PRESERVATION OF EXISTING VEGETATION PER CALIFORNIA STORM WATER BMP HANDBOOK, LATEST EDITION.
- EC-7: APPLY PLASTIC SHEETING (MINIMUM THICKNESS OF 10 MILLS) PER CALIFORNIA STORM WATER BMP HANDBOOK, LATEST EDITION.
- SE-1: INSTALL SILT FENCE ALONG TRACT BOUNDARY AND TOP OF NATURAL SLOPE PER PLAN AND CALIFORNIA STORM WATER BMP HANDBOOK, LATEST EDITION.
- SE-4: INSTALL GRAVEL BAG CHECK DAMS ALONG PAVED ACCESS ROAD AT A MAXIMUM INTERVAL OF EVERY 50 FEET.
- SE-6: INSTALL GRAVEL BAG BERM (MINIMUM 2 BAGS HIGH) TO KEEP FLOW OFF SLOPE.

- INSPECTION AND MAINTENANCE**
1. PLASTIC SHEETING AND ANCHORS SHALL BE VISUALLY INSPECTED FOR TEARS OR WEAK POINTS WEEKLY AND AFTER EVERY STORM. ANY AREAS DAMAGED SHALL BE REPAIRED WITHIN 3 DAYS.
 2. AREAS RECEIVING RUNOFF FROM PLASTIC SHEETING SHALL BE CHECKED FOR EROSION AND REPAIRED WITHIN 3 DAYS AFTER EVERY STORM.
 3. REPLACE TORN SHEETS AND REPAIR OPEN SEAMS.
 4. COMPLETELY REMOVE AND REPLACE PLASTIC WHEN IT BEGINS TO DETERIORATE OR AS DIRECTED BY CITY.
 5. COMPLETELY REMOVE ALL PLASTIC ONCE SITE HAS REACHED FINAL STABILIZATION OR IS NO LONGER INACTIVE.
 6. CHECK ANCHORING SYSTEM AND REPAIR OR ADD ANCHORS AS REQUIRED OR AS DIRECTED BY CITY.
 7. AFTER HIGH-WIND AND OTHER EXTREME WEATHER EVENTS, INSPECT PLASTIC AND ANCHOR SYSTEM AND ADD MORE PLASTIC AND/OR SAND BAGS AS NEEDED, OR AS DIRECTED BY CITY. REPAIRS WILL BE COMPLETED WITHIN 5 DAYS AFTER THE EVENT.
 8. INSPECT GRAVEL BAG BERM (SE-6) AND CHECK DAMS (SE-4), WEEKLY AND AFTER EVERY STORM EVENT. REMOVE AND REPLACE ANY DAMAGED GRAVEL BAGS WITHIN 3 DAYS OR AS DIRECTED BY CITY.

- INSTALLATION NOTES**
- PLASTIC SLOPE COVER MUST BE INSTALLED AS FOLLOWS:
1. PREPARE SLOPE BY REMOVING ANY REBAR AND OTHER DEBRIS FROM AROUND THE AREA BEING COVERED, TO PREVENT PUNCTURING PLASTIC COVER.
 2. APPLY IN A CONTINUOUS SHEET COVERING THE SLOPE.
 3. RUN PLASTIC UP AND DOWN SLOPE, NOT ACROSS SLOPE.
 4. SECURE EDGES TIGHTLY. CHECK SEAMS AND MATERIAL CONDITION OFTEN. INSPECT WEIGHTS FREQUENTLY TO ENSURE THE PLASTIC STAYS IN PLACE.
 5. ANCHOR THE PLASTIC USING SAND BAGS WITH A TETHERED ANCHORING SYSTEM. COVERING SHALL BE MAINTAINED TIGHTLY IN PLACE BY USING SANDBAGS ON ROPES WITH A MAXIMUM SIX-FOOT GRID SPACING IN ALL DIRECTIONS.
 6. ALL SEAMS SHALL BE TAPED FOR THE FULL LENGTH OF THE SEAM. A MINIMUM OF 12" OVERLAP OF ALL SEAMS IS REQUIRED.
 7. PLACE PLASTIC INTO A SMALL SLOT TRENCH (6-INCH WIDE BY 6-INCH DEEP) AT THE TOP OF THE SLOPE AND BACKFILL WITH SOIL TO KEEP WATER FROM FLOWING UNDERNEATH; NO RUNOFF SHALL RUN UNDER THE PLASTIC COVERING.
 8. PLACE SAND FILLED GEOTEXTILE BAGS EVERY 3 TO 6 FEET ALONG SEAMS. SAND BAGS MAY BE LOWERED INTO PLACE TIED TO ROPES.
 9. PLASTIC SHEETING SHALL HAVE A MINIMUM THICKNESS OF 10 MILLIMETERS.
 10. IF EROSION AT THE TOE OF A SLOPE IS OBSERVED, A GRAVEL BERM, RIPRAP, OR OTHER SUITABLE PROTECTION SHALL BE INSTALLED AT THE TOE OF THE SLOPE IN ORDER TO REDUCE THE VELOCITY OF RUNOFF.
 11. INSPECT PLASTIC WEEKLY FOR RIPS, TEARS, AND OPEN SEAMS AND REPAIR IMMEDIATELY.



