



# staff report

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TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Jim DellaLonga, Director of Economic Development

SUBJECT: Consideration and possible action to receive and file Agreement File No. 706 with HC and Associates for the purpose of an Exclusive Negotiation Agreement for the development of real property located at 8827-8829 Artesia Boulevard and 8800 Palm Street.

DATE: June 13, 2016

## **EXECUTIVE SUMMARY**

On May 11, 2016, the City entered into the above referenced Agreement File No. 706 with HC and Associates (“Developer”). The purpose of this agreement is to allow Developer the opportunity to develop the property located at 8827-8829 Artesia Boulevard and 8800 Palm Street as a commercial retail development project.

## **RECOMMENDATION TO CITY COUNCIL**

- 1) Receive and file Agreement File No. 706; or
- 2) Alternatively, discuss and take other action related to this item.

## **FISCAL IMPACT**

Initial \$15,000 deposit and subsequent deposits to reimburse the City for costs incurred under the Agreement.

## **DISCUSSION**

On May 11, 2016, the City and Developer entered into an Exclusive Negotiation Agreement (“Agreement”) for the development of a commercial retail project on Successor Agency owned property located at 8827-8829 Artesia Boulevard and 8800 Palm Street. The term of the Agreement is 12 months with an option for a 6-month extension by mutual agreement of the parties. This agreement requires a deposit of \$15,000 to offset City costs directly associated with this Agreement.

## **ATTACHMENT**

Agreement File No. 706..... 2

**EXCLUSIVE NEGOTIATION AGREEMENT  
BY AND BETWEEN  
THE CITY OF BELLFLOWER  
AND  
HC AND ASSOCIATES**

This Agreement is entered into this 11 day of May, 2016 ("Effective Date"), by and between the City of Bellflower, a general law city and municipal corporation ("City"), the Successor Agency to the Bellflower Redevelopment Agency, a subdivision of the state of California ("SA") and HC and Associates, a General Partnership ("Developer"), on the terms and provisions set forth below. Developer and City are sometimes collectively referred to as the "Parties" and each, individually, may be referred to as a "Party." Pursuant to California law, City is also acting on behalf of the SA. Accordingly, both City and SA are referred to as "City" for purposes of this Agreement unless otherwise provided in the context.

1. **RECITALS.** The Parties enter into this Agreement in light of the following facts and objectives:

A. Developer seeks to purchase and develop an approximately 3.25 acre site of real property owned by the SA located at 8827 – 29 Artesia Boulevard and 8800 Palm Street in the City of Bellflower, California (the "Property"), which is currently vacant. The Property is legally described in attached Exhibit "A," which is incorporated by reference. Developer seeks to enter into an agreement with City to conduct exclusive negotiations with City regarding the purchase and development of the Property.

B. Developer desires to construct a commercial development consisting of retail stores on the Property, along with ancillary development (the "Project").

C. The Parties acknowledge that the Project will require certain entitlements to be obtained from City including, without limitation, discretionary legislative acts such as a zone change, amendment to City's General Plan, tentative map, and potentially a development agreement all of which will require environmental review pursuant to the California Environmental Quality Act ("CEQA").

D. The Parties acknowledge that in order for SA to convey the Property to Developer, SA and the Oversight Board to the SA ("OB"), must approve the disposition pursuant to the SA's Long Range Property Management Plan ("LRPMP")

E. City believes it is in the public interest to enter into exclusive negotiations with Developer regarding the potential sale of the Property.

2. **CONSIDERATION.** The Parties agree to strictly comply with the recitals and mutual covenants and conditions contained in this Agreement.

3. **TERM.**

A. The term of this Agreement commences as of the Effective Date of this Agreement and terminates pursuant to the terms of Section 5 (the "Term"). At the option of the Parties, pursuant to the conditions set forth below and before expiration of this Agreement, the Term may be extended for an additional, 6 month period by mutual written consent of Developer and City. The City Manager is authorized to approve the extension on behalf of City.

