

ORDINANCE NO. 181636

An ordinance authorizing the execution of the development agreement by and between the City of Los Angeles and Hanjin International Corporation relating to real property in the Central City Community Plan area and located at 916, 925 and 937 West 7th Street; 655, 685, 695, and 699 Figueroa Street; 900 and 930 West Wilshire Boulevard.

WHEREAS, the City Planning Commission on December 16, 2010, approved and recommended that the City Council approve the development agreement which is attached to Council File No. 09-2540 by and between the City of Los Angeles and Hanjin International Corporation, (Development Agreement) which Development Agreement is hereby incorporated by reference and which is hereby incorporated into the provisions of this ordinance; and

WHEREAS, after due notice the City Planning Commission and the City Council did conduct public hearings on this matter; and

WHEREAS, pursuant to California Government Code Sections 65864, *et seq.*, the City Planning Commission has transmitted to City Council its findings and recommendations; and

WHEREAS, the Development Agreement is in the public interest and is consistent with the City's General Plan and the Central City Community Plan; and

WHEREAS, the City Council has reviewed and considered the Development Agreement and the findings and recommendations of the City Planning Commission.

NOW, THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. The City Council finds, with respect to the Development Agreement, that:

(a) It is consistent with the City's General Plan, policies and programs specified in the Central City Community Plan and is compatible with the uses authorized in, and the regulations prescribed for, the zone in which the real property is located;

(b) The intensity, building height and use set forth in the development agreement are permitted by or are consistent with the Central City Community Plan;

(c) It will not be detrimental to the public health, safety and general welfare since it encourages the construction of a project which is desirable and beneficial to the public. Furthermore, the development agreement specifically permits application to the

project of rules and regulations under the Los Angeles Municipal Code Section 91.101.1 to 98.0605 relating to public health and safety;

(d) It complies with all applicable City and State regulations governing development agreements; and

(e) It is necessary to strengthen the public planning process and to reduce the public and private costs of development uncertainty.

Sec. 2. The City Council hereby approves the Development Agreement, and authorizes and directs the Mayor to execute the Development Agreement in the name of the City of Los Angeles.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of MAR 29 2011.

JUNE LAGMAY, City Clerk

By [Signature]
Deputy

Approved APR 07 2011

[Signature]
Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By [Signature]
LAURA M. CADOGAN
Deputy City Attorney

Pursuant to Charter Section 559, I approve this ordinance on behalf of the City Planning Commission and recommend that it be adopted

March 5, 2011

See attached report.

[Signature]
Michael LoGrande
Director of Planning

Date 3-4-11

File No. CF No. ~~09-2540~~ 11-0106

DECLARATION OF POSTING ORDINANCE

I, MARIA VIZCARRA, state as follows: I am, and was at all times hereinafter mentioned, a resident of the State of California, over the age of eighteen years, and a Deputy City Clerk of the City of Los Angeles, California.

Ordinance No. 181636 – Authorizing the execution of the development agreement by and between the City of Los Angeles and Hanjin International Corporation relating to real property in the Central City Community Plan area and located at 916, 925, and 937 West 7th Street; 655, 685, 695, and 699 Figueroa Street; 900 and 930 West Wilshire Boulevard - a copy of which is hereto attached, was finally adopted by the Los Angeles City Council on **March 29, 2011**, and under the direction of said City Council and the City Clerk, pursuant to Section 251 of the Charter of the City of Los Angeles and Ordinance No. 172959, on **April 11, 2011** I posted a true copy of said ordinance at each of the three public places located in the City of Los Angeles, California, as follows: 1) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; 2) one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; 3) one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Copies of said ordinance were posted conspicuously beginning on **April 11, 2011** and will be continuously posted for ten or more days.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this **11th** day of **April 2011** at Los Angeles, California.



Maria Vizcarra, Deputy City Clerk

Ordinance Effective Date: **May 21, 2011**

Council File No. **11-0106**

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Paul, Hastings, Janofsky & Walker LLP
515 South Flower Street
25th Floor
Los Angeles, CA 90071
Attn: Mitchell B. Menzer

NO RECORDING FEE – PUBLIC AGENCY – GOVERNMENT CODE §6103

(Space above for Recorder's Use)

DEVELOPMENT AGREEMENT

by and among

THE CITY OF LOS ANGELES

and

HANJIN INTERNATIONAL CORPORATION

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DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is executed this _____ day of _____, 2011, by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), and HANJIN INTERNATIONAL CORPORATION, a California corporation (the "Developer"), pursuant to California Government Code Section 65864 et seq., and the implementing procedures of the City, with respect to the following:

RECITALS

WHEREAS, the City and Developer recognize that the further development of the Property will create significant opportunities for economic growth in the City of Los Angeles, the Southern California region and California generally;

WHEREAS, Developer wishes to obtain reasonable assurances that the Project may be developed in accordance with the Project Approvals, as defined below, and the terms of this Agreement;

WHEREAS, Developer will implement public benefits above and beyond the necessary mitigation for the Project, including benefits and other consideration as noted in Section 2.3.1;

WHEREAS, this Agreement is necessary to assure Developer that the Project will not be reduced in density, height, or use, or be subjected to new rules, regulations, ordinances, or policies unless otherwise allowed by this Agreement;

WHEREAS, by entering into this Agreement, the City is encouraging the development of the Project as set forth in this Agreement in accordance with the goals and objectives of the City, while reserving to the City the legislative powers necessary to remain responsible and accountable to its residents; and

WHEREAS, Developer intends to redevelop the 3.2-acre site (the "Property"), as set forth in Exhibit A, bounded by Wilshire Boulevard to the north, 7th Street to the south, Figueroa Street to the east, and Francisco Street to the west in the Central Business District of downtown Los Angeles, inclusive of the vacated portion of the Francisco Street right-of-way between 7th Street and Wilshire Boulevard;

WHEREAS, Developer anticipates that the Project will be completely built-out and operational by the year 2020, but is requesting a longer term in this Agreement to allow sufficient time for development in the unlikely event of delays caused by unforeseen economic conditions and other unforeseen factors such as, but not limited to, unanticipated site conditions and the unavailability of materials or labor shortages;

WHEREAS, for the foregoing reasons, the Parties desire to enter into a development agreement for the Project pursuant to the Development Agreement Act, as defined below, and the City's charter powers upon the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, and in consideration of the premises and mutual promises and covenants herein contained and other valuable consideration the receipt and adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

1. DEFINITIONS.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context requires:

1.1 “Agreement” means this Development Agreement, including all exhibits attached hereto and all amendments and modifications hereto.

1.2 “Applicable Rules” means all of the rules, regulations, ordinances and officially adopted policies of the City in force as of the Effective Date, including, but not limited to, the Los Angeles Municipal Code (“Municipal Code”), and Project Approvals. Additionally, notwithstanding the language of this Section or any other language in this Agreement, all specifications, standards and policies regarding the design and construction of public works facilities, if any, shall be those that are in effect at the time the applicable Project plans are being processed for approval and/or under construction.

1.3 “CEQA” means the California Environmental Quality Act (Cal. Public Resources Code Sections 21000 et seq.) and the State CEQA Guidelines (Cal. Code of Regs., Title 14, Sections 15000 et seq.).

1.4 “City” means the City of Los Angeles, a charter city and municipal corporation.

1.5 “City Agency” means each and every agency, department, board, commission, authority, employee, and/or official acting under the authority of the City, including without limitation the City Council and the Planning Commission.

1.6 “City Council” means the City Council of the City and the legislative body of the City pursuant to Section 65867 of the California Government Code.

1.7 “Design Flexibility Program” means the Design Flexibility Program, as more fully described in the Project Approvals, in which the Project design can be modified within the development envelope defined by the approved entitlements without resulting in any new significant environmental impacts or a substantial increase in the severity of previously identified significant environmental impacts as analyzed in the EIR.

1.8 “Developer” means Hanjin International Corporation, a California corporation, and its Transferees and assignees.

1.9 “Development Agreement Act” means Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 et seq.) of the California Government Code.

1.10 “Discretionary Action” means an action which requires the exercise of judgment, deliberation, or a decision on the part of the City and/or any City Agency, including any board, commission, or department or any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity which merely requires the City and/or any City Agency, including any board, commission or department or any officer or employee thereof, to determine whether there has been compliance with statutes, ordinances, or regulations.

1.11 “EIR” means the Environmental Impact Report for the Project, State Clearinghouse No. ENV-2009-1577-EIR-GB, certified by the City in accordance with the requirements of CEQA.

