

CD 114  
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APPROVED FOR THE  
CITY ENGINEER BY

BOND CONTROL

ACCEPTED  
RISK MANAGEMENT  
CITY ADMINISTRATIVE OFFICE

CA0130103  
5/30/13

City of Los Angeles  
DEPARTMENT OF PUBLIC WORKS  
**SUBDIVISION IMPROVEMENT AGREEMENT AND CONTRACT**

THIS AGREEMENT AND CONTRACT, made and entered into, by and between the CITY OF LOS ANGELES, hereinafter designated as the CITY; and **AERC DESMOND'S TOWER, LLC.**

hereinafter designated as SUBDIVIDER; WITNESSETH:

ONE: For, and in consideration of the approval of the final map of that certain division of land known as:

**TRACT MAP NO. 62842**

and for acceptance of the dedication therein by the CITY, the SUBDIVIDER hereby agrees, at his own costs and expense, to construct and install all public improvements required in and adjoining and covered by the final map which are shown on plans, profiles and specifications, previously supplied to the City Engineer; and to furnish all equipment, labor and materials necessary to construct, install and complete the required improvements in a good and workmanlike manner. The estimated cost for completion of the above-mentioned work and improvement is the sum of **FOUR HUNDRED FORTY SIX THOUSAND AND NO/100 Dollars (\$446,000.00)**.

TWO: It is agreed that the SUBDIVIDER has furnished to the City Engineer all necessary final plans, profiles and standard specifications for the required public improvements; or, that in lieu of such final plans, profiles and specifications, the City Engineer has been furnished preliminary plans that are of sufficient detail so as to be approved by the City Engineer for use in the preparation of the estimated cost of the required improvements. In consideration of the acceptance of such preliminary plans by the City Engineer, the SUBDIVIDER hereby agrees to furnish all necessary final plans, profiles and specifications in a form that will be sufficient to be processed and approved by the City Engineer not later than six (6) months from the date the final map of said subdivision of land is filed for record with the County Recorder, County of Los Angeles, State of California.

THREE: The SUBDIVIDER agrees to perform all of the above-mentioned work under permit or permits to be issued by the Board of Public Works, hereinafter designated as the BOARD. All work shall be performed in accordance with the standards and specifications of the BOARD, as amended, and to the approval of the City Engineer. The SUBDIVIDER further agrees to pay for such inspection of work and improvements as may be required by the BOARD, and the performance of the work shall be further conditioned upon due compliance with all of the provisions of Article 7 of Chapter 1, and Sections 62.105 through 62.117, inclusive, of the Los Angeles Municipal Code, as amended.

**SUBDIVISION IMPROVEMENT AGREEMENT AND CONTRACT**

FOUR: In the event said work is required to be performed under Class "B" Permit as defined in Section 62.106 of the Municipal Code, the SUBDIVIDER hereby agrees to obtain said permit from the City Engineer, including payment of all necessary fees as required under the provisions of Sections 62.110 and 62.111 of said Code, prior to certification of the final map by the City Engineer.

FIVE: If the planting of street trees is required under the conditions of approval established by the Advisory Agency, the SUBDIVIDER shall install all required trees and shall pay all maintenance fees for each tree required to be planted by the SUBDIVIDER, in accordance with the maintenance fee schedule set forth in Section 62.176 of the Municipal Code. Said fees shall be paid to the Bureau of Engineering of the DEPARTMENT OF PUBLIC WORKS and shall be included in the permit fee deposit for the permit type determined by the Bureau of Engineering.

SIX: The SUBDIVIDER agrees to perform any changes or alterations required by the CITY in the construction and installation of the required improvements, provided that all such changes or alterations do not exceed ten (10) percent of the original estimated cost of such improvements; and the SUBDIVIDER further agrees; to install such devices for the abatement of erosion or flood hazard as may be required under the provisions of Section 61.02 of the Municipal Code; the costs of each of the above to be borne by the SUBDIVIDER.

SEVEN: The SUBDIVIDER expressly agrees to perform the above-mentioned work in a diligent and workmanlike manner so as to complete the construction and installation of all required public improvements on or before twenty-four (24) months from the date the final map is filed for record with the County Recorder, County of Los Angeles, State of California; or within any lawful extension of said term, or as otherwise provided by law. The SUBDIVIDER acknowledges that in the event any extension of term is granted, the City Engineer may impose additional conditions in accordance with Section 17.08G-3 of the Municipal Code.

