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6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **COUNTY OF LOS ANGELES, CENTRAL - LOS ANGELES COURTHOUSE**
8

9 ASSI SUPER, INC.,) **Case No.: BC319425**
10 a Corporation,)
11 Plaintiff,) **DECLARATION OF:**
12 vs.) **MICHAEL STUART POLES, GC, CM,**
13 EIGHT OXFORDS PROPERTY) **RCI, DABFET, ACFE**
14 MANAGEMENT, INC., a)
15 Corporation,)
16 Defendants.)

17
18 I, **MICHAEL S. POLES**, declare:

19 **1.** I am over the age of 18 years and I am a resident of
20 the County of Los Angeles, State of California. I have personal
21 knowledge of the facts set forth in this declaration. I am
22 making this declaration in support of Eight Oxfords Property
23 Management, Inc. ("Eight Oxfords") motion for the Court to
24 modify its previous order reinstating the sublease agreement
25 between Eight Oxfords and Assi Super, Inc. ("Assi").

26 If called as a witness, I could and would competently
27 testify as follows:
28

1 of Forensic Examiners International(*Member*), American Society
2 for Testing and Materials (*Member*), Beverly Hills Bar
3 Association (*Non-Attorney Participant: ADR, Litigation and Real*
4 *Estate Law Sections*), California Dispute Resolution Council
5 (*Member*), Consumer Attorneys of California (*Technical Support*
6 *Member*), Construction Specifications Institute (*past member*),
7 Forensic Expert Witness Association (*Member*), Los Angeles County
8 Bar Association (*Member*).

9 **BACKGROUND**

10 **4.** For the past 44 years I have been actively involved in
11 building, project management, consulting and inspection of
12 commercial, industrial and residential buildings. For the past
13 thirty five years I have been providing litigation support as a
14 Forensic Expert Witness and I have testified in numerous Court
15 proceedings as a designated construction expert. For the past
16 four years I have been providing mediation services and I have
17 served on the Los Angeles County Superior Court pro-bono panel
18 of ADR Mediators. My background, training and experience which
19 qualify me to act as an expert in this case are more fully set
20 forth in my attached curriculum vitae which is specifically
21 incorporated herein, as though set forth in full and marked as

22 **EXHIBIT "A"**.

23 **ISSUES AT HAND**

24 **5.** I have been advised that Eight Oxfords' sublease with
25 Assi was declared forfeited, but that afterwards Eight Oxfords
26 successfully moved the Court to set aside the forfeiture and
27 reinstate the sublease with Assi. In addition, I understand
28 that the Order setting aside the forfeiture was granted on a
number of conditions, including, that Eight Oxfords obtain

1 building permits within 60 days, that construction be commenced
2 within 90 days and that construction be completed within two
3 years. Based upon the reasons set forth below, it is my
4 conclusion that it was impossible for Eight Oxfords to comply
5 with the portion of the Court's order requiring a building
6 permit within 60 days and commencing construction within 90
7 days.

8 DOCUMENTS REVIEWED

9 6. I have reviewed the 2002 City of Los Angeles Building
10 Code, which is based on the 2001 California Building Code and
11 the 1997 Uniform Building Code, and are currently applicable.
12

13 DISCUSSION

14 7. **DESIGN DEVELOPMENT.** As a precedent to constructing any
15 building project, there is an extensive and complex process that
16 must be undertaken and submitted to the "Building Authority" for
17 their review and acceptance. In this case the "Building
18 Authority" is the **City of Los Angeles, Department of Building
19 And Safety** that enforces the "CODES." This complex process
20 begins with gathering exhaustive engineering and other data
21 consisting of:

22 **7.1. CIVIL ENGINEERING, GEOTECHNICAL ENGINEERING,
23 STRUCTURAL ENGINEERING, ELECTRICAL ENGINEERING AND
24 MECHANICAL ENGINEERING, ZONING, ENVIRONMENTAL AND
25 ARCHITECTURAL STUDIES, CALCULATIONS REPORTS AND
26 DRAWING PREPARATION:**

- 27 A. On-Site exploration
28 1. Surveying
2. Soils sampling and log of borings

1 3. Ingress, egress and other specific site
2 conditions

3 **B.** Generation of **topographical and plat maps** from
4 the surveys

5 **C.** **Soils Laboratory analysis** of soil sampled from
6 the site coupled with empirical soils data and
7 historical seismic data generated into a formal
8 **SOILS REPORT**. The report contains specific
9 scientific data gathered from numerous locations
10 within the boundaries of the site. The
11 **GEOTECHNICAL ENGINEER** reports the characteristics
12 and soil bearing values with recommendations for
13 the **STRUCTURAL ENGINEER** to base his **STRUCTURAL**
14 **CALCULATIONS** for the transfer of loads and
15 stresses imposed upon and from the structure into
16 the soil and thereby provide the designed support
17 for the structure.

