

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

Goodwin Procter LLP
601 S. Figueroa Street, 41st Floor
Los Angeles, CA 90017
Attn: Dean Pappas, Esq.

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TIEBACK LICENSE AGREEMENT

THIS TIEBACK LICENSE AGREEMENT (this "**Agreement**") is made on this _____ day of September, 2018, by and between the Santa Monica-Malibu Unified School District, a political subdivision of the State of California ("**SMMUSD**"), and FSTAR 1613 LLC, a California limited liability company ("**Developer**").

R E C I T A L S

A. Developer is the owner of that certain real property located in the City of Santa Monica, commonly known as 1613 Lincoln Blvd, Santa Monica, California, and more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "**Development Property**").

B. SMMUSD is the owner of certain real property, commonly known as 902 Colorado, Santa Monica, California, located adjacent to the northeast of the Development Property as depicted in Exhibit B attached hereto and incorporated herein by reference (the "**Tieback Parcels**").

C. Developer plans to construct a 191-unit mixed-use apartment building (the "**Project**") on the Development Property.

D. In conjunction with the development of the Project, Developer proposes to install a tieback anchor system and other foundation forms and supports which will extend below the surface of the Tieback Parcels in the areas depicted in the shoring plans for the Project on file with the City of Santa Monica (the "**Tieback License Area**"). The Tieback License Area is also depicted in Exhibit B hereto.

E. SMMUSD and Developer desire to enter into this Agreement in order to set forth the terms and conditions pursuant to which Developer and its representatives, agents, employees and independent contractors ("**Developer Parties**") shall be permitted to insert and maintain tieback rods and other foundation forms and supports beneath the surface of the Tieback Parcels in the Tieback License Area.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Grant of Tieback License. Subject in all respects to Section 19 hereof, SMMUSD hereby grants to Developer and Developer Parties a temporary license (the "**License**") to perform subsurface excavation in the Tieback License Area, to install foundation forms and supports in the Tieback License Area, to install a tieback anchor system in the Tieback License Area, and to take all reasonable and usual actions necessary in connection therewith. Any excavation and installation shall be at the sole cost, liability and expense of Developer as set forth herein and shall conform to the drawings approved in conjunction with the issuance by the City of the building permit for the Project. Prior to commencing any work, Developer shall locate all improvements in or beneath the Tieback License Area so as to avoid damaging all underground utilities, vaults and other improvements located in or beneath the Tieback License Area. All installations made by Developer in the Tieback License Area in connection with the Project shall be made in the fashion that they shall be removable by Developer (or, at Developer's expense, SMMUSD) after completion of the Project without affecting or compromising the Project in the event that SMMUSD decides to improve or change the use of the Tieback Parcels at some future date. Following Developer's installation of any tiebacks pursuant to the terms of this Agreement, Developer shall promptly restore the Tieback License Area to the condition existing before the work.

2. Indemnification; Hold Harmless. Developer shall indemnify, defend and hold harmless SMMUSD, its boards and commissions, officers, agents, employees, tenants and subtenants (including, without limitation, STG Three Properties, LLC and any of its subtenants), from and against any and all losses, damages, liability, claims, suits, judgments, costs and expenses, whatsoever, including reasonable attorneys' fees, arising from or in any manner connected to: (i) alterations and improvements in the Tieback License Area and adjacent Development Property, including, but not limited to, all excavation, tieback installation, tieback removal and related activities performed by Developer, its agents, employees and independent contractors; (ii) the condition and use of the Tieback License Area; (iii) the construction of the Project; and (iv) any negligent or willful acts or omissions of Developer, its agents, employees, independent contractors and invitees, whether such acts or omissions occur in the Tieback License Area or outside the Tieback License Area, including, but not limited to, acts or omissions on the adjacent Development Property. The obligations set forth in this Section 2 shall survive the termination of this Agreement.

3. Removal and Ownership of Tiebacks. Before completion of the Project, Developer must remove all soldier beams to a depth of five (5) feet below the existing surface grade of the Tieback License Area, including all appurtenant shoring materials located within the five (5) foot area of the Tieback License Area. Developer must also de-tension all tieback rods to a minimum depth of fifteen (15) feet below the existing surface grade of the Tieback License Area. With the exception of these requirements, and subject to the other provisions of this Agreement, Developer shall not be obligated to remove the tieback anchor system or any other materials installed in the Tieback License Area pursuant to this Agreement. However, once the tiebacks have been de-tensioned,

if SMMUSD undertakes a project located in the Tieback License Area, Developer agrees to remove, at Developer's cost, all portions of the tieback anchor system and underpinnings or any other related materials installed in the Tieback License Area to the extent deemed necessary by SMMUSD. Such removal shall occur in a time frame that allows SMMUSD project to proceed as scheduled, provided that SMMUSD shall provide Developer with sufficient notice of the need for such removal.