EIGHT: The SUBDIVIDER agrees to warrant all work performed against any defective workmanship, or labor done, or defective materials furnished in the performance of the work required by this contract. The term of this warranty shall expire one year from the date of acceptance of the completed improvements by the City Engineer, all as required under Chapter 5 of Division 2 of Title 7 of the State of California Government Code, known as the "Subdivision Map Act," and as amended. The estimated amount sufficient for warranty is the sum of NONE.

NINE: The CITY shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage happening or occurring from or to the works specified in this contract prior to the completion and acceptance of the same by the City Engineer; nor shall the CITY, nor any officer or employee thereof, be liable for any persons or property injured by reason of the nature of said work, or by reason of the acts or omissions of the SUBDIVIDER, his agents or employees, in the performance of said work; but all of said liabilities shall be assumed by the SUBDIVIDER. The SUBDIVIDER further agrees to protect, defend and hold harmless the CITY and its officers and employees from all loss, liability or claim because of, or arising out of, the acts or omissions of the SUBDIVIDER, or his agents and employees, in the performance of this contract, or arising out of the use of any patent or patented article in the construction of said work.

**SUBDIVISION IMPROVEMENT AGREEMENT AND CONTRACT**

TEN: It is agreed that the SUBDIVIDER has filed or deposited with the CITY a good and sufficient IMPROVEMENT SECURITY in accordance with the provisions of Section 17.08G of the Municipal Code of the CITY, in an amount equal to or greater than the estimated cost of construction and installation of the required improvements and an amount sufficient to act as warranty for said improvements as defined in Article Eight hereof, together with reasonable attorney's fees which may be incurred by the CITY in enforcing the terms and conditions of this contract. IN ADDITION TO the Improvement Security, it is further agreed that the SUBDIVIDER has filed or deposited a good and sufficient PAYMENT SECURITY for labor and materials in an amount not less than fifty (50) percent of the amount of the Improvement Security, to secure the claims to which reference is made in Title 15, commencing with Section 3082, of Part 4 of Division 3 of the Civil Code of the State of California. If the sureties or security on either said Improvement Security or Payment Security, or both, in the opinion of the CITY become insufficient, in any respect, the SUBDIVIDER hereby agrees to furnish sufficient additional security within ten (10) days after receiving notice from the CITY that said extant securities are insufficient.

ELEVEN: It is further understood and agreed, that in the event it is deemed necessary to extend the time for the performance of the work contemplated to be done under this contract, such extensions of time may be granted by the City Engineer or by the BOARD, or both, either at their own option or upon request of the SUBDIVIDER, and such extensions shall in no way affect the validity of this contract, the Subdivision Cash or Negotiable Security Improvement and Warranty Performance Agreement executed in connection herewith or release the Surety on any Surety Bond or Bonds. Such extensions of time may be conditioned upon a construction schedule to be specified by the City Engineer, and/or a revision of the Improvement Security based on revised estimated improvement costs, and/or revision of the plans, profiles and specifications used for the construction and installation of the required improvements to comply with the standards and specifications of the BOARD in effect at the time such extension of time is granted.

TWELVE: The SUBDIVIDER further agrees to maintain the aforesaid Improvement and Payment Security in full force and effect, during the term of this contract, including any extensions of time as may be granted thereto.

THIRTEEN: If the SUBDIVIDER neglects, refuses or fails to prosecute the required work with such diligence as to insure its completion within the time specified herein, or within such extension of said time as may have been granted by the City Engineer or by the BOARD, or both, or if the SUBDIVIDER neglects, refuses or fails to perform satisfactorily any of the provisions of the improvement construction permit, plans and profiles, or specifications, or any other act required under this agreement and contract, the BOARD may declare this agreement and contract in default.

Immediately upon a declaration of default, the Subdivider and Surety shall be liable to City for the cost of construction and installation of the public improvements and for costs and reasonable expense and fees, including reasonable attorneys' fees incurred in enforcing this Agreement and Contract.

A notice of default shall be mailed to the SUBDIVIDER and any Surety and the Board shall cause a demand to be made for payment of any negotiable securities held as Improvement Securities in connection with this Agreement and Contract.

Continuation Sheet For:

**SUBDIVISION IMPROVEMENT AGREEMENT AND CONTRACT**

In the event of such default, the SUBDIVIDER hereby grants to the CITY and/or the Surety upon any Surety Bond, the irrevocable permission to enter upon the lands of the subject division of land for the purpose of completing the required improvements. The CITY reserves the right if it elects to do the work to exclude the SUBDIVIDER from the site in order to complete the required work either by CITY forces or by separate contract.