1.12 “Effective Date” is the date on which this Agreement is attested by the City Clerk of the City of Los Angeles after execution by Developer and the Mayor of the City of Los Angeles.

1.13 “Floor Area” shall have the meaning given such term in Section 12.03 of the Los Angeles Municipal Code.

1.14 “Floor Area Rights” means the ability to construct additional Floor Area within the Project, pursuant to an approved Transfer Plan, in excess of the amount of Floor Area that the Project would be allowed.

1.15 “General Plan” means the General Plan of the City.

1.16 “Land Use Equivalency Program” means the land use equivalency program, as more fully described in the Project Approvals, in which the various land uses can be exchanged in accordance with the equivalency factors. The Equivalency Program is intended to provide flexibility in land uses for the Project while ensuring that a change in land uses would not result in new significant environmental impacts or a substantial increase in the severity of significant environmental impacts previously identified in the EIR.

1.17 “Ministerial Permits and Approvals” means the permits, approvals, plans, inspections, certificates, documents, licenses, and all other actions required to be taken by the City in order for Developer to implement, develop and construct the Project, including without limitation, building permits, foundation permits, public works permits, grading permits, stockpile permits, encroachment permits, and other similar permits and approvals which are required by the Los Angeles Municipal Code and project plans and other actions required by the Project Approvals to implement the Project. Ministerial Permits and Approvals shall not include any Discretionary Actions.

1.18 “Parties” means collectively Developer and the City.

1.19 “Party” means any one of Developer or the City.

1.20 “Phase 1” means any portion of the Project containing hotel or residential uses.

1.21 “Phase 2” means any portion of the Project containing 100,000 square feet or more of office uses, or the construction of a second tower of any use above 170 feet in height.

1.22 “Planning Commission” means the City Planning Commission and the planning agency of the City pursuant to Section 65867 of the California Government Code (Development Agreement Act).

1.23 “Planning Director” means the Director of Planning for the City or his or her designee.

1.24 “Processing Fees” means all processing fees and charges required by the City or any City Agency including, but not limited to, fees for land use applications, project permits, building application, building permits, grading permits, encroachment permits, tract or parcel maps, lot line adjustments, air right lots, street vacations and certificates of occupancy which are necessary to accomplish the intent and purpose of this Agreement. Expressly exempted from Processing Fees are all linkage fees or exactions which may be imposed by the City on development projects pursuant to laws enacted after the Effective Date, except as specifically provided for in this Agreement. Processing Fees include those linkage fees, impact fees, and exactions which are in effect as of the Effective Date, the amounts of which are subject to ongoing annual increases which shall be calculated at time of payment. The amount of the Processing Fees to be applied in connection with the development of the Project shall be the amount which is in effect on a City-wide basis at the time an application for the City action is made unless an alternative amount is established by the City in a subsequent agreement.

1.25 “Project” means the mixed-use, transit oriented development, described in greater detail in Exhibit B.

1.26 “Project Approvals” those Discretionary Actions authorizing the Project which have been requested by the Developer and approved by the City and which are comprised of (1) the Transfer of Floor Area Rights from the Los Angeles Convention Center Site at 1201 S. Figueroa Street, a City-owned property, to the subject property, for an amount not to exceed 1,485,458 square feet; (2) the Master Conditional Use Permit to permit the sale of a full line of alcoholic beverages, for on and off-site consumption in conjunction with the operation of a maximum of 21 establishments including restaurants having indoor and outdoor seating, service retail grocery stores, and hotel facilities including restaurants, mini bars, banquet facilities, room service, and sundries, as conditioned; (3) the Conditional Use to permit a “Major” development project that creates a maximum 2,397,304 square feet of development on a 3.2 acre site including 1,500,000 square feet of office; 275,000 square feet of amenity areas including retail and restaurant uses, conference and meeting rooms, ballrooms, spa, fitness center, and ancillary areas; approximately 1,900 parking spaces; 560 hotel rooms and/or condo-hotel units; and 100 residential units; and with demolition will eliminate approximately 215,000 square feet of office uses, 286 parking spaces, and 896 hotel guest rooms; (4) a Heliport incidental to an office building, on the roof of the maximum 1,250 feet tall building, with landing frequency not to exceed an average of two per day; (5) the Conditional Use to permit a maximum of 10 Wireless Telecommunication facilities to be located on the rooftop of the proposed buildings; (6) the Variance from Section 12.14 A.1.b.3 to permit outdoor dining not to exceed 25,000 square feet, on multiple terraces, patios, the outdoor plaza, and on the rooftops of both buildings; (7) the

Sign District “SN” ordinance, to set forth sign regulations, procedures, guidelines and standards for the Project site; (8) the Determination to permit Shared Parking between hotel, office and other non-residential uses, and residential guest spaces within the Project site; (9) the Determination to permit a Reduced On-Site Parking/Transportation Alternatives Authorization for a proposed 20 percent reduction in parking spaces, providing 1,900 spaces in lieu of approximately 2,375 spaces required by code; (10) Site Plan Review for a project that creates a maximum 2,397,304 square feet of development on a 3.2 acre site including 1,500,000 square feet of office; 275,000 square feet of amenity areas including retail and restaurant uses, conference and meeting rooms, ballrooms, spa, fitness center, and ancillary areas; approximately 1,900 parking spaces; 560 hotel rooms and/or condo-hotel units; and 100 residential units; and with demolition will produce an increase in approximately 1,285,000 square feet of office uses, an increase of 100 residential units, and a decrease of 336 hotel guest rooms; (11) the subdivision of the location into two master lots and a 48 airspace-lot subdivision pursuant to case VTT-71141-CN.

1.27 “Property” shall have the meaning in the sixth Recital and as legally described in Exhibit A.

1.28 “Reserved Powers” means the rights and authority excepted from this Agreement’s restrictions on the City’s police powers and which are instead reserved to the City. The Reserved Powers include the powers to enact regulations or take future Discretionary Actions after the Effective Date of this Agreement that may be in conflict with the Applicable Rules and Project Approvals, but: (1) are necessary to protect the public health and safety, and are generally applicable on a City-wide basis (except in the event of natural disasters as found by the City Council such as floods, earthquakes and similar acts of God); (2) are amendments to Chapter IX of the Los Angeles Municipal Code Section 91.0101 *et seq.* (Building Code) or Chapter V of the Los Angeles Municipal Code Section 57.01.01 *et seq.* (Fire Code) regarding the construction, engineering and design standards for private and public improvements and which are (a) necessary to the health and safety of the residents of the City, and (b) are generally applicable on a Citywide basis (except in the event of natural disasters as found by the Mayor or City Council such as floods, earthquakes, and similar acts of God); (3) are necessary to comply with state or federal laws and regulations (whether enacted previous or subsequent to the Effective Date of this Agreement) as provided in Section 3.2.3.3 or; (4) constitute Processing Fees and charges imposed or required by the City to cover its actual costs in processing applications, permit requests and approvals of the Project or in monitoring compliance with permits issued or approvals granted for the performance of any conditions imposed on the Project, unless otherwise waived by the City.

1.29 “Sign District” means an “SN” Sign District as defined in Section 13.11 of the Los Angeles Municipal Code.

1.30 “Term” means the period of time for which this Agreement shall be effective in accordance with Section 7.2 hereof.

1.31 “Transfer” means the conveyance of unused allowable Floor Area, which is approved in accordance with Municipal Code Section 14.5.

1.32 “Transferee” means individually or collectively, Developer’s successors in interest, assignees, or transferees of all or any portion of the Property.

1.33 “Vesting Tentative Tract Map” means Vesting Tentative Tract Map No. 71141 approved by the City on November 3, 2010.

2. RECITALS OF PREMISES, PURPOSE, AND INTENT.

2.1 **State Enabling Statute.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in this property. Section 65864 of the Development Agreement Act expressly provides as follows:

“The Legislature finds and declares that:

“(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development.

(c) The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing. Whenever possible, applicants and local governments may include provisions in agreements whereby applicants are reimbursed overtime for financing of public facilities.”

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City: (1) accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties; and (2) to offset these restraints, seeks public benefits which go beyond those obtained by traditional City controls and conditions imposed on development project applications.

2.2 City Procedures and Actions.

2.2.1 City Planning Commission Action. The City Planning Commission held a duly noticed public hearing, and recommended approval of this Agreement on December 16, 2010.

2.2.2 City Council Action. The City Council on _____, after conducting a duly-noticed public hearing, adopted Ordinance No. _____, to become effective on the thirty-first day after publication, or on the forty-first day after posting, approving this Agreement, found that its provisions are consistent with the City's General Plan, the Central City Community Plan, and the Municipal Code, and authorized the execution of this Agreement.