CONSTRUCTION MANAGEMENT:
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1940 GARNET AVENUE, SUITE 300
SAN DIEGO, CA 92109
TEL: (858) 273-5400
FAX: (858) 273-5455
E-MAIL: www.kcmgroup.net

DEVELOPER:
CENTER INT'L INVESTMENTS, INC.
501 W. GARVEY AVE. #207
MONTEREY PARK, CA 91754
TEL: (626) 379-3288
FAX: (626) 282-8605
E-MAIL: www.centerintlinvestments.com

PROJECT ARCHITECT
SLSD
1414 FAIR OAKS AVENUE, STE 2
SOUTH PASADENA, CA 91030
TEL: (626) 799-8818
FAX: (626) 799-8823
E-MAIL: www.slstdinc.com

SOIL / GEOTECHNICAL ENGINEER:
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485 CORPORATE DRIVE, SUITE B
ESCONDIDO, CA 92029
TEL: (760) 709-8890
FAX: (714) 409-3267
E-MAIL: www.odv-geosolutions.com

CIVIL ENGINEER:
FOCUS ENGINEERING, INC.
LAND SURVEYORS
25 MAUCHLY, SUITE 317
IRVING, CA 92618
TEL: (949) 450-0992
FAX: (949) 450-0992
E-MAIL: focusengr@sbcbglobal.net

EARTH RETENTION DESIGNER:
DRS ENGINEERING INC.
3564 SAGUNTO ST. #486
SANTA ANA, CA 92740
TEL: (818) 276-1922
FAX: (818) 276-1922
E-MAIL: DRS@DRS-ENGINEERING.NET

REVISIONS

NO.	DATE	DESCRIPTION

Exhibit G

CITY OF MONTEREY PARK

320 West Newmark Avenue • Monterey Park • California 91754-2896
www.montereypark.ca.gov



City Council
Peter Chan
Mitchell Ing
Stephen Lam
Hans Liang
Teresa Real Sebastian

City Clerk
Vincent D. Chang

City Treasurer
Joseph Leon

February 20, 2019

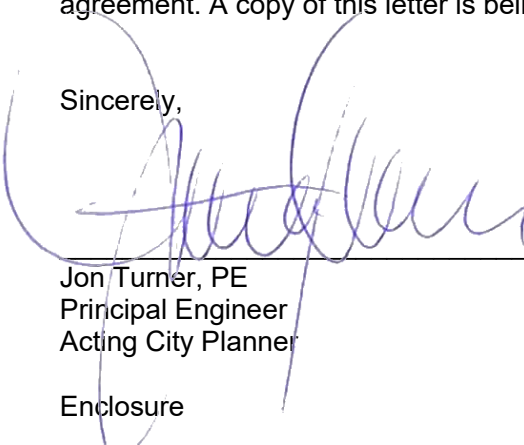
Mr. Robert Garrison
Director of Consulting Services
Murow|CM
1151 Duryea Ave
Irvine, CA 92614

1688 W. Garvey Ave – Site Slope Winterization Remediation Requirements – Supplemental Visit

I visited the project site boundary again after the first noncompliance letter was sent out on 2/11/19 regarding the slope winterization. This was after I was assured that the slope protection would be brought into compliance. I have included updated photos of the current condition of the slope. It appears that some work was performed; however, other areas were not completed. It is unclear why the identified deficiencies were not completely addressed. Additionally, there is soil debris that the site driveway on Garvey Ave. This needs to be swept up and removed from the public right of way.