IN WITNESS WHEREOF, this instrument has been duly executed by the above named SUBDIVIDER on May 10, 20 13.

**AERC DESMOND'S TOWER, LLC.**

By: Associated Estates Realty Corporation, its Managing Member

By: Bradley A. VanAken  
Its Vice President

SEE INSTRUCTIONS FOR SIGNATURES AND ACKNOWLEDGMENTS ON "NOTICE TO CLASS B PERMIT AND BOND APPLICANTS" (FORM ENG. 3.693-REVISED)

District Design Office: **CENTRAL**

Council District No.: **4**

Date Issued: **05/08/2013**

Location: **5520 W. WILSHIRE BLVD. S/E CORNER OF BURNSIDE AVE. AND WILSHIRE BLVD.**

**ACKNOWLEDGMENT**

OHIO  
State of ~~California~~  
County of Cuyahoga )

On May 23, 2013 before me, Susan K. Sue Bozek, Notary Public  
(insert name and title of the officer)

personally appeared Bradley Van Auken, Vice President of Associated Estates Realty Corporation,  
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~~ <sup>OHIO</sup> that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

SUSAN K. BOZEK, Notary Public  
State of Ohio  
My Commission Expires May 17, 2018

City of Los Angeles  
DEPARTMENT OF PUBLIC WORKS  
Office of the City Engineer

APPROVED FOR THE  
CITY ENGINEER BY

BOND CONTROL

1018558

SURETY'S BOND NO.

CENTRAL

District/Division Design Office  
Council District No. 4  
Date Issued: 05/08/2013

CA013013

CAO-RISK MGMT. NO.

5/30/13

**SUBDIVISION IMPROVEMENT AND WARRANTY PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, **AERC DESMOND'S TOWER, LLC.**

as PRINCIPAL and The Hanover Insurance Company a corporation  
incorporated under the laws of the State of NH and authorized by the  
laws of the State of California to execute bonds and undertakings as sole surety, as SURETY, are  
held and firmly bound unto the City of Los Angeles, in the JUST and FULL SUM of **FOUR  
HUNDRED FORTY SIX THOUSAND AND NO/100 Dollars (\$446,000.00)** . lawful money of the  
United States, for the payment of which sum, well and truly to be made, we bind ourselves, our  
heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these  
presents.

The CONDITION of the foregoing obligation is such that WHEREAS the PRINCIPAL has entered  
or is about to enter into the annexed agreement with the CITY, pursuant to the authority of an act  
of the Legislature of the State of California known as the "Subdivision Map Act" (Division 2,  
commencing with Section 66410, of Title 7 of the Government Code) and amendments thereto,  
and pursuant to the provisions of Article 7 of Chapter 1, and Sections 62.105 through 62.117,  
inclusive, of the Municipal Code of the CITY, as amended, for the construction and installation of  
certain public improvements in accordance with the terms and conditions stipulated in said  
agreement, and is required by the CITY to give this bond in connection with the execution of said  
agreement as a contract for approval of that certain division of land known as:

**TRACT MAP NO. 62842**

NOW, THEREFORE, if the above bounden PRINCIPAL, his or its heirs, executors, administrators,  
or assigns, shall in all things stand to and abide by, and well and truly keep and perform the  
covenants, conditions and provisions in said annexed agreement and any alteration thereof made  
as therein provided, on his or their part, to be kept and performed at the time and in the manner  
therein specified, and in all respects according to their true intent and meaning, and shall  
indemnify and save harmless the CITY, its officers, agents and employees, as therein stipulated,  
then this obligation shall become null and void; otherwise it shall be and remain in full force and  
effect.

Continuation Sheet For:

**SUBDIVISION IMPROVEMENT AND WARRANTY PERFORMANCE BOND**

AS PART OF THE OBLIGATION SECURED HEREBY, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the CITY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered therefor.

THE SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the annexed agreement, or to the work to be performed thereunder, or to the specifications accompanying the work to be performed, shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said agreement, or to the work, or to the plans and specifications. The provisions of Section 2945 of the Civil Code are not a condition precedent to the Surety's obligation hereunder, and are hereby waived by the SURETY.

IN WITNESS WHEREOF, this instrument has been duly executed by the above named PRINCIPAL and SURETY on May 13, 20 13.

