

**FIRST ADMINISTRATIVE AMENDMENT TO DEVELOPMENT AGREEMENT FOR
THE EL PASEO MARKETPLACE PROJECT
(PHASE 1 OF THE EL PASEO MASTER PLAN PROJECT).**

1. On May 24, 2012, the City Council of the City of Fresno ("City Council") approved a Settlement Agreement and Release ("Settlement Agreement") by and between the City of Fresno and Fresno City Council (collectively, "City") and John Allen Company, LLC ("John Allen"), on the one hand, and The Kashian Group, LTD, Suzanne Lanfranco and Dr. Joginder S. Matharu, on the other hand. In support thereof, the City Council also approved an Addendum to the certified Environmental Impact Report (SCH#2008011003) ("Addendum") for the El Paseo Master Plan Project ("Project"), which was approved by the City Council on December 16, 2010. The Settlement Agreement settled two lawsuits ("Lawsuits"), *Lanfranco, et al. v. City of Fresno, et al.* (Fresno County Superior Court Case No. 11 CECG00149) and *Kashian Group, LTD. v. City of Fresno, et al.* (Fresno Superior Court Case No. 11 CECG 00148). The Lawsuits alleged, on various grounds, that the City's approval of the Project was improper.

2. The Settlement Agreement, at Sections 6 and 7, sets forth road improvements that will, or might be, constructed as part of Phase 1 of the Project ("Road Improvements"). Section 2.1 of the Settlement Agreement provides that the construction of the Road Improvements shall be deemed conditions of approval of Phase 1. Pursuant to Section 8 of the Settlement Agreement, the City Council also deleted Project Mitigation Measure 13-13, the installation of two residential traffic circles on Palo Alto Avenue between Hayes and Bryan Avenues ("Traffic Circles"). The City has determined that an administrative amendment, adopted pursuant to Section 3.3 of the Development Agreement ("Amendment"), is appropriate to implement Section 2.1. and memorialize the deletion of the Traffic Circles. This Amendment implements the Settlement Agreement, but does not supersede or limit the Settlement Agreement or any portion of it.

3. John Allen's signature on the Settlement Agreement constitutes John Allen's finding under Section 3.3.1 of the Development Agreement that the Road Improvements and deletion of the Traffic Circles are appropriate and its written request that they be effectuated.

4. The following provisions are hereby added to and amend Subsection B of Exhibit "E" to the Development Agreement. In the event of a conflict with all or any portion of existing Subsection B, the provisions of this Amendment shall control.

“ 45. Improvement of Bryan Avenue. As a part of construction of Phase 1 of the Project and prior to the City issuing a certificate of occupancy for any portion of Phase 1, the following road improvements shall be completed as set forth below:

45.1. West Herndon to Southern Phase 1 Boundary. Improve or construct Bryan Avenue from West Herndon Avenue to the southern boundary of Phase 1, as detailed in the Project's original conditions of approval, except as to timing of the improvements. Construction of this portion of Bryan Avenue is an

existing condition of Phase 1 and is only mentioned in this Section 45.1 to establish that with the other road improvements described in this Section 45, a "looped" road will encircle the existing neighborhood following construction of the Bryan Avenue improvements.

45.2 Southern Phase 1 Boundary to Veterans Boulevard. Improve or construct Bryan Avenue from the southern boundary of Phase 1 to Veterans Boulevard. One travel lane shall be constructed in each direction and a median shall be constructed pursuant to current City standards, including the installation of concrete curbs on each side of the median. The median may be dirt and shall not be required to have landscaping. Median curbs and asphalt paving shall be constructed to Fresno Metropolitan Flood Control District (FMFCD) master-planned grades. The Bryan Avenue raised median island shall be constructed to accommodate a future two-hundred and fifty foot (250') southbound left turn pocket at Veterans Boulevard. In order that the median island and paving be designed to accommodate the ultimate intersection improvements, the intersection shall be designed conceptually to accommodate six travel lanes on Veterans Boulevard, four travel lanes on Bryan Avenue, dual left turn lanes on each approach and a separate right turn pocket for each approach, utilizing City standard lane widths. Only the median island and a seventeen foot (17') travel lane in each direction shall be required to be installed to satisfy this Section 45.2.

45.3 Veterans Boulevard to North Hayes Avenue. Improve or construct Veterans Boulevard from Bryan Avenue to North Hayes Avenue. One travel lane shall be constructed in each direction and a median shall be constructed pursuant to current City standards, including the installation of concrete curbs on each side of the median. The median may be dirt and shall not be required to have landscaping. The Veterans Boulevard raised median island shall be constructed to accommodate a future two-hundred fifty foot (250') westbound left turn pocket at Bryan Avenue. In order that the median island and paving may be designed to accommodate the ultimate intersection improvements, the intersection conceptually shall be designed to accommodate six (6) travel lanes on Veterans Boulevard, four (4) travel lanes on Bryan Avenue, dual left turn lanes on each approach and a separate right turn pocket for each approach, utilizing City standard lane widths. Only the median island and a seventeen foot (17') travel lane in each direction shall be required to be installed to satisfy this Section 45.3.