4. Access to Install Tiebacks. Developer shall not interfere with the use of the surface of the Tieback License Area by SMMUSD, its tenants and occupants. Prior to any entry upon the Tieback License Area or any exercise of the License granted hereby, Developer shall first obtain all necessary licenses, permits, and entitlements as required by applicable federal, state, and local law. Developer hereby covenants that Developer and Developer Parties shall limit their entry upon the Tieback License Area to those instances where the activities requiring entry may not reasonably be performed exclusively on the Development Property, and all such entry upon the Tieback License Area shall be during regular business hours (unless otherwise consented to in writing by SMMUSD) upon no less than five (5) business days' prior written notice to SMMUSD. Developer further covenants that (i) at no time shall the activities contemplated under this Agreement impair normal ingress or egress to the surface of the Tieback License Area, and (ii) the work to be performed by Developer and Developer Parties shall be performed in a careful and workmanlike manner, within applicable noise and work hour ordinances and free of all claims or liens.

5. Timing to Install Tiebacks. All work and entry upon or over the Tieback License Area shall be done under the supervision of Developer. Developer anticipates that the work contemplated by this Agreement for the installation of tiebacks will commence within four (4) months from execution of this Agreement and should be completed within twenty (20) months thereafter. Developer further anticipates that construction of the Project should be completed within thirty (30) months after execution of this Agreement. The time periods set forth in this Section 5 are estimates only. Developer's failure to commence or complete the work described in this Section 5 in the time periods set forth in this Section 5 shall constitute a default under this Agreement.

6. "As-Built" Drawings. Upon completion of the Project, Developer agrees to provide SMMUSD with "as-built" drawings indicating the actual installed location of all improvements located in the Tieback License Area arising from the work performed under this Agreement. Developer hereby warrants that SMMUSD may rely on the "as-built" drawings for any future construction that SMMUSD may undertake within the Tieback License Area.

7. Nature of Shoring Licenses. The License granted herein shall commence upon execution of this Agreement and shall continue for such time as is reasonably necessary for the purposes set forth herein or the termination of this Agreement. This License shall not constitute, in any event, an easement or encumbrance against the Tieback License Area. After completion of the Project, Developer shall de-tension the tieback cables and abandon the same so that thereafter they shall remain below the surface of the Tieback License Area, and Developer shall have no further obligations hereunder except as expressly provided herein.

8. License Fee. Developer agrees to pay to SMMUSD a one-time fee in the amount of \$16,000 for the License installed in the Tieback License Area.

9. Insurance. At all times during the term of this Agreement, Developer shall carry and maintain in full force and effect commercial general liability insurance with a limit no less than \$50,000,000 and shall include coverage for all premises and completed operations, broad form property damage, contractual liability and underground, explosion and collapse hazards coverage. In addition, Developer shall maintain (a) workers' compensation and employer's liability insurance in form and amount as is required by law during all periods of construction, (b) automobile liability insurance with a \$1,000,000 combined single limit per accident for bodily injury and property damage, and (c) professional liability errors and omissions insurance for all professional services with a \$1,000,000 limit per claim and a \$1,000,000 limit in the aggregate. Each required insurance policy must be issued by a company licensed in the State of California and rated as "A" or better and ranked as to financial size at "Class X" or higher by A.M. Best & Co. Such coverage shall (i) include claims of assumed liabilities and contractual liabilities, and shall specifically cover the indemnification liability of Developer under this Agreement, and (ii) require at least thirty (30) days' written notice to SMMUSD prior to any expiration, termination or material change to the coverage provided by the policy. The deductible under any insurance policy required hereunder will not exceed \$25,000. Concurrently with the execution of this Agreement and not less than twenty (20) days prior to the expiration of any policy required hereunder, Developer shall deliver to SMMUSD certificates of insurance confirming the existence of the insurance required by this Agreement and naming SMMUSD as an additional insured thereunder.