2.3 Purpose of This Agreement.

2.3.1 Public Benefits. This Agreement provides assurances that the public benefits identified below, which are additional consideration for this Agreement, will be achieved and developed in accordance with the Applicable Rules and Project Approvals and with the terms of this Agreement and subject to the City's Reserved Powers. The Project will provide local and regional Public Benefits to the City, including without limitation (i) increased sales tax, property tax, and future transient occupancy tax revenues; (ii) an approximately one-quarter acre pedestrian plaza for both passive relaxation and scheduled activities; (iii) major improvements to the streetscape and functionality of Francisco Street; (iv) provision of new housing in close proximity to mass transit and employment opportunities; and other benefits as contained in Section 3.1.3. The Project will contribute positively to the City by providing a new convention center hotel, and a new class A office building, which will serve to create new jobs and increase City Tax revenues.

2.3.2 Developer Objectives. In accordance with the legislative findings set forth in the Development Agreement Act, and with full recognition of the City's policy of judicious restraints on its police powers, Developer wishes to obtain reasonable assurances that the Project may be developed in accordance with the Applicable Rules and Project Approvals and with the terms of this Agreement and subject to the City's Reserved Powers. In the absence of this Agreement, Developer would have no assurance that it can complete the Project for the uses and to the density and intensity of development set forth in this Agreement and the Project Approvals. This Agreement, therefore, is necessary to assure Developer that the Project will not be (1) reduced or otherwise modified in density, intensity or use from what is set forth in the Project Approvals, (2) subjected to new rules, regulations, ordinances, or official policies or plans which are not adopted or approved pursuant to the City's Reserved Powers, or (3) subjected to delays for reasons other than Citywide health and safety enactments related to critical situations such as, but not limited to, the lack of water availability or sewer or landfill capacity.

2.3.3 Mutual Objectives. Development of the Project in accordance with this Development Agreement will provide for the orderly development of the Property in accordance with the objectives set forth in the General Plan. Moreover, a development agreement for the Project will eliminate uncertainty in planning for and securing orderly development of the Property, assure installation of necessary improvements, assure attainment of maximum efficient

resource utilization within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted. The Parties believe that such orderly development of the Project will provide Public Benefits, as described in Section 2.3.1, to the City through the imposition of development standards and requirements under the provisions and conditions of this Agreement, including without limitation: increased tax revenues, installation of on-site and off-site improvements, redevelopment of an underutilized site with an infill, mixed-use office and hotel project within an existing activity center offering direct proximity to existing public transit and transportation infrastructure, the addition of new, high-quality hotel rooms, meeting rooms, ballroom spaces, retail and restaurant uses to support the future growth and expansion of the Los Angeles Convention Center, development of a one quarter acre pedestrian plaza, 12,600 construction-related jobs, and creation and retention of 9,700 net new direct and indirect jobs for the City of Los Angeles. Additionally, although development of the Project in accordance with this Agreement will restrain the City's land use or other relevant police powers, this Agreement provides the City with sufficient Reserved Powers during the term hereof to remain responsible and accountable to its citizens. In exchange for these and other benefits to City, Developer will receive assurance that the Project may be developed during the term of this Agreement in accordance with the Applicable Rules, Project Approvals and Reserved Powers, subject to the terms and conditions of this Agreement.

2.4 Applicability of the Agreement. This Agreement does not: (1) grant height, density, or intensity in excess of that otherwise established in the Applicable Rules and Project Approvals; (2) eliminate future Discretionary Actions relating to the Project if applications requiring such Discretionary Action are initiated and submitted by the owner of the Property after the Effective Date of this Agreement; (3) guarantee that Developer will receive any profits from the Project; (4) prohibit the Project's participation in any benefit assessment district that is generally applicable to surrounding properties; or (5) amend the City's General Plan. This Agreement has a fixed Term. Furthermore, in any subsequent actions applicable to the Property or any portion thereof, the City may apply the new rules, regulations and official policies as are contained in its Reserved Powers.

3. AGREEMENT AND ASSURANCES.

3.1 Agreement and Assurance on the Part of Developer. In consideration for the City entering into this Agreement, and as an inducement for the City to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the premises, purposes, and intentions set forth in Section 2.3 of this Agreement, Developer hereby agrees as follows:

3.1.1 Project Development. Developer agrees that it will use its best efforts, in accordance with its own business judgment and taking into account market conditions and economic considerations, to undertake development of the Project in accordance with the terms and conditions of this Agreement, including the Applicable Rules and the Project Approvals. Nothing in this Agreement shall be construed to require Developer to proceed with the construction of or any other implementation of the Project or any portion thereof. In addition, Developer agrees to the following:

(1) Dedication of Land for Public Street Purposes. Provisions for the dedication of land for public purposes are set forth in the conditions of approval of the Project Approvals.

(2) Description of Transportation Improvements. The transportation improvements to be included within the scope of the Project are set forth in the Project Approvals.

(3) Maximum Height of the Project. The maximum height of the Project shall not exceed 1,250 feet and the Project shall comply with and be limited as set forth in the Project Approvals.

(4) Maximum Floor Area of the Project. The maximum Floor Area of the Project shall not exceed 2,543,437 square feet and the Project shall comply with and be limited as set forth in the Project Approvals.

3.1.2 Timing of Development. The parties acknowledge that Developer cannot at this time predict when or at what rate the Property would be developed. These decisions depend upon numerous factors that are not all within the control of Developer, such as market orientation and demand, availability of financing, and competition. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal. 3d 465 (1984), that the failure of the parties therein to provide for the timing of development permitted a later adopted initiative restricting the timing of development and controlling the Parties' agreement, Developer and the City do hereby acknowledge and provide for the right of Developer to develop the Project in an order and at a rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment, subject to any restrictions that may exist in the Project Approvals. The City acknowledges that this right is consistent with the intent, purpose, and understanding of the Parties to this Agreement.

3.1.3 Additional Obligations of Developer as Consideration for this Agreement. In addition to the obligations identified in Sections 2.3.1 and 3.1.1, the development assurances provided by this Agreement and the resulting construction of the Project will result in the following:

3.1.3.1 Affordable Housing.

(a) **Affordable Housing Payment.** Prior to the issuance of any certificate of occupancy for the residential dwelling units, Developer shall be required to make payments to the City to support affordable housing (the "Affordable Housing Payment") in an amount equal to Seventy Five Thousand Dollars (\$75,000) multiplied by fifteen percent (15%) of the total number of market rate residential dwelling units in the Project as shown on the final approved building plans.

(b) **Initial Contribution.** Prior to issuance of a demolition permit for the existing hotel, Developer shall make a one-time \$562,500 contribution to the City as a payment to support one of the following: (i) the Dunbar Village Project, which consists of the rehabilitation and restoration of the historic Dunbar Hotel

(4225-4233 S. Central Avenue), and the substantial renovation of Somerville I (4251-4263 S. Central Avenue) and Somerville II (4201-4219 S. Central Avenue) properties, including the long-term preservation of eighty two (82) units of affordable housing for seniors and families (the “Dunbar Village Project”), or if the Dunbar Village Project is not available, such other affordable housing project designated by Council District 9; or (ii) a contribution to the City’s Affordable Housing Trust Fund to supplement the financing for the construction of affordable housing in Council District 9. Proof of payment shall be submitted to the Planning Director prior to issuance of a demolition permit for the existing hotel. This payment shall be credited against the Affordable Housing Payment, as defined above, at such time when the Affordable Housing Payment is required.

3.1.3.2 Contribution for Off-Site Streetscape Improvements.

(a) Financial Contribution. Developer shall make a phased, fixed-fee contribution to the City for streetscape and pedestrian improvements along 7th Street from the Harbor Freeway on the west to Olive Street on the east and the Wilshire Boulevard and 7th Street Harbor Freeway overcrossings (the “Streetscape Improvements”). The contribution for Phase 1 shall be \$4,425,000. The contribution for Phase 2 shall be \$4,750,000. Prior to the issuance of any building permit, an initial contribution of \$100,000 shall be made to the City to fund initial outreach and planning efforts for the Streetscape Improvements, with an additional \$100,000 paid on a yearly basis until the first certificate of occupancy for the Project is issued.