B. If an environmental impact report (the "EIR") is required for City's approval of the Project, then the Term will be automatically extended for a period of twelve months as may be necessary to satisfy the requirements of CEQA and its implementing guidelines. The Parties must document this additional automatic 12 month extension in a written acknowledgement. If need to meet the timeframes imposed by the EIR process, the Parties may, but are not required to, extend the Term for a period longer than twelve months by written amendment to this Agreement.

C. Upon the Parties entering into a purchase and sale agreement or other disposition document, City agrees to initiate and in good faith undertake action necessary to request approval of the disposition of Property by the SA and OB.

4. **NOTICE OF DEFAULT AND OPPORTUNITY TO CURE.**

A. Should there be a default in performance by a Party, the non-defaulting Party must provide written notice of such default to the defaulting Party. Notice must specify the nature of the event or deficiency giving rise to the default; the action required to cure the deficiency; if an action to cure is possible; and a date not less than thirty (30) calendar days from the date of the notice within which action to cure must be taken.

B. Notwithstanding anything to the contrary, any default does not constitute cause to terminate this Agreement if the defaulting Party cures, corrects or remedies the default within the time period required in the notice or other agreement between the Parties. In the case of a default by either Party, the alleged defaulting Party must promptly commence to cure the identified default and must complete the cure within thirty days after receiving the notice of default. The thirty day cure period for a default may be extended as is reasonably necessary to remedy such default, provided that the alleged defaulting Party commences such cure promptly after receiving the notice of default and continuously and diligently pursues such remedy at all times until such default is cured.

5. **TERMINATION.** This Agreement may terminate under the following circumstances:

- A. Twelve months after the Effective Date of this Agreement;
- B. By a Party upon the uncured default of the other Party;
- C. By Developer upon giving City thirty days prior written notice of its intent to terminate this Agreement; or

D. The Parties entering into a purchase and sale agreement or other disposition document.

## 6. EXCLUSIVE NEGOTIATIONS.

A. City agrees that, during the Term (or any extension or tolling of the Term) and provided that Developer is not in uncured default of any of its obligations under this Agreement, it will negotiate exclusively (except with regard to negotiations held pursuant to the Surplus Property Disposition Law) and in good faith with Developer concerning the disposition of the Property to Developer. Developer further acknowledges that City representatives, from time to time, may contact other developers respecting the Property, and that such contact is expressly permitted provided that City and its representatives inform those developers of the existence of this Agreement and City's obligations, and do not actively engage in negotiation with respect to the Property (except as required by the Surplus Property Disposition Law or other applicable law).

B. Developer understands and agrees that City is a public entity and must comply with, without limitation, the California Public Records Act ("PRA"). Each Party agrees that any and all financial data, reports and documentation supplied by one Party ("Disclosing Party"), or its affiliates or third parties on its behalf, to the other Party under this Agreement ("Receiving Party"), which are confidential cannot be disclosed or otherwise disseminated by the Receiving Party without the consent of the Disclosing Party except as required by law including, without limitation, the PRA. For this Section to apply, the Disclosing Party must mark or label its confidential information as "Confidential and Proprietary." City agrees to inform Developer of any request filed in accordance with the PRA to obtain documents labeled Confidential and Proprietary and Developer may determine whether to oppose disclosure of such documents. Under any such circumstance, Developer must defend, indemnify and hold harmless City and its officers, officials, employees and agents against and from a challenge under the PRA.

## 7. SCOPE OF NEGOTIATIONS.

A. During the Term, the Parties agree to diligently negotiate in good faith the purchase price and terms of a purchase and sale agreement for the conveyance of the Property from City to Developer. In furtherance of the negotiations of the purchase price of the Property, the City must, at its sole expense, obtain an appraisal of the fair market value of the Property. The purchase price of the Property must be acceptable to both Parties in their respective sole and unfettered discretion and identified as a firm/fixed price in the purchase and sale agreement ("Purchase Price").