Principal Signatories

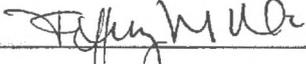
**AERC DESMOND'S TOWER, LLC.**

By: Associated Estates Realty Corporation, its Managing Member



By: Bradley A. Van Auken  
Its Vice President

SURETY: The Hanover Insurance Company

By:  Jeffrey M. Wilson (Attorney-in-Fact)

Surety's Address: 440 Lincoln Street, Worcester, MA 01653

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

POWERS OF ATTORNEY  
CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint

**Mark W. Edwards, II, Ronald B. Giadrosich, Jeffrey M. Wilson, Robert R. Freel and/or Evondia H. Woessner**

of **Birmingham, AL** and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:

**Any such obligations in the United States, not to exceed Forty Million and No/100 (\$40,000,000) in any single instance**

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

"RESOLVED, That the President or any Vice President, in conjunction with any Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 27th day of **October 2011**.



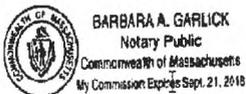
THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

*Robert Thomas*  
Robert Thomas, Vice President

*Mark Fitzgerald*  
Mark Fitzgerald, Vice President

THE COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF WORCESTER ) ss.

On this 27th day of **October 2011** before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



BARBARA A. GARLICK  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires Sept. 21, 2018

*Barbara A. Garlick*  
Barbara A. Garlick, Notary Public  
My Commission Expires September 21, 2018

I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 13th day of **May, 2013**

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

*Glenn Margosian*  
Glenn Margosian, Vice President

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of Alabama

County of Jefferson

On May 13, 2013 before me, Anna Keith Childress, Notary Public  
(Here insert name and title of the officer)

personally appeared Jeffrey M. Wilson, Attorney-in-Fact

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.

Anna Keith Childress

Signature of Notary Public Anna Keith Childress  
My Commission Expires 10/3/2015

(Notary Seal)

## ADDITIONAL OPTIONAL INFORMATION

### INSTRUCTIONS FOR COMPLETING THIS FORM

*Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. verifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*

- State and County information must be the State and County where the document signed(s) personally appeared before the notary public for acknowledgment
- Date of notarization must be the date that the signet(s) personally appeared which must also be the same date the acknowledgment is completed
- The notary public must print his or her name as it appears within his or her commission (followed by a comma and then your title (notary public))
- Print the name(s) of document signet(s) who personally appear at the time of notarization
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they - is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-stamp if a sufficient area permits, otherwise complete a different acknowledgment form
- Signature of the notary public must match the signature on file with the office of the county clerk
  - ◊ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document
  - ◊ Indicate title or type of attached document, number of pages and date
  - ◊ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary)
- Securely attach this document to the signed document

### DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

- Individual (s)  
 Corporate Officer

(Title)

- Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

**ACKNOWLEDGMENT**

OHIO  
State of ~~California~~  
County of Cuyahoga )

On May 13, 2013 before me, Susan K. Sue Bozek, Notary Public  
(insert name and title of the officer)

personally appeared Bradley Van Auken, Vice President of Associated Estates Realty Corporation,  
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~~ <sup>OHIO</sup> that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

SUSAN K. BOZEK, Notary Public  
State of Ohio  
My Commission Expires May 17, 2018

City of Los Angeles  
DEPARTMENT OF PUBLIC WORKS  
Office of the City Engineer

APPROVED FOR THE  
CITY ENGINEER BY

BOND CONTROL

1018558

SURETY'S BOND NO.

**CENTRAL**

District/Division Design Office  
Council District No. 4  
Date Issued: 05/08/2013

CA8/30103

CAO-RISK MANAGEMENT NO.

**SUBDIVISION LABOR AND MATERIAL PAYMENT BOND 5/30/13**

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, **AERC DESMOND'S TOWER, LLC.**

as PRINCIPAL and The Hanover Insurance Company a corporation  
incorporated under the laws of the State of NH and authorized by the  
laws of the State of California to execute bonds and undertakings as sole surety, as SURETY, are  
held and firmly bound unto the City of Los Angeles, in the JUST and FULL SUM of **TWO  
HUNDRED TWENTY THREE THOUSAND AND NO/100 Dollars (\$223,000.00)** lawful money of  
the United States, for the payment of which sum, well and truly to be made, we bind ourselves,  
our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these  
presents.