At the time of building plan check submittal for Phase 1, the scope of such Streetscape Improvements shall be determined by the Planning Director in consultation with the appropriate Council Office. The Planning Director shall meet, confer and consult with the Developer and hold a minimum of one public workshop to determine: (i) the scope of the Streetscape Improvements, including the physical extent of such Streetscape Improvements, (ii) the phasing of the construction of the Streetscape Improvements, with Streetscape Improvements to be divided into two phases, and (iii) the estimate of the cost of such Streetscape Improvements. Prior to the issuance of any certificate of occupancy for Phase 1, the remainder of the \$4,425,000 contribution shall be due for Phase 1 (\$4,425,000 less any \$100,000 annual contributions paid to date).

Developer shall contribute a second payment of \$4,750,000 for Phase 2, bringing the total payment to \$9,175,000. Prior to the issuance of any building permit for Phase 2, an initial contribution of \$100,000 shall be made to the City to fund initial outreach and planning efforts for the Streetscape Improvements, with an additional \$100,000 paid on a yearly basis until the first certificate of occupancy is issued for Phase 2. At the time of building plan check submittal for Phase 2, the scope of such Streetscape Improvements shall be determined by the Planning Director in consultation with the appropriate Council Office. The Planning Director shall meet, confer and consult with the Developer and hold a minimum of one public workshop to determine: (i) the scope of the remaining

Streetscape Improvements, including the physical extent of such Streetscape Improvements, and (ii) the estimate of the cost of such Streetscape Improvements. Prior to the issuance of any certificate of occupancy for Phase 2, the remainder of the \$4,750,000 contribution shall be due for Phase 2 (\$4,750,000 less any \$100,000 annual contributions paid to date for Phase 2).

All required payments shall be placed into a designated City fund reserved for the Streetscape Improvements, necessary consultant work and related City staff time. The Planning Director shall oversee the fund, in consultation with the appropriate Council Office. The City shall complete the Streetscape Improvements as soon as reasonably practicable.

(b) Developer Construction. Alternatively, the Developer may elect to construct the Streetscape Improvements in lieu of paying the fixed-fee contribution to the City. Credit shall be given in an amount equivalent to the cost of the improvements constructed. Prior to the issuance of any building permit associated with Phase 1, the Developer shall submit a detailed construction and cost schedule including permit valuations showing the total value of the proposed work, to the satisfaction of the Planning Director, in consultation with the Bureau of Engineering. The costs shall be equivalent to the \$4,425,000 obligation for Phase 1, minus any initial contribution(s) of \$100,000 for each year from the issuance of a building permit. Such Streetscape Improvements must be completed prior to the issuance of any certificate of occupancy associated with Phase 1; provided however that such deadline shall be extended by the Planning Director for any delays in completing the Streetscape Improvements that are not reasonably within the control of Developer. The Planning Director, in consultation with the Bureau of Engineering may require the Developer to post a construction bond for the remainder of the Phase 1 obligation. Phase 2 Streetscape Improvements obligations shall be met similarly. Prior to the issuance of any building permit associated with Phase 2, the Developer shall submit a detailed construction and cost schedule to the satisfaction of the Planning Director, in consultation with the Bureau of Engineering. The costs shall be equivalent to the \$4,750,000 obligation for Phase 2, minus any initial contribution(s) of \$100,000 for each year from the issuance of a building permit for Phase 2. Such Streetscape Improvements must be completed prior to the issuance of any Certificate of Occupancy associated with Phase 2; provided, however that such deadline shall be extended by the Planning Director for any delays in completing the Streetscape Improvements that are not reasonably within the control of Developer. The Planning Director, in consultation with the Bureau of Engineering may require the Developer to post a construction bond for the remainder of the Phase 2 obligation.

3.1.3.3 Transportation Improvements. The Developer shall provide the following transportation-related benefits: (1) Developer shall provide an upfront investment for a Transportation Demand Management (TDM) Program aimed at reducing the use of single occupancy vehicles by increasing the number of trips by walking, bicycle, carpool, vanpool, bus, and rail. The upfront investment shall be in the amount of \$65,000, payable to the Department of

Transportation, and be made prior to issuance of any certificate of occupancy for Phase 1. Developer shall also provide on-going operation and management support for the TDM Program. As part of the Annual Review process required by Section 4.1 of this Agreement, the Developer shall demonstrate to the Planning Director how it has implemented the TDM Program. (2) Developer shall provide a fixed-fee contribution to supplement LADOT's ExpressPark program that will include new parking meter technology, vehicle sensors, a central management system, and real-time parking guidance for motorists. The contribution shall be in the amount of \$925,000 to the Department of Transportation and made prior to issuance of any certificate of occupancy for Phase 2. (3) Developer shall provide an on-site integrated mobility hub to be constructed with Phase 1 and be provided at the time of issuance of any certificate of occupancy for the Project. The integrated mobility hub shall be located in a kiosk approximately at the corner of Figueroa Street and 7th Street. If the kiosk location is infeasible, the integrated mobility hub shall be located in another prominent location with direct pedestrian access and a visual connection to the subway portal by pedestrians exiting the subway station at Figueroa Boulevard and 7th Street. Developer shall provide the following to satisfy the requirement to provide an integrated mobility hub: a) a one-time fixed-fee contribution in the amount of \$500,000 to the Department of Transportation, made prior to issuance of any certificate of occupancy for Phase 1; b) 300 square feet of rent-free space for a three-year period to accommodate the vehicle-bicycle sharing kiosk within the Project site which shall accommodate bicycle parking, bicycle lockers, and shared bicycles; and c) Up to ten parking spaces for a three-year period in the Project's parking garage for shared vehicles. (4) Developer shall provide a fixed-fee contribution in the amount of \$650,000 to the Department of Transportation for the purchase of a new electric/hybrid bus for the Downtown DASH program. The contribution shall be made prior to issuance of any certificate of occupancy for Phase 2.

3.1.3.4. Metro Improvements. Prior to the issuance of any certificate of occupancy for the following phasing, Developer shall cause to be developed and implement the following improvements: (1) Developer shall provide a new "knockout" access panel to be constructed at a location within the South East Corner of the Project's subterranean parking garage to be determined by the Planning Director in consultation with the Developer and Metro. The knockout panel will allow for a future subterranean connection between the Project and the 7th Street/Metro Center subway station. The Developer shall coordinate with Metro on the panel construction to the satisfaction of the Planning Director. If the knockout panel is determined to be infeasible by the Planning Director in consultation with Metro, such funding shall be redirected to other Transportation Demand Management programs or other transportation improvements, as determined by the Planning Director. The cost of such improvements shall not exceed \$1,000,000 with proof of compliance required prior to issuance of any certificate of occupancy for the hotel building; (2) In partnership with Metro, Developer shall fund and install Next Train/Next Bus technology, and install it in a permanent, publically viewable location within the public plaza, to the satisfaction of the Planning Director. The cost or contribution required for such improvements shall not exceed \$500,000 and proof of compliance shall be required prior to issuance of any certificate of occupancy for Phase 2. Next Train/Next Bus visually displays actual arrival information, updated at regular intervals for easier access to various regional transportation elements. The arrival information is made available on the World Wide Web and to wireless devices including digital signs at bus stops and Metro portals, business display locations, internet capable cell phones, and other Personal Digital Assistants (PDAs).

3.1.3.5. Project Labor Agreement. Developer shall enter into a Project Labor Agreement with the Building and Construction Trades Council prior to the issuance of the first building permit. The purpose of the Project Labor Agreement will be to promote efficiency of construction operation during the construction of the Project and provide for the orderly settlement of labor disputes and grievances without strikes or lockouts, thereby assuring timely and economical completion of the Project. Additionally, the Project Labor Agreement will reflect a commitment by all parties to diversity in the workforce hiring that reflects levels of minority, women and other worker utilization at levels which are representative of the relevant workforce of these groups in the Greater Los Angeles Area. The Project Labor Agreement will serve to identify the construction trade union(s) as the primary source of all craft labor employed on the Project. The union(s) will use their best efforts to recruit and identify individuals, particularly residents of the City of Los Angeles, for entrance into joining labor/management apprenticeship programs and to assist individuals in qualifying and becoming eligible for such programs.

3.1.3.6 Construction Trades Prevailing Wage. Construction workers employed in connection with the construction of the Project including core and shell construction shall be paid no less than the prevailing rate of wages as determined pursuant to the provisions of Sections 1770 et seq. of the California Labor Code. The Developer shall submit proof of compliance with this obligation prior to the issuance of any certificate of occupancy for the Project.