B. During the Term, the Parties agree to split the cost, 50/50, of appraisals for other properties Developer is considering acquiring on his own in furtherance of the Project.

C. The good faith negotiations agreed to between the Parties requires each to reasonably communicate with the other. This will include all methods of communication including via telecommunications (fax, phone, e-mail, etc.), face-to-face meetings between the Parties' representatives, and written correspondence.

8. **DEVELOPER RESPONSIBILITIES.**

A. Developer may at its discretion conduct such tests, surveys and other analyses of the Property during the Term as Developer deems necessary to determine the feasibility of the Project. Any entry by Developer or its agents onto the Property is subject to, and conducted in accordance with, all applicable laws, statutes, rules and regulations. Developer must promptly restore the Property to its previous condition before any such entry, test, or investigation occurred or was performed. Developer or its agents may undertake borings or other disturbances of the soil with City's prior written approval (not to be unreasonably withheld), provided that the soil borings and other disturbances must be sealed and closed using materials and techniques that conform with all applicable laws, statutes, rules and regulations and industry and governmental standards, and the soil must be recompact to the condition immediately before any such borings were undertaken. Upon receipt of a written request, Developer and City must each provide the other with access to all data and information concerning the physical condition of the Property which is available to it and of which it is aware, but without representation or warranty as to the accuracy of such data or information.

B. City licenses Developer to enter, on the terms and conditions in this Agreement, the Property. City's action is not, and should not be construed to be, a conveyance of a property interest or a lease; it is a license to use property only.

C. When Developer seeks to exercise its license for entering the Property, its use is limited as follows:

- i. City may change, amend, or terminate Developer's use of Property at any time, and in its sole discretion, verbally or in writing.
- ii. Developer must comply with City's representative's directives as to time, place and manner of accessing the Property including, without limitation, accessing the Property during business hours and those times that do not unduly interfere with City's ongoing business operations.
- iii. Developer may engage in limited testing as approved by City for the purposes of assessing the fair market value of the Property. Examples of such testing including, without limitation, soil sampling and boring.

B. All applications for land use entitlements for the Project are Developer's responsibility at its sole expense. City may, but is not required to, reasonably cooperate with Developer to assist in acquiring land use entitlements from City at Developer's expense.

9. **INDEMNIFICATION.**

A. **Developer agrees to the following:**

B.

- i. ***Indemnification for Professional Services.*** Developer will save harmless and indemnify and at City's request reimburse defense costs for City and all its officers, volunteers, employees and representatives from and against any and all suits, actions, or claims, of any character

whatever, brought for, or on account of, any injuries or damages sustained by any person or property resulting or arising from any negligent or wrongful act, error or omission by Developer or any of Developer's officers, agents, employees, or representatives, in the performance of this Agreement, except for such damages arising from City's sole negligence or willful misconduct.

ii. *Indemnification for other Damages.* Developer indemnifies and holds City harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising out of this Agreement, or its performance. Should City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, except for such damages arising from City's sole negligence or willful misconduct. Developer will defend City (at City's request and with counsel satisfactory to City) and will indemnify City for any judgment rendered against it or any sums paid out in settlement or otherwise, except for such damages arising from City's sole negligence or willful misconduct.

- C. For purposes of this section "City" includes City's officers, officials, employees, agents, representatives, and certified volunteers.
- D. It is expressly understood and agreed that the foregoing provisions will survive termination of this Agreement.
- E. The requirements as to the types and limits of insurance coverage to be maintained by Developer as required by Section 12, and any approval of said insurance by City, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by Developer pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.

10. **DEVELOPER REIMBURSEMENT OF CITY COSTS.**

A. Developer and City agree that Developer must pay for all administrative and other costs associated with this Agreement including, without limitation, legal fees, and staff time (collectively "City Costs").

