

*STAFF REPORT**CITY OF OCEANSIDE*

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DATE: June 6, 2007

TO: Chairman and Members of the Community Development Commission

FROM: Economic Development and Redevelopment Department

SUBJECT: **APPROVAL OF WAIVER AND RELEASE OF RESTRICTIVE COVENANTS FROM A PORTION OF THE BELVEDERE SITE**

**SYNOPSIS**

Staff recommends that the Community Development Commission ("Commission") approve a waiver and release of restrictive covenants on a portion of the Belvedere site (Assessor Parcel Nos. 147-196-06, 07, 08 and 09), which are contained in the Grant Deed conveying the property by the Commission to Santa Barbara Savings and Loan Association ("SBS&L") in 1989, and authorize the Chairman to execute the document and the City Clerk/Secretary to file it with the County Recorder.

**BACKGROUND**

On February 6, 1989, the Commission sold the property, which now comprises the northerly half and the easterly half of the southerly half of the Belvedere site located at the southwest corner of Mission Avenue and Horne Street ("Property").

Through the Grant Deed, recorded as Document No. 89-063612 ("Grant Deed"), conveying the Property to SBS&L, the Commission placed certain restrictions on the use and development of the property, i.e., (a) use of the Property for financial, professional and other offices suitable for a financial district; (b) prohibition on uses for automobile related uses, massage parlors, adult entertainment uses, manufacturing or sale of drug paraphernalia, gambling, or any illegal conduct or activity (these uses already are not permitted anywhere within the Redevelopment Project Area); (c) maintenance of the property and adjoining public sidewalks and rights-of-way in an attractive and safe condition (developer is already required to maintain these areas per the Resolutions approving the project and has been incorporated into their CCR's, both of which will be recorded against the property); and (d) the Property may only be sold, transferred, conveyed, or assigned as a whole and no subdivision of the Property is permitted.

The property was subsequently transferred to the Federal Deposit Insurance Corporation as Receiver for SBS&L and is now owned by Pacific Crest Investments, LLC.

On February 23, 2005, the Commission held a public hearing to consider the Belvedere project, and on March 16, 2005, adopted Resolution No. 05-R0139-3 approving Tentative Map (T-200-04), Development Plan (D-203-04), Conditional Use Permits (C-202-04 and C-203-04) and Variation (V-205-04) for the construction of a mixed-use development consisting of 66 residential condominium units, 51 live/work units and retail/office space on the Property and the remainder of the block, bounded by Mission Avenue, Seagaze Drive and Horne and Clementine Streets. Subsequently, on February 14, 2007, the Commission adopted Resolution No. 07-0048-3 granting a time extension for the project.

Because the uses approved for the Belvedere project are inconsistent with the restrictive uses contained in the Grant Deed, First American Title Insurance Company is requiring that the conflicting restrictions be released from title. A "Wavier and Release of Restrictive Covenant", has been prepared which would release and terminate the original Grant Deed Document No. 89-063612.

### **ANALYSIS**

To remove the conflicting restrictions from title on the Property it would be appropriate that the Commission approve and authorize the Chairman to execute the document. Upon the filing of the document with the County Recorder the conflicting restrictions will be removed from title, permit the construction of the project, and provide for the mixed-use and subdivision of the Property as approved by the Commission.

### **FISCAL IMPACT**

Te proposed tax increment generated from this project is \$700,000 per year.

### **COMMISSION OR COMMITTEE REPORT**

The Belvedere project was reviewed and considered by the Redevelopment Advisory Committee ("RAC") at its meeting on January 10, 2007, and recommended the approval of the time extension by the Commission.

### **CITY ATTORNEY'S ANALYSIS**

The Wavier and Release of Restrictive Covenant document was reviewed by the City Attorney and has been approved as to form.

**RECOMMENDATION**

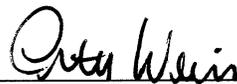
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PREPARED BY:



Kathy Baker  
Redevelopment Manager

SUBMITTED BY:

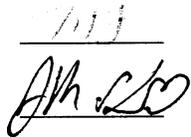


Peter A. Weiss  
Interim Executive Director

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Jane McVey, Economic Development and Redevelopment Director



First American Title  
Order NCS-234202-SF  
APN 147-196-06, 07, 08 & 09

**Recording Request By and When Recorded  
Return To:**

Pacific Crest Investments, LLC  
c/o MetroPacific Properties  
1640 Tiburon Blvd., Suite 14  
Tiburon, CA 94920

**WAIVER AND RELEASE**  
**OF**  
**RESTRICTIVE COVENANT**

THIS WAIVER AND RELEASE OF RESTRICTIVE COVENANT (“Release”) is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007 by COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE, a public body corporate and politic of the State of California (“Commission”), with reference to the following:

**RECITALS**

A. Pursuant to that certain conveyance instrument entitled “Grant Deed” executed by Commission, in favor of Santa Barbara Savings and Loan Association, a California corporation, as grantee (“Grantee”), recorded on February 6, 1989 as Instrument No. 89-063612 of Official Records of San Diego County, California (the “Instrument”), Commission imposed certain covenants, conditions and/or restrictions upon the real property described therein and conveyed thereby (the “Property”).