The CONDITION of the foregoing obligation is such that WHEREAS the PRINCIPAL has entered  
or is about to enter into a contract with the CITY, pursuant to the authority of an act of the  
Legislature of the State of California known as the "Subdivision Map Act" (Division 2, commencing  
with Section 66410, of Title 7 of the Government Code) and amendments thereto, for the  
construction and installation of certain public improvements in accordance with the terms and  
conditions stipulated in said contract, and WHEREAS, pursuant to said Code, the PRINCIPAL  
must give this PAYMENT BOND as a condition to the execution of said contract, and for approval  
by the CITY of that certain division of land known as:

**TRACT MAP NO. 62842**

NOW, THEREFORE, if said PRINCIPAL fails to pay the Contractor or his Subcontractors, or fails  
to pay persons renting equipment or furnishing labor or materials of any kind for the performance  
of said contract, or fails to pay amounts due under the Unemployment Insurance Act with respect  
to such work or labor, then said SURETY will pay the same in an amount not exceeding the  
amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition  
to the face amount thereof, costs and reasonable expenses and fees, including reasonable  
attorney's fees, incurred by the CITY in successfully enforcing such obligation, to be awarded and  
fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

Continuation Sheet For:

**SUBDIVISION LABOR AND MATERIAL PAYMENT BOND**

IT IS EXPRESSLY STIPULATED AND AGREED that this bond shall insure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns to any suit brought upon this bond.

SHOULD THE CONDITION of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

THE SURETY hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract, or to the work to be performed thereunder, or to plans and specifications for the work to be performed, shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition. The provisions of Section 2845 of the Civil Code are not a condition precedent to the SURETY's obligation hereunder and are hereby waived by the SURETY.

IN WITNESS WHEREOF, this instrument has been duly executed by the above named PRINCIPAL and SURETY on May 13, 2013.

Principal Signatories

Principal Signatories

**AERC DESMOND'S TOWER, LLC.**

By: Associated Estates Realty  
Corporation, its Managing Member

Bradley A. Van Auken

By: Bradley A. Van Auken  
Its Vice President

SURETY: The Hanover Insurance Company

By: Jeffrey M. Wilson Jeffrey M. Wilson (Attorney-in-Fact)

Surety's Address: 440 Lincoln Street, Worcester, MA 01653

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of Alabama

County of Jefferson

On May 13, 2013 before me, Anna Keith Childress, Notary Public  
(Type, print name and title of the officer)

personally appeared Jeffrey M. Wilson, Attorney-in-Fact

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 Anna Keith Childress  
My Commission Expires 10/3/2015

(Notary Seal)

## ADDITIONAL OPTIONAL INFORMATION

### INSTRUCTIONS FOR COMPLETING THIS FORM

*Any acknowledgment completed in California must contain verbatim verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternate acknowledgment verbiage as may be printed on such a document as long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. verifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.*

- State and County information must be the State and County where the document signer~~s~~ personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signers personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then year, title (notary public).
- Print the name~~s~~ of document signer~~s~~ who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/~~she/they~~ is/~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-ink it a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on the with the effect of the notary clerk.
  - ✦ Additional information is not required but could help to ensure this acknowledgment is not misused or attached in a different document.
  - ✦ Indicate title or type of attached document, number of pages and date.
  - ✦ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Signer~~s~~ attach this document to the signed document.

### DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages \_\_\_\_\_ Document Date \_\_\_\_\_

(Additional information)

### CAPACITY CLAIMED BY THE SIGNER

- Individual (S)  
 Corporate Officer

(Title)

- Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other \_\_\_\_\_

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

POWERS OF ATTORNEY  
CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint

Mark W. Edwards, II, Ronald B. Giadrosich, Jeffrey M. Wilson, Robert R. Freel and/or Evondia H. Woessner

of Birmingham, AL and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:

Any such obligations in the United States, not to exceed Forty Million and No/100 (\$40,000,000) in any single instance

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

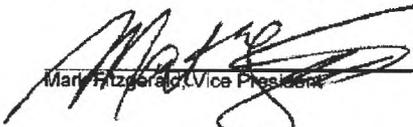
"RESOLVED, That the President or any Vice President, in conjunction with any Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by two Vice Presidents, this 27th day of October 2011.



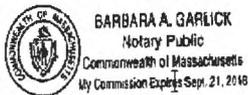
THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

  
Robert Thomas, Vice President

  
Mark Fitzgerald, Vice President

THE COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF WORCESTER ) ss.