10. Default. Developer's failure to perform any covenant or obligation under this Agreement and to cure such non-performance within 30 days following written notice by SMMUSD shall constitute a default hereunder. In the event of any default by Developer under the terms of this Agreement, SMMUSD shall have the right, but shall not be required, to perform the obligation which Developer has failed to perform and shall, on demand, be entitled to be forthwith reimbursed therefor and to be paid interest at a rate of 10% on the amount expended for such purpose. SMMUSD shall have the right to record a lien on the Development Property for the purpose of securing any unpaid or unreimbursed payment obligations under this Agreement (including, without limitation, the reimbursement and payment obligations in the immediately preceding sentence) and such lien may be enforced by suit or by sale under power of sale (which power of sale is hereby granted), judicial foreclosure or any other manner allowed by law. Any exercise of the power of sale provided for above shall be conducted in accordance with California Civil Code Section 2924, applicable to the exercise of powers of sale in mortgages or deeds of trust, or in any other manner permitted or provided by law. SMMUSD is hereby appointed the trustee for purposes of exercising such power of sale, with full right of substitution.

11. Termination; Remedies. Upon the occurrence of any default by Developer or the Developer Parties under this Agreement, SMMUSD shall have the right to immediately terminate this Agreement. Such termination shall be effective immediately upon the delivery of written notice to Developer. In addition to the foregoing, SMMUSD shall have all rights and remedies available under law or in equity following the occurrence of any default by Developer or the Developer Parties under this Agreement.

12. Relationship of Parties. It is understood that the contractual relationship between SMMUSD, on one part, and Developer, on the other part, is such that the Developer is an independent contractor and not the agent of SMMUSD.

13. Attorneys' Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs from the losing party.

14. Notices. All written notices and demands of any kind which any party may be required or may desire to serve on the other in connection with this Agreement may be served as an alternative to personal service by registered or certified mail. Any such notice or demands served by registered or certified mail shall be deposited in the United States mail with postage thereon fully prepaid, addressed to the party to be served and delivered to the party if not by personal service, as follows:

If to Developer: Kevin Farrell
Century West Partners
1250 6th Street, Suite 403
Santa Monica, CA 90401

If to SMMUSD: Santa Monica-Malibu Unified School District
1651 16th Street
Santa Monica, California 90404
Attention: Carey Upton, Chief Operating Officer

With a copy to:
City of Santa Monica, Public Works, Civil Engineering
Division
1685 Main Street, Room 101
Santa Monica, California 90401
Attention: Thomas Check

With a copy to:
Goodwin Procter LLP
601 S. Figueroa Street, 41st Floor
Los Angeles, CA 90017
Attention: Dean Pappas, Esq.

Service of any notice or demand made by mail shall be deemed complete on the date of actual delivery as shown by the addressee's certified or registered receipt or upon the expiration of the second day after the date of mailing, whichever is earlier in time. Any party hereto may, from time to time by notice in writing served upon the other party as aforesaid, designate a different mailing address or a different person to whom all notices and demands are thereafter to be addressed.

15. Waivers. Waiver by any party hereto of any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach

of the same or any other term, covenant or condition contained herein, whether of the same or different character.

16. Compliance with Laws. Developer represents and warrants that any use of the License granted under this Agreement shall be in compliance with all applicable laws, ordinances, rules, regulations and requirements of governmental authorities, including any permits granted by the City of Santa Monica in connection with the Project.

17. Other Agreements. This Agreement does not in any way affect the terms or validity of other agreements between SMMUSD, on the one part, and Developer, on the other part.

18. Successors and Assigns; Assignment. This Agreement shall not be severable from Developer's interest in the Development Property. This Agreement and the covenants, conditions and restrictions contained herein shall run with the land and shall burden the Development Property for the benefit of SMMUSD and shall bind Developer and its heirs, successors and assigns and every successor-in-interest of the Development Property (collectively, "Developer Successors"). Each Developer Successor acknowledges that by taking title to the Development Property, such Developer Successor shall be bound by this Agreement. Any transfer of the Development Property shall automatically operate to transfer the benefits and burdens of this Agreement. Developer may freely sell, transfer, exchange or otherwise dispose of its interests in the Development Property or the Project without the consent of SMMUSD, but shall provide SMMUSD prior written notice of any such transfer.