3.1.3.7 Local Hiring / First Source / Minority Business Recruitment. Developer shall implement a Local Hiring/First Source/Minority Business Recruitment program to promote hiring for non-exempt employees, subcontractor opportunities and permanent service jobs and to provide training and employment for the traditionally unemployed or under-employed during operation of the Project. Through referral resources, including but not limited to, trade unions, community based organizations such as the YWCA/Job Corps program, City work source centers, LA Trade Tech's hospitality division and others, contractors will be connected with potential service workers. A list of training opportunities and anticipated employment opportunities shall be provided to the referral resources; these resources will, in turn, provide contractors, sub-contractors and the hotel operator with a list of candidates for the job openings. Developer will ensure that the referral resources will use their best efforts to recruit and identify individuals, particularly residents of the City of Los Angeles, for entrance into training programs and to assist individuals in qualifying and becoming eligible for such programs. The referral resources will exert their best efforts to recruit and identify Local Residents and/or Minority Businesses of the City. The Developer shall submit proof of compliance with this obligation prior to the issuance of any certificate of occupancy. Nothing in this provision shall be construed to apply to employees hired by the future office or retail tenants.

3.1.3.8 Job Training Program. Developer shall provide a one-time fixed-fee contribution in the total amount of \$150,000 to the LA Trade Tech Hotel Hospitality training program and/or the YWCA Job Corps program, which will earmark the contribution for the hospitality programs that help prepare students for careers in hotel management and other hospitality focused jobs. Proof of compliance shall be required prior to the issuance of building permit for Phase 1, in the form of a letter from the recipient training entity/agency confirming payment of funds and that such funds have been earmarked for the specific purpose of job

training. Additionally, Developer shall participate in existing apprenticeship programs for construction trades.

3.1.3.9 Living Wage Program. Developer shall submit proof of compliance with the City's Living Wage Ordinance (Ordinance Number 172336) program prior to the issuance of any certificate of occupancy for the Project; provided however that hotel and restaurant employees covered by a collective bargaining agreement and retail employees shall not be subject to this requirement.

3.1.3.10 Public Meeting Space in Hotel. Developer shall provide meeting space at the Project for use by downtown and community non-profit groups including, but not limited to, the local Neighborhood Council and civic organizations, during reasonable business hours, as available. One or more meeting spaces shall be provided to accommodate small gatherings, such as regularly scheduled community meetings for a maximum of 50 occurrences per year. Organizations shall be provided a meeting room if they schedule at least 14 days in advance and may be required to pay a refundable \$40 deposit to hold the room. Additionally, a minimum of 5,000 square feet of larger meeting space shall be provided to accommodate larger gatherings and special events, for the same type of above-mentioned organizations, a maximum of 2 occurrences per year. Organizations shall be provided a meeting room if there is available space 30 days or less in advance of event, and if they provide a nominal flat clean up fee of \$300. The Developer shall establish and operate a reservation system whereby community groups can reserve the meeting space as available. Said requirement shall not include provision of food, equipment, or other materials. The meeting space will be included in one of the Project buildings and may also be used by residents, tenants, or others in the Project.

3.1.3.11 Open Space. Developer shall provide, maintain, and operate a minimum one-quarter acre outdoor plaza oriented to the corner of Figueroa Boulevard and 7th Street at the ground-level of the Project site. Developer will allow public access as conditioned in Project approvals. A plaza phasing plan, showing the construction of the majority of the plaza in Phase 1, shall be provided to the satisfaction of the Planning Director prior to issuance of any building permit. In the event Phase 2 is not in active plan check at the Department of Building and Safety two years after the issuance of the first certificate of occupancy for Phase 1, the footprint area of the unbuilt second tower shall be brought up to grade and landscaped as a plaza area with public access. Such action shall be installed within 10 months of the expiration of the two year period, to the satisfaction of the Planning Director.

3.1.3.12 Public Art. Developer shall physically include public art and programming in the Project's pedestrian plaza, as described in the Project Approvals, in keeping with the City of Los Angeles public art guidelines. The cost for providing such public art and programming enhancements shall be applied toward Developer's on-site Public Percent for Art fee requirements. Proof of compliance shall be required prior to issuance of any certificate of occupancy for Phase 2.

3.1.3.13 Public Access to Hotel Rooftop. Developer shall use commercially reasonable efforts to construct a publicly accessible bar/café and/or outdoor dining space on the rooftop of the hotel building; provided however that nothing in this Agreement shall

be construed to require Developer to construct and operate such space if it is not economically feasible as determined in Developer's sole and absolute discretion. Developer shall submit a letter providing a general feasibility review for such rooftop space, for review and comment only, prior to issuance of the Phase 1 building permit.

3.1.3.14 Signage / Public Service. On a limited and periodic basis, Developer shall utilize certain Project signs, as determined by Developer and requested by the City, for the purpose of displaying public service announcements and messages for City-sponsored events and/or programs (Public Service Announcements "PSAs"). Such PSAs shall be broadcast on the Scrolling News Ribbon Signs or other sign as determined by Developer and shall take place a minimum total combined duration of 4 minutes for each 4-hour period. As part of the Annual Review process required by Section 4.1 of this Agreement, the Developer shall demonstrate compliance.

3.1.3.15 Contribution for Expanded Sign District. Developer shall contribute a single fixed-fee payment of \$400,000 to the Planning Department to fund required environmental studies and analysis, plan development, adoption, outreach, and related staff and consultant time for an expanded Sign District beyond the Project along the Figueroa Corridor. Such a payment shall be made prior to the issuance of any building permit for the Project. The Planning Director shall bring a recommendation report to the City Planning Commission within twenty-four months after receipt of such payment, or in the event such work has not been completed shall prepare a report to the City Planning Commission outlining the status of progress with an estimated completion date.

3.2 Agreement and Assurances on the Part of the City. In consideration for Developer entering into this Agreement, and as an inducement for Developer to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the premises, purpose, and intentions set forth in Section 2.3 of this Agreement, the City hereby agrees as follows:

3.2.1 Entitlement to Develop. Developer has the vested right to develop the Project subject to the terms and conditions of this Agreement, the Applicable Rules, Project Approvals, and the Reserved Powers. Developer's vested rights under this Agreement shall include, without limitation, the right to remodel, renovate, rehabilitate, rebuild, or replace the Project or any portion thereof throughout the applicable Term for any reason, including, without limitation, in the event of damage, destruction, or obsolescence of the Project or any portion thereof, subject to the Applicable Rules, Project Approvals, and Reserved Powers. To the extent that all or any portion of the Project is remodeled, renovated, rehabilitated, rebuilt, or replaced, Developer may locate that portion of the Project at any other location of the Property, subject to the requirements of the Project Approvals, the Applicable Rules, and the Reserved Powers.

3.2.2 Consistency in Applicable Rules. Based upon all information made available to the City up to or concurrently with the execution of this Agreement, the City finds and certifies that no Applicable Rules prohibit or prevent or encumber the full completion and occupancy of the Project in accordance with the uses, densities, designs, heights, signage regulations, permitted demolition, and other development entitlements incorporated and agreed to herein and in the Project Approvals.

3.2.3 Changes in Applicable Rules.

3.2.3.1 Non-Application of Changes in Applicable Rules. Any change in, or addition to, the Applicable Rules, including, without limitation, any change in any applicable General Plan, zoning or building regulation, adopted, or becoming effective after the Effective Date of this Agreement, including, without limitation, any such change by means of ordinance including but not limited to adoption of a specific plan or overlay zone, City Charter amendment, initiative, referendum, resolution, motion, policy, order or moratorium, initiated, or instituted for any reason whatsoever and adopted by the City, the Mayor, City Council, Planning Commission or any other Board, Commission, Department or Agency of the City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict in any way with the Applicable Rules, Project Approvals, or this Agreement, shall not be applied to the Project unless these changes represent an exercise of the City's Reserved Powers, or are otherwise agreed to in this Agreement. Notwithstanding the foregoing, Developer may, in its sole discretion, give the City written notice of its election to have any subsequent change in the Applicable Rules applied to some portion or all of the Property as it may own, in which case such subsequent change in the Applicable Rules shall be deemed to be contained within the Applicable Rules insofar as that portion of the Property is concerned. In the event of any conflict or inconsistency between this Agreement and the Applicable Rules, the provisions of this Agreement shall control.

3.2.3.2 Changes in Building and Fire Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time in the California Building Code and other uniform construction codes. In addition, development of the Project shall be subject to changes occurring from time to time in Chapters V and IX of the Municipal Code regarding the construction, engineering, and design standards for both public and private improvements provided that these changes are (1) necessary to the health and safety of the residents of the City, and (2) are generally applicable on a Citywide basis (except in the event of natural disasters as found by the Mayor or City Council, such as floods, earthquakes and similar disasters).