B. Within five (5) business days of the execution of this Agreement, Developer must provide City with a deposit of Fifteen Thousand Dollars (\$15,000) (the "Initial Deposit"), which City agrees to maintain in a separate trust account for Developer; any interest earned on funds deposited in this trust account must be for the benefit of Developer. The Initial Deposit and any subsequent replenishment must be used only to pay City Costs actually incurred. City must have the right from time to time to withdraw funds from the Initial Deposit to pay (or reimburse itself) for City Costs, and must provide Developer

with monthly statements specifying the City Costs so incurred by City and paid (or reimbursed) from the Initial Deposit. Together with such monthly statements, City must provide to Developer copies of invoices for the City Costs shown in such monthly statements, including invoices for attorneys' fees and costs (but the detailed description of the services provided by each attorney, as described in each such invoice, must be redacted to show only the matter on which such attorney worked, together with the name (or initials) of such attorney, the date and amount of time spent by such attorney on such matter, and the attorneys' fees charged to City therefore) and including any invoices from other Developers or experts (but each such invoice from other Developers or experts must be redacted so as not to show or contain any privileged information or communications). Developer has no obligation to pay as City Costs any third party cost for which an invoice is not provided. Any City Costs related to charges for City staff time must be based on written time entries that include the name of the staff, the actual time spent and a specific description of work performed.

C. Within ten (10) business days after City notifies Developer in writing that the then remaining balance of the Initial Deposit has been reduced to One Thousand Dollars (\$1,000) or less, Developer must replenish the Initial Deposit to a balance of Fifteen Thousand Dollars (\$15,000).

D. City must provide ten (10) business days' prior written notice to Developer of City's intent to engage any other third party (excluding City's legal counsel) or authorize any other work (excluding work by City's legal counsel relating to the Project), the cost of which is reasonably anticipated by City to exceed One Thousand Dollars (\$1,000). Developer is entitled to review and comment (but not approve) on any contract or scope of work (or amendment or change order to such agreements) that City intends to enter with a third party (excluding City legal counsel) with respect to this Agreement or the Project before City entering such contract or agreeing to such scope of work. If Developer has a good faith and bona fide dispute as to a charge incurred as City Costs (excluding City legal counsel), then City must meet and confer with Developer in a good faith effort to resolve such dispute. If, after such meeting, City agrees with Developer, City must cooperate with Developer in seeking credit or offset from third parties to whom City Costs are paid. To the extent practicable, any third party contract (excluding City's legal counsel) must name Developer as an intended third party beneficiary.

E. Upon City's receipt of written notice from Developer to stop work (or temporarily suspend work) on the Project, City must promptly direct all of City's staff, attorneys, Developers and other professionals to stop work thereon; provided, however, that such a notice to stop work (or temporarily suspend work) does not constitute Developer's election to terminate this Agreement absent a specific statement to that effect; and, provided further, that the Developer agrees and acknowledges that:

F. Depending upon the terms of the contract(s) governing the work to be performed by such Developers and other professionals (excluding City's attorneys), such Developers' and other professionals' stopping work on the Project may or may not result in City incurring costs therefor, and Developer must be responsible for, and the Initial

Deposit may be used by City to pay (or reimburse itself) for, such costs that are actually incurred and to which a third party has a contractual right to payment; and

G. Should Developer fail to perform any of its obligations under this Section, then City may, at its option, pursue any one or more or all of the remedies available to it under this Agreement, at law or in equity. Without limiting any other remedy which may be available to it, if Developer fails to perform any of its obligations under this Agreement, City may cease performing its obligations under this Agreement and may bring an action to recover all costs and expenses incurred by City together with interest from the date incurred at the rate of ten percent (10%) per annum.

11. **HAZARDOUS/TOXIC WASTE.** City has not, nor, to City's knowledge, has any third party used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any Hazardous Material (as defined below) on, under, about or within the Property in violation of any law or regulation. Developer agrees that it will not use, generate, store or dispose of any Hazardous Material (as defined below) on, under, about or within the Property in violation of any law or regulation. Developer agrees to defend and indemnify City, to the extent stated below, against any and all losses, liabilities, claims and/or costs arising from any breach of any Developer warranty or agreement contained in this Section. As used in this Section, "Hazardous Material" means any substance, chemical or waste that is identified as hazardous, toxic or dangerous in any applicable federal, state or local law or regulation (including petroleum and asbestos).