19. Recordation. As a condition to the effectiveness of the granting of the License contemplated by this Agreement and as material consideration for SMMUSD's agreements contained herein, Developer shall record an original of this Agreement in the Office of the County Recorder of the County of Los Angeles against title to the Development Property within fifteen (15) days of the full execution and delivery of this Agreement to put each Developer Successor on notice of the terms and conditions of this Agreement and the obligations of Developer and each Developer Successor contained herein. In no event shall Developer be permitted to exercise any right granted under this License prior to the recordation of this Agreement.

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date herein first above written in the City of Santa Monica.

SMMUSD:

Santa Monica-Malibu Unified School District

By: _____
Contact
Title

DEVELOPER:

FSTAR 1613 LLC

By: _____
Contact
Title

NOTARIAL ACKNOWLEDGEMENT FOR SMMUSD

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____, 201_ before me, _____
(insert name and title of the officer)

personally appeared _____,
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 _____ (Seal)

NOTARIAL ACKNOWLEDGEMENT FOR DEVELOPER

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____, 201_ before me, _____
(insert name and title of the officer)

personally appeared _____,
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 _____ **(Seal)**

Exhibit A

TIEBACK LICENSE AGREEMENT

LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

Real property in the City of Santa Monica, County of Los Angeles, State of California, described as follows:

APN No. 4283-001-002

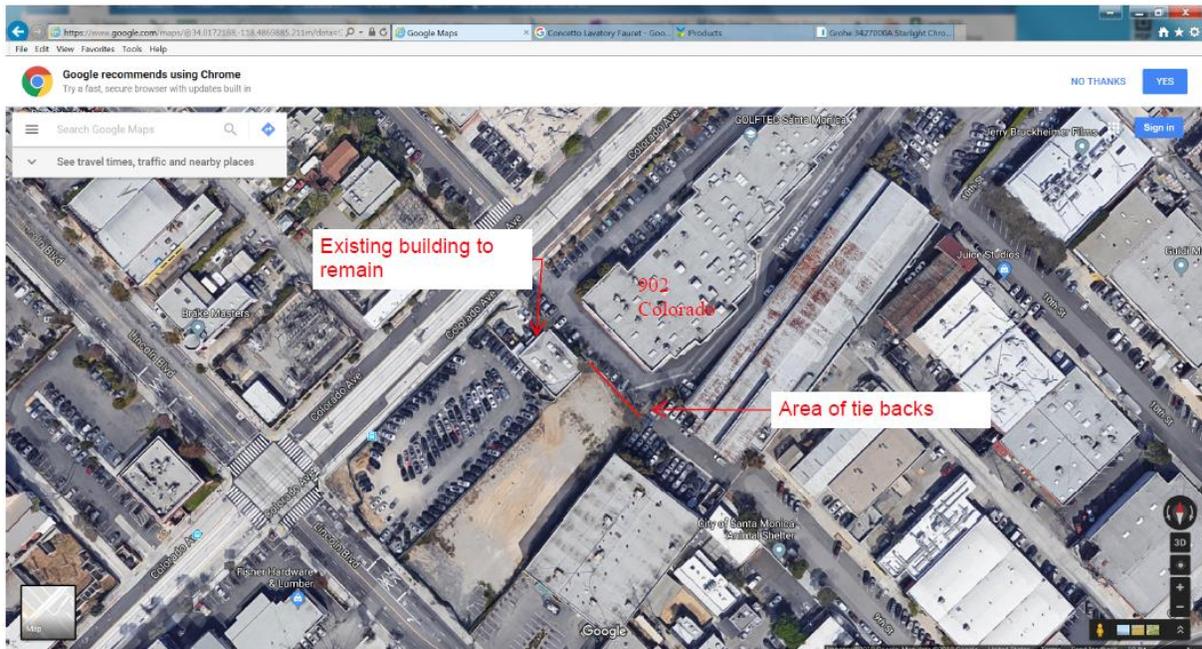
Lot 15 of the standard tract, in the City of Santa Monica, County of Los Angeles, State of California, as per map recorded in book 5 Page 83 of maps in the office of the county recorder of said county.