46. Additional Road Improvements. The improvements in Sections 47 and 48, below, shall be constructed in accordance with the terms and conditions specified therein. It is intended that these improvements be constructed prior to the City's issuance of any certificate of occupancy for any building within Phase 1.

47. Right Turn Lane at West Herndon and North Hayes Avenue. A right hand turn lane shall be installed at the southeast corner of the intersection at

West Herndon Avenue and North Hayes Avenue. It is understood that John Allen does not own or control the real property necessary for this improvement. John Allen or its Transferee(s) pursuant to Section 12 of this Development Agreement ("Developer"), shall use reasonable efforts to acquire the necessary right-of-way at a cost not to exceed Twenty-five Thousand Dollars (\$25,000.00). For the purpose of determining whether Developer's cost to acquire such right-of-way exceeds Twenty-five Thousand Dollars (\$25,000.00), the cost of the right-of-way shall be the acquisition payment to the property owner and shall not include any ancillary costs. If Developer is able in the exercise of reasonable efforts to acquire the necessary right-of-way for a cost not to exceed Twenty-five Thousand Dollars (\$25,000.00), Developer shall construct a right turn lane at the intersection of West Herndon and North Hayes Avenues.

47.1. If at such time as Developer seeks a certificate of occupancy for any portion of Phase 1, Developer has been unable to acquire the necessary right-of-way, Developer shall deposit Twenty-Five Thousand Dollars (\$25,000.00) with the City's Public Works Department, or other Department specified by the City ("the First Deposit") to be held for five (5) years and earmarked for construction of the right turn lane. The City is under no obligation to exercise its power of eminent domain or otherwise acquire the necessary right-of-way and is under no obligation to undertake or complete construction of this improvement. However, nothing in this Section 47.1 shall preclude the City, at its sole option, from constructing a right turn lane at the intersection of West Herndon and North Hayes Avenues and applying the First Deposit toward the costs of construction. If within the five (5) year time frame the right turn lane is installed as a result of a condition of approval of a CEQA-reviewed development, the installing party will have one (1) year from acceptance of the improvement to submit a claim for reimbursement from the City for up to Twenty-five Thousand Dollars (\$25,000.00). After the five (5) year time frame the installing party may also install and submit a claim for reimbursement from the City any amounts remaining from the First Deposit, provided the First Deposit has not been released as described in Section 47.3 at the time the request for reimbursement is accepted as complete by the City. Any reimbursement may be offset by fee credits which may already been credited by the City to the installing party.

47.2. If a right turn lane at the intersection of West Herndon and North Hayes Avenues has been fully constructed, and the cost of construction is less than the First Deposit or the time for reimbursement has expired, any remaining money from the First Deposit may be spent by the City on public improvements within a ½ mile radius from the intersection of West Herndon and North Hayes Avenues.

47.3. If a right turn lane at the intersection of West Herndon and North Hayes Avenues has not been fully constructed within the five (5) year time frame from the date of deposit, the First Deposit may be released from the dedicated account and spent by the City on public improvements within a ½ mile radius of the intersection of Hayes/Herndon Avenues. Provided, however, the

First Deposit may be released for this purpose only if the City Engineer finds either that (i) the improvement is not reasonably necessary; or (ii) the improvement is not reasonably feasible. The City shall give written notice mailed to the following address at least fourteen (14) days prior to making a finding for the release of the First Deposit: Michael P. Slater, Esq., 7522 N. Colonial Avenue, Suite 100, Fresno, CA 93711.

47.4. If any portion of the First Deposit is held by the City longer than the initial five (5) year time frame, at its sole option the City can recover employee time and costs incurred for administration of the fund and deduct those costs from any reimbursement or the costs of public improvements within a ½ mile radius of West Herndon and North Hayes Avenues.

48. Crosswalk and Asphalt Path. Developer shall install an approximately four foot (4') wide and four inch (4") thick asphalt path from the east side of Veterans Boulevard to the Palo Alto/North Hayes intersection along the east side of North Hayes Avenue and install a standard crosswalk at Palo Alto and North Hayes Avenues. It is understood that Developer does not own or control the real property necessary for this improvement. Developer shall use reasonable efforts to acquire the rights-of-way necessary to install the asphalt path and standard crosswalk at a cost not to exceed Twenty-five Thousand Dollars (\$25,000.00). For the purpose of determining whether the cost to acquire such rights-of-way exceeds Twenty-five Thousand Dollars (\$25,000.00), the cost shall be the acquisition payment to the property owner and shall not include any ancillary costs. If Developer is able in the exercise of reasonable efforts to acquire the necessary rights-of-way, at a cost not to exceed Twenty-five Thousand Dollars (\$25,000.00), Developer shall construct a standard crosswalk and install an approximately four foot (4') wide and four inch (4") thick asphalt path within the limits described in this Section 48. The City shall issue any permit necessary for construction of the asphalt path in the dimensions described in this Section 48.