12. **INSURANCE.**

A. Before commencing performance under this License, and at all other times this License is effective, Developer will procure and maintain the following types of insurance with coverage limits complying, at a minimum, with the limits set forth below:

<u>Type of Insurance</u>	<u>Limits (combined single)</u>
Commercial general liability:	\$1,000,000
Workers compensation	Statutory limits

B. Commercial general liability insurance will meet or exceed the requirements of the most current ISO Forms. The amount of insurance set forth above will be a combined single limit per occurrence for bodily injury, personal injury, and property damage for the policy coverage. Liability policies must be endorsed to name City, its officials, and employees as "additional insureds" under said insurance coverage and to state that such insurance will be deemed "primary" such that any other insurance that may be carried by City will be excess thereto. Such insurance will be on an "occurrence," not a "claims made," basis and will not be cancelable except upon thirty (30) days prior written notice to City except for nonpayment of premiums which may be cancelable upon ten (10) day notice.

- C. Developer will furnish to City duly authenticated Certificates of Insurance and Endorsements evidencing maintenance of the insurance required under this License and such other evidence of insurance or copies of policies as may be reasonably required by City from time to time. Insurance must be placed with insurers with a current A.M. Best Company Rating equivalent to at least a Rating of "A:VII." Certificate(s) must reflect that the insurer will provide thirty day notice of any cancellation of coverage. Developer will require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- D. Should Developer, for any reason, fail to obtain and maintain the insurance required by this Agreement, City may obtain such coverage at Developer's expense and charge the cost of such insurance to Developer under this Agreement or terminate.
- E. All policies required by this Agreement must allow City, as additional insured, to satisfy the self-insured retention ("SIR") and deductible of the policy in lieu of Developer (as the named insured) should Developer fail to pay the SIR or deductible requirements. The amount of the SIR or deductible is subject to the approval of the City Attorney and the Finance Director. Developer understands and agrees that satisfaction of this requirement is an express condition precedent to the effectiveness of this Agreement. Failure by Developer as primary insured to pay its SIR or deductible constitutes a material breach of this Agreement. Should City pay the SIR or deductible on Developer's behalf upon the Developer's failure or refusal to do so in order to secure defense and indemnification as an additional insured under the policy, City may include such amounts as damages in any action against DEVELOPER for breach of this Agreement in addition to any other damages incurred by City due to the breach.

13. **NOTICES.** All communications to either Party by the other Party must be deemed made when received by such Party at its respective name and address, as follows:

City: City of Bellflower  
 16600 Civic Center Drive  
 Bellflower, California 90706  
 Attention: Mr. Jim DellaLonga, Director of Economic Development

With a copy to:

Karl H. Berger, City Attorney  
 Hensley Law Group  
 3655 Torrance Blvd., Suite 300  
 Torrance, CA 90503

Developer:

Stephen Hopkins, <sup>Manager</sup> Managing Partner

HC and Associates  
4340 Von Karman, Suite 200  
Newport Beach, CA 92660

Any such written communications by mail must be conclusively deemed to have been received by the addressee five days after the deposit thereof in the United States Mail, postage prepaid and properly addressed as noted above.