B. Pacific Crest Investments, LLC, a California limited liability company (“Pacific Crest”), successor in interest to Grantee, is the legal and equitable owner of the Property.

C. Pacific Crest has received entitlements for the development of the Property as a part of the larger project commonly referred to as the Belvedere, which is inconsistent with uses permitted under the conditions of the Instrument.

D. Pacific Crest has requested, and Commission has agreed, that the use restriction contained in the Instrument be released and terminated.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby agrees that all of the covenants, conditions and/or restrictions contained in the Instrument are hereby unconditionally and irrevocably released and terminated as to the Property.

IN WITNESS WHEREOF, this Release is made and executed as of this \_\_\_\_ day of \_\_\_\_\_, 2007.

Commission:

COMMUNITY DEVELOPMENT COMMISSION  
OF THE CITY OF OCEANSIDE

By: \_\_\_\_\_  
Chairman

ACKNOWLEDGED AND AGREED:

PACIFIC CREST INVESTMENTS, LLC,  
a California limited liability company

By: Sanford L. Goldeen  
Sanford L. Goldeen, Managing Member

By: Siavash Barmand  
Siavash Barmand, Managing Member

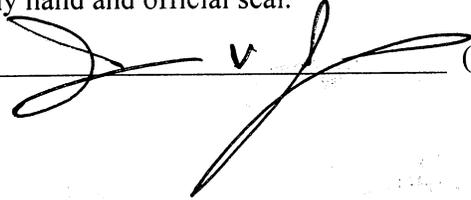
**APPROVED AS TO FORM  
OCEANSIDE CITY ATTORNEY**  
John P. Mel

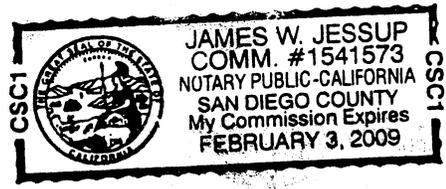
[ALL SIGNATURES TO BE ACKNOWLEDGED]

State of California  
County of San Diego

On 5-22-07 before me, James W Jessup, a notary public,  
personally appeared SIYASH BARMAH, personally known to me (or  
proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same  
in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature  (Seal)



ACKNOWLEDGMENT

State of California  
County of San Diego

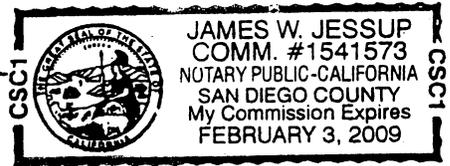
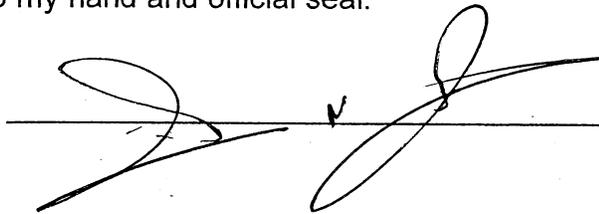
On 5-22-07 before me, James W Jessup Notary Public,  
(here insert name and title of the officer)

personally appeared SIAVASH BARMANP

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

WITNESS my hand and official seal.

Signature



(Seal)

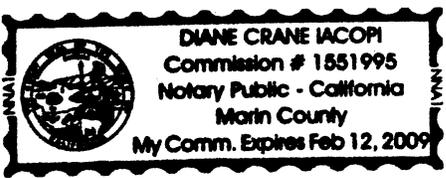
**ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of MARIN } SS.

On May 24, 2007 before me, Diane Crane Iacopi,  
(DATE) (NOTARY)  
personally appeared Stanford L. Golden  
SIGNER(S)

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



WITNESS my hand and official seal.

[Signature]  
NOTARY'S SIGNATURE

**OPTIONAL INFORMATION**

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

**CAPACITY CLAIMED BY SIGNER (PRINCIPAL)**

- INDIVIDUAL
- CORPORATE OFFICER  
Managing Member  
TITLE(S)
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

**DESCRIPTION OF ATTACHED DOCUMENT**

Waiver and Release of Participative Agreement  
TITLE OR TYPE OF DOCUMENT

2 + Notary  
NUMBER OF PAGES

5-24-07  
DATE OF DOCUMENT

signature

OTHER \_\_\_\_\_

**SIGNER IS REPRESENTING:**  
NAME OF PERSON(S) OR ENTITY(IES)  
Pacific Crest Investments, LLC

RIGHT THUMBPRINT  
OF  
SIGNER