48.1. If at such time as Developer seeks a certificate of occupancy for any portion of Phase 1, Developer has been unable to acquire the necessary rights-of-way, Developer shall deposit Twenty-five Thousand Dollars (\$25,000.00) ("the Second Deposit") with the City's Public Works Department, or other Department specified by the City, to be held and earmarked for installation of the asphalt path in the dimensions set forth in this Section 48 and the standard crosswalk. The City is under no obligation to exercise its power of eminent domain or otherwise acquire the necessary rights-of-way and is under no obligation to undertake or complete construction of either the standard crosswalk or asphalt path. However, nothing in this Section 48.1 shall preclude the City, at its sole option, from constructing the standard crosswalk or asphalt path and applying the Second Deposit toward the costs of construction. If within the five (5) year time frame the improvements are installed under an obligation to improve this intersection in this manner as a result of a condition of approval of a CEQA-reviewed development, the installing party will have one year from

acceptance of the improvement to submit a claim for reimbursement from the City for up to Twenty-five Thousand Dollars (\$25,000.00). After the five (5) year time frame the installing party may also install and submit a claim for reimbursement from the City any amounts remaining from the Second Deposit, provided the Second Deposit has not been released as described in Section 48.3 at the time the request for reimbursement is accepted as complete by the City. Any reimbursement may be offset by fee credits which may already have been credited by the City to the installing party.

48.2. If the crosswalk and asphalt path have been fully constructed, and the cost of construction is less than the Second Deposit or the time for reimbursement has expired, any remaining money from the Second Deposit may be spent by the City on public improvements within a ½ mile radius from the intersection of West Herndon and North Hayes Avenues.

48.3. If the crosswalk and asphalt path have not been fully constructed within the five (5) year time frame from the date of deposit, the Second Deposit may be released from the dedicated account to be spent on public improvements within a ½ mile radius of the intersection at Hayes and Herndon Avenues. Provided, however, that the Second Deposit may only be released for this purpose if the City Engineer finds either that (i) the improvements are not reasonably necessary; or (ii) the improvements are not reasonably feasible. The City shall give written notice mailed to the following address at least fourteen (14) days prior to making a finding for the release of the First Deposit: Michael P. Slater, Esq., 7522 N. Colonial Avenue, Suite 100, Fresno, CA 93711.

48.4. If any portion of the Second Deposit is held by the City longer than the initial five (5) year time frame, at its sole option the City can recover employee time and costs incurred for administration of the fund and deduct those costs from any reimbursement or the costs of public improvements within a ½ mile radius of West Herndon and North Hayes Avenues. “

5. The installation of the Traffic Circles is required pursuant to Exhibit “E”, Subsection B, Number 8, of the Development Agreement. That provision is hereby deleted from the Development Agreement.

6. The Road Improvements and deletion of the Traffic Circles are Minor Changes under Section 3.3.2 of the Development Agreement, including, without limitation, because they:

a. Are minor deviations to the Phase 1 approvals that are permitted under the Existing City Requirements (as defined in the Development Agreement), found to be reasonable by the Planning Manager, and required by the City Council through approval of the Settlement Agreement;

b. Have been determined by the Planning Manager to be consistent with the overall intent of the Phase 1 approvals and not materially altering the overall nature, scope or design of the Phase 1 approvals;

- c. Do not increase the aggregate total density and intensity of Phase 1;
- d. Do not modify the permitted uses from those in the Phase 1 approvals; and
- e. As found in the Addendum, none of the conditions in Public Resources Code Section 21166 and 14 Cal. Code Regs. Section 15162 have occurred; therefore, no subsequent or supplemental environmental impact report is required.

7. Based on all of the foregoing, this Amendment is a ministerial clarification and adjustment under Section 3.3.3 of the Development Agreement.

Date: 6/29/2012

CITY OF FRESNO

By: Mark Scott
 Mark Scott
 Its: City Manager

Date: 6/22/12

JOHN ALLEN COMPANY, LLC

By: [Signature]
 John Allen
 Its: Managing Member

SEE ATTACHED CERTIFICATE

APPROVED AS TO FORM:

JAMES C. SANCHEZ
 City Attorney

By: [Signature]
 Shannon Chaffin
 Senior Deputy City Attorney

Date: 6/27/12

APPROVED AS TO FORM:

TAMAR C. STEIN
 Cox Castle & Nicholson LLP

By: Tamar Stein
 Tamar C. Stein
 Attorneys for John Allen Company LLC

Date: 6/25/12

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

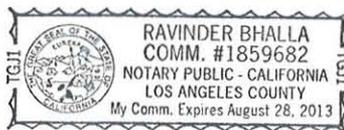
On June 22, 2012 before me, Ravinder Bhalla, Notary Public (here insert name of the officer), Notary Public, personally appeared John Allen, who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

[Seal]



CLERK'S CERTIFICATION

State of California)
County of Fresno)

On June 29, 2012 before me, Sherrie L. Badertscher, personally appeared, Mark Scott, City Manager, who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal

YVONNE SPENCE, CMC
City Clerk, City of Fresno

By Sherrie L. Badertscher
Deputy