3.2.3.3 Changes Mandated by Federal or State Law. This Agreement shall not preclude the application to the Project of changes in, or additions to, the Applicable Rules, including rules, regulations, ordinances, and official policies, to the extent that these changes or additions are mandated to be applied to developments such as this Project by state or federal regulations, pursuant to the Reserved Powers. In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, these provisions shall be modified or suspended as may be necessary to comply with state or federal laws or regulations.

3.2.4 Subsequent Development Review. The City shall not require Developer to obtain any approvals or permits for the development of the Project in accordance with this Agreement other than those permits or approvals that are required by the Applicable Rules, the Reserved Powers, and/or the Project Approvals. Except as permitted by the Land Use Equivalency and Design Flexibility Programs and by those changes and modifications as described in Section 3.2.5, any subsequent Discretionary Action initiated by Developer that is

not permitted by the Project Approvals or Applicable Rules, which changes the uses, intensity, density, building height, or timing of the Project, or decreases the lot area, setbacks, yards, parking, or which increases entitlements allowed under the Project Approvals, shall be subject to rules, regulations, ordinances, and official policies of the City then in effect.

3.2.5 Land Use Equivalency Program and Design Flexibility Program. The City acknowledges the Project includes Land Use Equivalency and Design Flexibility Programs to maintain flexibility of Project uses and Floor Areas so that the Project can respond to the changing needs of the Southern California economy.

3.2.6 Special Taxes and Assessments. Developer shall have the right, to the extent permitted by law, to protest, oppose, and vote against any and all special taxes, assessments, levies, charges, and/or fees imposed with respect to any assessment districts, infrastructure financing, Mello-Roos or community facilities districts, community taxing districts, maintenance districts, or other similar districts. If the Developer requests the formation of any such districts in connection with the Project, the City agrees to cooperate fully in their formation.

3.2.7 Effective Development Standards. The City agrees that it is bound to permit the uses, intensity of use and density on this Property which are permitted by this Agreement and the Project Approvals, insofar as this Agreement and the Project Approvals so provide or as otherwise set forth in the Applicable Rules or the Reserved Powers. The City hereby agrees that it will not unreasonably withhold or unreasonably condition any Discretionary Action which must be issued by the City in order for the Project to proceed, provided that Developer reasonably and satisfactorily complies with all City-wide standard procedures, actions, payments of Processing Fees, and criteria generally required of developers by the City for processing Requests for development consistent with this Agreement.

3.2.8 Interim Use. The City agrees that Developer may use the Property during the term of this Agreement for any use which is otherwise permitted by the applicable zoning regulations and the General Plan in effect at the time of the interim use, except as expressly provided in this Development Agreement, or pursuant to any approvals, permits, other agreements between the City and Developer, or other entitlements previously granted and in effect as of the Adoption Date.

3.2.9 Moratoria or Interim Control Ordinances. In the event an ordinance, resolution, policy, or other measure is enacted, whether by action of the City, by initiative, or otherwise, which relates directly or indirectly to the Project or to the rate, amount, timing, sequencing, or phasing of the development or construction of the Project on all or any part of the Property, City agrees that such ordinance, resolution, or other measure shall not apply to the Property or this Agreement, unless such changes: (1) are found by the City to be necessary to the public health and safety of the residents of the City, and (2) are generally applicable on a Citywide basis (except in the event of natural disasters as found by the Mayor or the City Council, such as floods, earthquakes and similar disasters).

3.2.10 Time Period of Tentative Tract Map and Project Approvals. The City acknowledges that the construction of the Project may be subject to unavoidable delays due to

factors outside Developer's control. Pursuant to California Government Code Section 66452.6(a), the City agrees that the duration of the Vesting Tentative Tract Map and any new tract or parcel map which are consistent with the Project Approvals, shall automatically be extended for the Term of this Agreement. The City further agrees that the duration of all of the Project Approvals shall automatically be extended for the Term of this Agreement.

3.2.11 Processing Fees. Developer shall pay all Processing Fees for Ministerial Permits and Approvals.

3.2.12 Timeframes and Staffing for Processing and Review. The City agrees that expeditious processing of Ministerial Permits and Approvals and Discretionary Actions, if any, and any other approvals or actions required for the Project are critical to the implementation of the Project. In recognition of the importance of timely processing and review of Ministerial Permits and Approvals, the City agrees to work with Developer to establish time frames for processing and reviewing such Ministerial Permits and Approvals and to comply with timeframes established in the Project Approvals. The City agrees to expedite all Ministerial Permits and Approvals and Discretionary Actions requested by Developer, if any.

3.2.13 Other Governmental Approvals. Developer may apply for such other permits and approvals as may be required for development of the Project in accordance with the provisions of this Agreement from other governmental or quasi-governmental agencies having jurisdiction over the Property. The City shall cooperate with Developer in its endeavors to obtain such permits and approvals. Each Party shall take all actions and do all things, and execute, with acknowledgment or affidavit, if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement.

4 ANNUAL REVIEW.

4.1 Annual Review. During the Term of this Agreement, the City shall review annually Developer's compliance with this Agreement by Developer, and/or any Transferee. This periodic review shall be limited in scope to good faith compliance with the provisions of this Agreement as provided in the Development Agreement Act and Developer, and/or any Transferee, shall have the burden of demonstrating such good faith compliance relating solely to such parties' portion of the Property and any development located thereon. The Annual Review shall be in the form of an Annual Report prepared and submitted by the Planning Director. The Report shall include: the number, type and square footage of and the status of Projects; any transfers of floor area; the total number of parking spaces developed; provisions for open space; any equivalency transfers; status of activities relating to streetscape improvements; summary of performance of Developer's obligations.

4.2 Pre-Determination Procedure. Submission by Developer, and/or Transferee, of evidence of compliance with this Agreement, in a form which the Planning Director may reasonably establish, shall be made in writing and transmitted to the Planning Director not later than sixty (60) days prior to the yearly anniversary of the Adoption Date. The public shall be afforded an opportunity to submit written comments regarding compliance to the Planning Director at least sixty (60) days prior to the yearly anniversary of the Effective Date. All such

public comments and final staff reports shall, upon receipt by the City, be made available as soon as possible to Developer, and/or any Transferees.

4.2.1 Special Review. The City may order a special review of compliance with this Agreement at any time.

4.3 Planning Director's Determination. On or before the yearly anniversary of the Adoption Date of the Agreement, the Planning Director shall make a determination regarding whether or not Developer, and/or any Transferee, has complied in good faith with the provisions and conditions of this Agreement. This determination shall be made in writing with reasonable specificity, and a copy of the determination shall be provided to Developer, and/or any Transferee, in the manner prescribed in Section 7.120.

4.4 Appeal by Developer. In the event the Planning Director makes a finding and determination of non-compliance, Developer, and/or any Transferee as the case may be, shall be entitled to appeal that determination to the Planning Commission. After a public hearing on the appeal, the Planning Commission shall make written findings and determinations, on the basis of substantial evidence, whether or not Developer, and/or any Transferee as the case may be, has complied in good faith with the provisions and conditions of this Agreement. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245 (City Council review of Commission and Board actions).

4.5 Period to Cure Non-Compliance. If, as a result of this Annual Review procedure, it is found and determined by the Planning Director or the Planning Commission or City Council, on appeal, that Developer, and/or any Transferee, as the case may be, has not complied in good faith with the provisions and conditions of this Agreement, the City, after denial of any appeal or, where no appeal is taken, after the expiration of the appeal period described in Section 7.3, shall submit to Developer, and/or any Transferee, as the case may be, by registered or certified mail, return receipt requested, a written notice of default in the manner prescribed in Section 7.120, stating with specificity those obligations of Developer and/or any Transferee, as the case may be, which have not been performed. Upon receipt of the notice of non-compliance, Developer, and/or any Transferee, as the case may be, shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of the default(s) not later than sixty (60) days after receipt of the notice of default, or any longer period as is reasonably necessary to remedy such items of the default(s), by mutual consent of the City and Developer provided that Developer shall continuously and diligently pursue the remedy at all times until the item of default(s) is cured.