On this 27th day of October 2011 before me came the above named Vice Presidents of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



  
Barbara A. Garlick, Notary Public  
My Commission Expires September 21, 2018

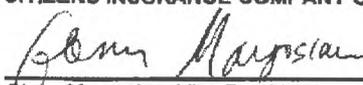
I, the undersigned Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 13th day of May, 2013

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

  
Glenn Margosian, Vice President

# ACKNOWLEDGMENT

OHIO  
State of ~~California~~  
County of Cuyahoga )

On May 13, 2013 before me, Susan K. ~~Sue~~ Bozek, Notary Public  
(insert name and title of the officer)

personally appeared Bradley Van Auken, Vice President of Associated Estates Realty Corporation,  
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~~ <sup>OHIO</sup> that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)

SUSAN K. BOZEK, Notary Public  
State of Ohio  
My Commission Expires May 17, 2018

LIMITED LIABILITY COMPANY AGREEMENT

OF

AERC DESMOND'S TOWER, LLC

This Limited Liability Company Agreement (this "Agreement") of AERC Desmond's Tower, LLC (the "Company") is entered into by Associated Estates Realty Corporation, as the sole member of the Company (the "Member").

The sole Member hereby forms a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act, as amended from time to time (the "Act"), and hereby designates Susan K. Bozek as an "authorized person" within the meaning of the Act for the sole purpose of executing, delivering and filing the Certificate of Formation of the Company with the Secretary of State of Delaware and for the registration of the Company in any jurisdiction where the business activities of the Company would require such registration, and further agrees as follows:

1. Name. The name of the limited liability company formed hereby is AERC Desmond's Tower, LLC.

2. Purpose. The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Act and engaging in any and all activities necessary or incidental to the foregoing.

3. Registered Office. The address of the registered office of the Company in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, County of New Castle, Delaware 19808.

4. Registered Agent. The name and address of the registered agent of the Company for service of process on the Company, in the State of Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, County of New Castle, Delaware 19808.

5. Member. The name and the business, residence or mailing address of the sole Member is as follows:

<u>Name</u>	<u>Address</u>
Associated Estates Realty Corporation	1 AEC Parkway Richmond Heights, Ohio 44143

6. Powers. The business and affairs of the Company shall be managed by the Member. The Member shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members under the laws of the State of Delaware.

7. Dissolution. The Company shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (a) the written consent of the Member, or (b) the entry of a decree of judicial dissolution under Section 18-802 of the Act or (c) the death of any member who is an individual or the dissolution of any Member which is a corporation, limited liability company or other entity.
8. Capital Contributions. The sole Member shall contribute the following to the Company: all of its right, title and interest in and to that certain Purchase and Sale Agreement to acquire the property known as Desmond's Tower located in the City of Los Angeles County of Los Angeles, State of California.
9. Additional Contributions. The Member may, but is not required to, make any additional capital contribution to the Company.
10. Allocation of Profits and Losses. The Company's profits and losses shall be allocated to the Member.
11. Distributions. Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member. Such distributions shall be allocated to the Member in the same proportion as its capital account balances.
12. Officers and Managers. The Member may from time to time appoint officers and managers to perform such functions as from time to time shall be delegated to such officers or managers by the Member. The Member may from time to time determine the compensation of any officers or managers of the Company or may delegate some or all compensation decisions to officers of the Company.
13. Assignments. A Member may not assign in whole or in part its limited liability company interest.
14. Resignation. From and after such time as an additional Member(s) shall be admitted to the Company, without the consent of the remaining Members, no Member may withdraw or resign as a Member or be entitled to receive any part of such Member's capital contribution or any distribution from the Company in connection therewith.
15. Admission of Additional Members. One (1) or more additional members of the Company may be admitted to the Company with the consent of all of the Members.
16. Liability of Member. The Member shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Act. The Company shall indemnify the Member for its actions as Member to the fullest extent permitted by the Act.
17. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Delaware, all rights and remedies being governed by said laws.
18. Amendment. This Agreement may be amended in writing by the Member. From and after such time as an additional Manager(s) shall be admitted to the Company, this Agreement may be amended by those Members holding a majority interest in the allocation of

the Company's profits, provided, however, that any amendment to Section 14 or Section 15 of this Agreement will require the unanimous consent of all of the Members.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Limited Liability Company Agreement as of the 19<sup>th</sup> day of April, 2012.

ASSOCIATED ESTATES REALTY CORPORATION

By: Bradley Van Auken  
Name: Bradley A. Van Auken  
Its: Vice President