Based on the condition of the winterization measures at the time of my second site visit, it is my opinion that the erosion protection system is still not in compliance at the locations shown on the attached photo log. Please remediate these issues by Friday, February 22, 2019 and notify me when the effort is completed. Failure to comply with this requirement will result in additional code enforcement action including, without limitation, the City issuing a notice of violation and notice of default under the settlement agreement. A copy of this letter is being forwarded to Karl H. Berger, Assistant City Attorney.

Sincerely,



Jon Turner, PE
Principal Engineer
Acting City Planner

Enclosure



Slope View from Abajo Drive Looking North – Plastic Sheetting Remnants Still Present



Garvey Ave - Gaps in Slope Plastic Sheetting Requiring Repair



Garvey Ave - Gaps in Slope Plastic Sheeting Requiring Repair



Garvey Ave - Deteriorated Plastic Sheeting Still Present



Garvey Ave - Gaps in Slope Plastic Sheeting Requiring Repair and Deteriorated Sheeting Requiring Replacement Still Present



Garvey Ave - Gaps in Slope Plastic Sheeting Requiring Repair and Deteriorated Sheeting Requiring Replacement

CITY OF MONTEREY PARK

320 West Newmark Avenue • Monterey Park • California 91754-2896
www.montereypark.ca.gov



City Council
Peter Chan
Mitchell Ing
Stephen Lam
Hans Liang
Teresa Real Sebastian

City Clerk
Vincent D. Chang

City Treasurer
Joseph Leon

February 12, 2020

Mr. Gordon Kovtun
KCM Group
1900 Garnet Ave. #300
San Diego, CA 92109

1688 W. Garvey Ave – Site Slope Winterization Remediation Requirements – Site Visit

I visited the project site on 2/09/20 to review the installation of the slope winterization. This was after I was notified by the City that the slope protection was a concern to nearby residents. I have included photos of the current condition of the slope. It appears that some work is needed on the slope to bring it into compliance with the approved project plans.

Based on the condition of the winterization measures at the time of my site visit, it is my opinion that the erosion protection system is not in compliance at the locations shown on the attached photo log. Please remediate these issues by Friday, February 14, 2020 and notify me when the effort is completed. Failure to comply with this requirement will result in additional code enforcement action including, without limitation, the City issuing a notice of violation and notice of default under the settlement agreement.

Sincerely,

Jon Turner, PE
Principal Engineer
Acting City Planner

Enclosure

Monterey Park Development - Winterization Photo Log



IMG_0261



IMG_0262

Monterey Park Development - Winterization Photo Log



IMG_0263



IMG_0264

Monterey Park Development - Winterization Photo Log



IMG_3871



IMG_3872

Monterey Park Development - Winterization Photo Log



IMG_3873



IMG_3874

Monterey Park Development - Winterization Photo Log



IMG_3875



IMG_3876

Monterey Park Development - Winterization Photo Log



IMG_3877



IMG_3878

Exhibit H

1688 W. Garvey Photos – Nov. 10, 2021







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PROOF OF SERVICE

I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2600 West Olive Avenue, Burbank, CA 91505.

On December 14, 2021, I served a copy of the within document(s): **PLAINTIFFS' EX PARTE APPLICATION TO SPECIALLY SET MOTION TO ENFORCE SETTLEMENT AGREEMENT PURSUANT TO CCP § 664.6; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION; [PROPOSED] ORDER SETTING DATE** on the interested parties:

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Diamond Springs, California addressed as set forth below.
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- by causing to be personally delivered the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Afred Frajio, Jr., Esq.
Sheppard, Mullin, Richter & Hampton LLP
333 South Hope Street Forty-Third Floor
Los Angeles, CA 90071
afrajio@sheppardmullin.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 14, 2021 at Diamond Springs, California.



Annette Kramer