4.6 Failure to Cure Non-Compliance Procedure. If the Planning Director finds and determines that Developer or a Transferee has not cured a default pursuant to this Section, and that the City intends to terminate or modify this Agreement or those transferred or assigned rights and obligations, as the case may be, the Planning Director shall make a report to the Planning Commission. The Planning Director shall then set a date for a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after the public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that (i) Developer, or its

Transferee has not cured a default pursuant to this Section, and (ii) that the City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the finding and determination shall be appealable to the City Council in accordance with Section 7.3 hereof. In the event of a finding and determination of compliance, there shall be no appeal by any person or entity. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245 (City Council's review of Commission and Council actions).

4.7 Termination or Modification of Agreement. The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after the final determination of noncompliance by the City Council or, where no appeal is taken, after the expiration of the appeal periods described in Section 7.3. There shall be no modifications of this Agreement unless the City Council acts pursuant to Government Code Sections 65867.5 and 65868, irrespective of whether an appeal is taken as provided in Section 7.3.

4.8 Reimbursement of Costs. The Developer shall reimburse the City for its actual costs, reasonably and necessarily incurred, to accomplish the required annual review.

4.9 Evidence of Compliance Applicable to a Particular Portion of the Property. Notwithstanding anything to the contrary in this Section 4 or any other provision of this Agreement, a Transferee of all or any portion of the Property shall only be responsible for submitting evidence of compliance with this Agreement as it relates solely to that portion of the Property transferred, assigned, or conveyed to such Transferee in an Assignment Agreement authorized by Section 6.2 of this Agreement.

4.10 City's Rights and Remedies Against a Developer. The City's rights in Section 4 of this Agreement relating to compliance with this Agreement by Developer shall be limited to only those rights and obligations assumed by Developer under this Agreement and as expressly set forth in the applicable Assignment Agreement authorized by Section 6.2 of this Agreement.

4.11 Developer Written Request for Confirmation. From time to time, Developer of any portion of the Property may, separate from the annual review process, submit a written request for confirmation from the Planning Director that certain obligations of this Agreement have been satisfied. Subject to the time limits and process requirements of Section 4.3, the Planning Director shall issue a written confirmation stating either that such obligations have been satisfied or setting forth the reasons why subject obligation have not been satisfied.

5 DEFAULT PROVISIONS.

5.1 Default by Developer.

5.1.1 Default. In the event Developer or a Transferee of any portion of the Property fails to perform its obligations under this Agreement applicable to its portion of the Property as specified in the applicable Assignment Agreement, in a timely manner and in compliance pursuant to Section 4 of this Agreement, the City shall have all rights and remedies provided for in this Agreement, including, without limitation, modifying or terminating this Agreement, shall relate exclusively to the defaulting party and such defaulting party's portion of

the Property, provided that the City has first complied with all applicable notice and opportunity to cure provisions in Section 5.1.2 and given notice as provided in Section 4.3 hereof, and provided further that Developer may appeal such declaration in the manner provided in, and subject to all terms and provisions of, Sections 4.4 and 4.5. In no event shall a default by a Developer or a Transferee of any portion of the Property constitute a default by any non-defaulting Developer or Transferee with respect to such non-defaulting parties' obligations hereunder nor affect such non-defaulting parties' rights hereunder, or respective portion of the Property.

5.1.2 Notice of Default. The City through the Planning Director shall submit to Developer or Transferee, as applicable, by registered or certified mail, return receipt requested, a written notice of default in the manner prescribed in Section 7.10, identifying with specificity those obligations of Developer or Transferee, as applicable, which have not been performed. Upon receipt of the notice of default, Developer or Transferee, shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of the default(s) not later than sixty (60) days after receipt of the notice of default, or a longer period as is reasonably necessary to remedy the default(s), provided that Developer or Transferee, as applicable, shall continuously and diligently pursue the remedy at all times until the default(s) is cured.

5.1.3 Failure to Cure Default Procedures. If after the cure period has elapsed (Section 4.6), the Planning Director finds and determines that Developer, or its Transferees, successors, and/or assignees, as the case may be, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Planning Director shall make a report to the Planning Commission and then set a public hearing before the Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Developer, or its Transferees, successors, and/or assigns, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, Developer and its Transferees, successors, and/or assigns, shall be entitled to appeal that finding and determination to the City Council in accordance with Section 7.3. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245 (City Council review of Commission and Board actions).

5.1.4 Termination or Modification of Agreement. The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, relating solely to the defaulting Developer or Transferee and such defaulting parties portion of the Property after such final determination of the City Council or, where no appeal is taken, after the expiration of the appeal periods described in Section 7.3 relating to the defaulting parties rights and obligations. There shall be no termination or modification of this Agreement unless the City Council acts pursuant to Section 7.3.

5.2 Default by the City.

5.2.1 Default. In the event the City does not accept, process, or render a decision on necessary development permits, entitlements, or other land use or building approvals for use as provided in this Agreement upon compliance with the requirements thereof, or as otherwise agreed to by the Parties, or the City otherwise defaults under the provisions of this Agreement, Developer, and any Transferee, shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement provided that Developer or Transferee, as the case may be, has first complied with the procedures in Section 5.2.2. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses the City may otherwise have with respect to claims for monetary damages.

5.2.2 Notice of Default. Developer or Transferee, as the case may be, shall first submit to the City a written notice of default stating with specificity those obligations that have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of the default(s) not later than one hundred and twenty (120) days after receipt of the notice of default, or a longer period as is reasonably necessary to remedy such default(s), provided that the City shall continuously and diligently pursue the remedy at all times until the default(s) is cured. In the case of a dispute as to whether the City has cured the default, the Parties shall submit the matter to arbitration pursuant to Section 7.5 of this Agreement.

5.3 No Monetary Damages. It is acknowledged by the Parties that the City would not have entered into this Agreement if it were liable in monetary damages under or with respect to this Agreement or the application thereof. The Parties agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages which would adequately compensate Developer for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify the exposure. Therefore, the Parties agree that each of the Parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that the Parties shall not be liable in monetary damages and the Parties covenant not to sue for or claim any monetary damages for the breach of any provision of this Agreement.

6 MORTGAGEE RIGHTS.

6.1.1 Encumbrances on the Property. The Parties hereto agree that this Agreement shall not prevent or limit Developer, from encumbering the Property or any estate or interest therein, portion thereof, or any improvement thereon, in any manner whatsoever by one or more mortgages, deeds of trust, sale and leaseback, or other form of secured financing ("Mortgage") with respect to the construction, development, use or operation of the Project and parts thereof. The City acknowledges that the lender(s) providing such Mortgages may require certain Agreement interpretations and modifications and agrees, upon request, from time to time, to meet with Developer and representatives of such lender(s) to negotiate in good faith any such request for interpretation or modification. The City will not unreasonably withhold its consent to any such requested interpretation or modification, provided such interpretation or modification is consistent with the intent and purposes of this Agreement.

6.1.2 Mortgagee Protection. To the extent legally permissible, this Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by the holder of a Mortgage (a "Mortgagee"), pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease or sublease termination or otherwise, shall be subject to all of the terms and conditions of this Agreement except that any such Mortgagee, including its affiliate, who takes title to the Property or any portion thereof shall be entitled to the benefits arising under this Agreement provided Mortgagee complies with Section 6.1.3 below.

6.1.3 Mortgagee Not Obligated. Notwithstanding the provisions of this Section 6, Mortgagee will not have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of Developer or other affirmative covenants of Developer hereunder, or to guarantee such performance, except that the Mortgagee and its successor shall have no vested right to develop the Project without fully complying with the terms of this Agreement and executing and delivering to the City, in a form and with terms reasonably acceptable to the City, an assumption agreement of Developer's obligations hereunder.

6.1.4 Request for Notice to Mortgage. The Mortgagee of any Mortgage or deed of trust encumbering the Property, or any part or interest thereof, who has submitted a request in writing to the City in the manner specified herein for giving notices shall be entitled to receive written notification from the City of any notice of non-compliance by Developer in the performance of Developer's obligations under this Agreement.

6.1.5 Mortgagee's Time to Cure. If the City timely receives a request from a Mortgagee requesting a copy of any notice of non-compliance given to Developer under the terms of this Agreement, the City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of non-compliance to Developer. The Mortgagee shall have the right, but not the obligation, to cure the non-compliance for a period of one hundred twenty (120) days after the Mortgagee receives written notice.

6.1.6 Disaffirmation. If this Agreement is terminated as to any portion of the Property by reason of (i) any default or (ii) as a result of a bankruptcy proceeding, or if this Agreement is disaffirmed by a receiver, liquidator, or trustee for Developer or its property, the City, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new development agreement for the Project as to such portion of the Property with the most senior Mortgagee requesting such new agreement. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this Section.