18 **D.** **Architectural Review and Design Development**
19 **coordinated with Consulting Engineers:**

- 20 1. **CIVIL**
- 21 2. **GEOTECHNICAL**
- 22 3. **STRUCTURAL**
- 23 4. **ELECTRICAL**
- 24 5. **MECHANICAL**
- 25 6. **OTHER CONSULTANTS**

26 **8. THE BUREAUCRACY.** After the construction documents are
27 prepared by the Architect and his Consulting Engineers the
28 permit process consists of undergoing the myriad of Departmental

1 Reviews and Approvals with payment of required fees to each.
2 They consist largely of the following:

3 **8.1. CITYWIDE GENERAL DEPARTMENTAL CLEARANCE**

- 4 A. Clearance by Department of City Planning
 - 5 1. For Existing City Planning Documents
 - 6 2. For New Entitlement Actions
- 7 B. Clearance by Department of Public Works
 - 8 1. For Bureau of Engineering (BOE)
 - 9 2. For Bureau of Sanitation (BOS)
- 10 C. Clearance by Fire Department
- 11 D. Clearance by Department of Transportation
- 12 E. Clearance by Cultural Affairs Department
- 13 F. Clearance or Approval by Other Departments and
14 Governmental Agencies

15 **8.2. AREA-SPECIFIC DEPARTMENTAL CLEARANCES**

- 16 A. Clearance by Community Planning Bureau of
17 Department of City Planning
- 18 B. Clearance by Community Redevelopment Agency

19 **8.3. APPLICABILITY MATRICES**

- 20 A. Planning Documents
- 21 B. Department of Public Works Clearance
- 22 C. Fire Department Clearance
- 23 D. Department of Transportation Clearance
- 24 E. Cultural Affairs Department Clearance
- 25 F. Specific Plans, Pedestrian Oriented District, and
26 Community Design Overlay District Clearance
 - 27 1. Index of Matrices for Specific Plans
- 28 G. Community Redevelopment Agency Clearance

1 The Source for the above described is the **Building Permit**
2 **Clearance Handbook, published by the City of Los Angeles**
3 **Development Services Committee, Rev.: 07-27-05.** A complete copy
4 is contained herein and marked as **EXHIBIT "B"**.

5 **9. THE PERMIT PROCESS.** Pursuant to the 2002 Edition of
6 the City of Los Angeles Building Code, the permit requirements
7 are contained under **SECTION 106 - PERMITS.** A complete copy is
8 contained herein SECTIONS 106 THROUGH 112, et seq and marked as
9 **EXHIBIT "C"**. Once construction documents, consisting of:
10 Plans, Specifications, Geotechnical (SOILS) Report, etc. have
11 been submitted to the **BUILDING DEPARTMENT** for **PLAN CHECK REVIEW,**
12 they are reviewed and often returned with corrections to be made
13 and re-submitted to Plan Check for additional review. This
14 process can be repeated numerous times until all requirements
15 have been satisfactorily met. Only then are the **PERMITS ISSUED.**

16 **10. Construction.** Once the requisite permits have been
17 issued, the **PRIME CONTRACTOR** and some twenty-plus **SUBCONTRACTORS**
18 commence the construction phase. Depending upon numerous
19 factors, complexities and size of the Project, the construction
20 phase can take a considerable period of time in which to
21 complete satisfactorily to the contractual requirements and
22 expectations of the Owner, the Owner's Architect and Consulting
23 Engineers and other Consultants to the Owner. In addition one
24 must take into account the required Building Department
25 Inspections with approvals and sign-offs, Materials Testing
26 Laboratory Reports of required tests of certain materials in
27 accordance with applicable A.S.T.M. Standards, required Special
28 Inspections (*in the City of Los Angeles, they are referred to as*
"Deputy Inspections"), and Structural Engineering Observation

1 Reports, and the list goes on. Upon completion of all the work,
2 submittal of all required reports of compliances to codes and
3 applicable standards the Project is provided a **FINAL INSPECTION**
4 by the Building Department. Once completed and **APPROVED**, a
5 **CERTIFICATE OF COMPLETION** is applied for and a **CERTIFICATE OF**
6 **OCCUPANCY** is subsequently issued by the City and recorded by the
7 **LOS ANGELES COUNTY RECORDER'S OFFICE.**

8 **CONCLUSIONS AND OPINIONS**

9 **11.** Based on my experience with building similar projects
10 in general and the inherent copious departmental clearance and
11 review requirements by the City of Los Angeles' Plan Check
12 Review and Permit process, it would take a considerably longer
13 time-frame to complete than the Court's order that permits be
14 obtained within 60 days and in addition that construction be
15 commenced within 90 days of the order. I find the time-frames
16 required under the order to be completely unrealistic and
17 consequently impossible to meet.

18 **11.1.** As a caveat, unless there is a valid and existing
19 Conditional Use Permit, the Department of Building and Safety
20 will not approve the plans or authorize the construction
21 permits. I have been advised, however, that Assi has so far
22 failed in its efforts to obtain a renewal of the Conditional Use
23 Permit, and that there is currently not a Conditional Use Permit
24 on the property.

26 **RECOMMENDATIONS**

27 **12.** It would seem to me to be more plausible to first
28 consult with all design professionals, the general contractor

1 and critical subcontractors, as to their opinions regarding
2 phases for design development and the necessary plan check
3 review processes and translate the data into a **CRITICAL PATH**
4 **METHOD SCHEDULE** for the following phases:

- 5 A. **DESIGN DEVELOPMENT**
- 6 B. **PLAN CHECK REVIEW AND PERMITS**
- 7 C. **CONSTRUCTION**

8
9 I declare under the penalty of perjury under the laws of
10 the State of California that the foregoing is true and correct
11 to the best of my knowledge and abilities, and as to those items
12 stated on information and belief, I believe them to be true.

13
14 Executed this 6th day of November, 2006, in Los Angeles
15 County, California.

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17 _____
18 **MICHAEL S. POLES, GC, CM, RCI, DABFET, ACFE**
19 1202 Greenacre Avenue
20 West Hollywood, California 90046

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EXHIBIT "A"
CURRICULUM VITAE OF
MICHAEL S. POLES

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EXHIBIT "B"
CITY OF LOS ANGELES BUILDING PERMIT CLEARANCE HANDBOOK

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EXHIBIT "C"
CITY OF LOS ANGELES BUILDING CODE SECTIONS 106 THROUGH 112,
ET SEQ