14. **ASSIGNMENT.** This Agreement cannot be assigned by Developer without City Manager's prior written approval in his sole, absolute and unfettered discretion, except that approval must not be required for a wholly-owned successor-in-interest formed, owned, and operated by Developer for the express purpose of fulfilling the obligations set forth in this Agreement.
15. **INTERPRETATION/VENUE.** This Agreement and its performance will be governed, interpreted, construed and regulated by the laws of the State of California. Exclusive venue for any action arising from this Agreement will be in Los Angeles County Superior Court.
16. **EXCLUSIVE REMEDY.** Declaratory and injunctive relief and specific performance must be the sole remedies available to the Parties and each Party understands and agrees that it cannot seek damages of any nature or type against the other Party except City can seek damages for any physical harm caused to the Property by Developer, as further described in Section 8.A.
17. **ENTIRE AGREEMENT.** This Agreement, and its Attachments, sets forth the entire understanding of the Parties as to the matters covered in this Agreement. There are no other understandings, terms or other agreements expressed or implied, oral or written.
18. **SEVERABILITY.** If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent 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.
19. **COVENANT AGAINST DISCRIMINATION.** Developer cannot discriminate against nor segregate, any person, or group of persons, on account of sex, race, color, age, marital status, religion, handicaps, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor must Developer establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Property.
20. **CONSTRUCTION.** This Agreement must be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the Party preparing this Agreement. This Agreement supersedes any prior understanding or written or oral agreements between the Parties hereto respecting the subject matter and contains the entire understanding between the Parties with respect thereto. This Agreement is the result of negotiations between the Parties who are each represented an attorney. This Agreement must be interpreted as though it was jointly drafted by the Parties, and it must not be construed

against a Party based upon the Party that drafted any particular section, phrase or word of the Agreement.

21. **AUTHORITY/MODIFICATION.** The Parties represent and warrant that all necessary action has been taken by the Parties to authorize the undersigned to execute this Agreement and to engage in the actions described herein. This Agreement may be modified by written amendment. Any such amendment must be approved by City Council.

22. **COUNTERPARTS.** This Agreement may be executed in any number or counterparts, each of which will be an original, but all of which together will constitute one instrument executed on the same date.

23. **FORCE MAJEURE.** Performance by either Party (who is not otherwise in uncured default) must not be deemed to be in default and the Term must be extended where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, supernatural causes acts of the public enemy, terrorism, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions on priority, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplies, acts of the other Party, or any other causes beyond the reasonable control or without fault of the Party claiming extension of time to perform. Notwithstanding the foregoing, inability to secure satisfactory financing or market and economic conditions must not entitle Developer to an extension of time to perform. An extension of time for any such cause must be for the period of the enforced delay and must commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within twenty (20) days of knowledge of the commencement of the cause.

**[Signature Page Follows]**

**CITY OF BELLFLOWER, a  
general law city and municipal  
corporation and the Successor Agency  
to the Bellflower Redevelopment  
Agency, a subdivision of the State of  
California.**

**HC and Associates**

**By:** \_\_\_\_\_  
**Jeffrey L. Stewart, City  
Manager**

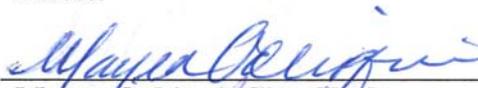
**By:** \_\_\_\_\_  
**Stephen Hopkins, Managing  
Partner**

**Date:** 5/11/16

**By:** \_\_\_\_\_

**Its:** \_\_\_\_\_

**Attest:**

  
\_\_\_\_\_  
**Mayra Ochiqui, City Clerk**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
**Karl H. Berger, City Attorney**

**City of Bellflower  
Agreement File No. 706**

**CITY OF BELLFLOWER, a  
general law city and municipal  
corporation and the Successor Agency  
to the Bellflower Redevelopment  
Agency, a subdivision of the State of  
California.**

By: \_\_\_\_\_  
Jeffrey L. Stewart, City  
Manager

Date: \_\_\_\_\_

**HC and Associates**

By: LCW  
Stephen Hopkins, ~~Managing Manager~~  
Partner

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

Its: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
Mayra Ochiqui, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Karl H. Berger, City Attorney

**EXHIBIT A**  
**Property Legal Description**

PORTION OF LOTS 17 THROUGH 19, BLOCK 19, CALIFORNIA COOPERATIVE COLONY TRACT, PER MAP RECORDED IN BOOK 21, PAGES 15 AND 16 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF LOS ANGELES, CALIFORNIA.