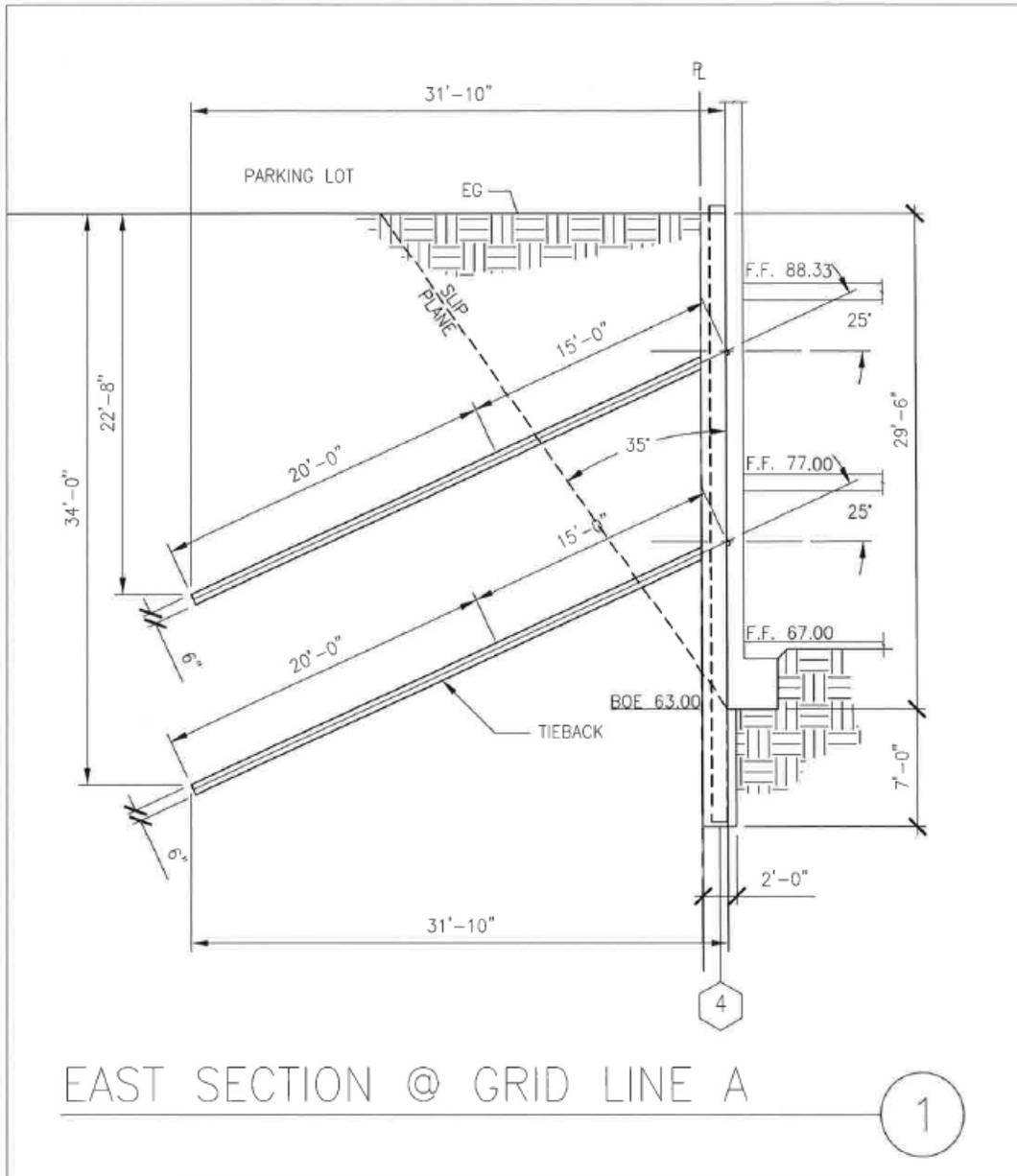
Exhibit B

TIEBACK LICENSE AGREEMENT

TIEBACK PARCELS AND TIEBACK LICENSE AREA

902 Colorado Avenue
APN: 4283-002-900
Lot 14 Rancho San Vicente Y Santa Monica





Cefali & Associates, Inc. 4344 Laurel Canyon Blvd, Suite 3 Studio City, CA 91604 818.752.1812 engr@cefali.com www.cefali.com		CEFALI		PROJECT NAME: 1625 LINCOLN	
PROJECT NO.: 17-050 DATE: 5/9/2018 FILE NAME: SS-4.0 DRAWN BY: L.H. SCALE: 1/8" = 1'-0"		SHEET NAME: TIEBACK EXHIBIT @ PILE 4		LOCATION: SANTA MONICA, CA	
				DRAWING NO.: EX-1	