6.2 Assignment. The Property, as well as the rights and obligations of Developer under this Agreement, may be transferred or assigned in whole or in part by Developer to a Transferee without the consent of the City, subject to the conditions set forth below in Sections 6.2.1 and 6.2.2.

6.2.1 Conditions of Assignment. No such assignment shall be valid until and unless the following occur:

(a) **Written Notice of Assignment Required.** Developer, or any successor transferor, gives prior written notice to the City of its intention to assign or transfer any of its interests, rights or obligations under this Agreement and a complete disclosure of the identify of the assignee or Transferee, including copies of the Articles of Incorporation in the case of corporations and the names of individual partners in the case of partnerships. Any failure by Developer or any successor transferor to provide the notice shall be curable in accordance with the provisions in Section 5.1.

(b) **Automatic Assumption of Obligations.** Unless otherwise stated elsewhere in this Agreement to the contrary, a Transferee of Property or any portion thereof expressly and unconditionally assumes all of the rights and obligations of this Agreement transferred or assigned by Developer and which are expressly set forth in the applicable Assignment Agreement.

6.2.2 Liability Upon Assignment. Each Developer of any portion of the Property shall be solely and only liable for performance of such Developer's obligations applicable to its portion of the Property under this Agreement as specified in the applicable Assignment Agreement. Upon the assignment or transfer of any portion of the Property together with any obligations assignable under this Agreement, the Transferee shall become solely and only liable for the performance of those assigned or transferred obligations so assumed and shall have the rights of a "Developer" under this Agreement; which such rights and obligations shall be set forth specifically in the Assignment Agreement, executed by the transferring Developer, and the Transferee, as of the date of such transfer, assignment or conveyance of the applicable portion of the Property. The failure of a Developer of any portion of the Property to perform such Developer's obligation set forth in the applicable Assignment Agreement may result, at the City's option, in a declaration that this Agreement has been breached and the City may, but shall not be obligated to, exercise its rights and remedies under this Agreement solely as it relates to the defaulting Developer's portion of the Property as provided for in Section 5.1 hereof, subject to such defaulting Developer's right to notice and opportunity to cure the default in accordance with provisions of Section 5.1 hereof.

6.2.3 Release of Developer. With respect to a transfer and assignment of all or a portion of Developer's interest in the Property and the related rights and obligations hereunder, upon the effective date of any such transfer and assignment, as evidenced by the execution of an Assignment Agreement pursuant to this Section 6.2.3 between Developer and the Transferee and delivery of such Assignment Agreement to the City, Developer shall automatically be released from any further obligations to the City under this Agreement with respect to the Property so transferred.

6.2.4 Release of Property Transferee. A Transferee shall not be liable for any obligations to the City under this Agreement relating to any portion of the Property other than that portion transferred to such Transferee, and no default by a Developer under this Agreement with respect to such other portions of the Property shall be deemed a default by such Transferee with respect to the portion of the Property transferred to such Transferee.

7 GENERAL PROVISIONS.

7.1 Effective Date. The Effective Date of this Agreement shall be the date on which this Agreement is attested by the City Clerk of the City of Los Angeles after execution by Developer and Mayor of the City of Los Angeles.

7.2 Term. The Term of this Agreement shall commence on the Effective Date and shall extend for a period of twenty (20) years after the Effective Date, unless said Term is otherwise terminated or modified by circumstances set forth in this Agreement or by mutual consent of the Parties hereto. Following the expiration of this Term, this Agreement shall terminate and be of no further force and effect; provided, however, that this termination shall not affect any right or duty arising from entitlements or approvals, including the Project Approvals on the Property, approved concurrently with, or subsequent to, the Effective Date of this Agreement. The Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from any enactments pursuant to the Reserved Powers or moratoria, or from legal actions or appeals which enjoin performance under this Agreement or act to stay performance under this Agreement (other than bankruptcy or similar procedures), or from any actions taken pursuant to Section 7.5 (Dispute Resolution), or from any litigation related to the Project Approvals, this Agreement or the Property.

7.3 Appeals to City Council. Where an appeal by Developer, or its Transferees, as the case may be, to the City Council from a finding and/or determination of the Planning Commission is created by this Agreement, such appeal shall be taken, if at all, within twenty (20) days after the mailing of such finding and/or determination to Developer, or its successors, Transferees, and/or assignees, as the case may be. The City Council shall act upon the finding and/or determination of the Planning Commission within eighty (80) days after such mailing, or within such additional period as may be agreed upon by Developer, or its Transferees, as the case may be, and the City Council. The failure of the City Council to act shall not be deemed to be a denial or approval of the appeal, which shall remain pending until final City Council action.

7.4 Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, whenever a period of time, including a reasonable period of time, is designated within which either Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which such Party is actually prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of causes beyond the reasonable control of the Party to be excused, including: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; litigation and administrative proceedings against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs (such as the Annual Review)); any approval required by the City (not including any period of time normally expected for the processing of such approvals in the ordinary course of affairs); restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; the exercise of the City's Reserved Powers; or similar bases for excused performance which are not within the reasonable control of the Party to be excused (financial inability excepted). This Section shall not be applicable to any proceedings with respect to bankruptcy or receivership initiated by or on behalf of Developer or, if not dismissed within ninety (90) days, by any third parties against

Developer. If written notice of such delay is given to either party within thirty (30) days of the commencement of such delay, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

7.5 Dispute Resolution.

7.5.1 Dispute Resolution Proceedings. The Parties may agree to dispute resolution proceedings to fairly and expeditiously resolve disputes or questions of interpretation under this Agreement. These dispute resolution proceedings may include: (a) procedures developed by the City for expeditious interpretation of questions arising under development agreements; or (b) any other manner of dispute resolution which is mutually agreed upon by the Parties.

7.5.2 Arbitration. Any dispute between the Parties that is to be resolved by arbitration shall be settled and decided by arbitration conducted by an arbitrator who must be a former judge of the Los Angeles County Superior Court or Appellate Justice of the Second District Court of Appeals or the California Supreme Court. This arbitrator shall be selected by mutual agreement of the parties.

7.5.2.1 Arbitration Procedures. Upon appointment of the arbitrator, the matter shall be set for arbitration at a time not less than thirty (30) nor more than ninety (90) days from the effective date of the appointment of the arbitrator. The arbitration shall be conducted under the procedures set forth in Code of Civil Procedure Section 638, et seq., or under such other procedures as are agreeable to both Parties, except that provisions of the California Code of Civil Procedure pertaining to discovery and the provisions of the California Evidence Code shall be applicable to such proceeding.

7.5.3 Extension of Term. The Term of this Agreement as set forth in Section 7.2 shall automatically be extended for the period of time in which the Parties are engaged in dispute resolution to the degree that such extension of the Term is reasonably required because activities which would have been completed prior to the expiration of the Term are delayed beyond the scheduled expiration of the Term as the result of such dispute resolution.

7.5.4 Legal Action. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation, or enforce by specific performance the obligations and rights of the Parties hereto. Notwithstanding the above, the City's right to seek specific performance shall be specifically limited to compelling Developer to complete, demolish or make safe any particular improvement(s) on public lands which is required as a Mitigation Measure or Condition of Approval. Developer shall have no liability (other than the potential termination of this Agreement) if the contemplated development fails to occur.

7.5.5 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, and the venue for any legal actions brought by any party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions..

7.6 Amendments. This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868, and any Transferee of the Property or any portion thereof, in the event such amendment affects the rights and obligations of the Transferee under this Agreement in connection with the development, use and occupancy of its portion of the Property and/or any improvements located thereon. Any amendment to this Agreement which relates to the Term, permitted uses, substantial density or intensity of use, height, or size of buildings provisions (not otherwise permitted by the Land Use Equivalency and/or Design Flexibility Programs or changes and modifications pursuant to Section 3.2.5 or otherwise permitted by the Agreement) obligations for reservation and dedication of land, conditions, restrictions, and requirements relating to subsequent Discretionary Action or any conditions or covenants relating to the use of the Property, which are not provided for under the Applicable Rules or Project Approvals, shall require notice and public hearing before the Parties may execute an amendment thereto. Developer, or a Transferee as applicable, shall reimburse the City for its actual costs, reasonably and necessarily incurred, to review any amendments requested by Developer or a Transferee, including the cost of any public hearings.

7.7 Covenants. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property for the benefit thereof, subject to the provisions of any Assignment Agreement (if applicable), and the burdens and benefits hereof shall bind and inure to the benefit of the Parties hereto and all successors and assigns of the Parties, including any Transferee of Developer.

7.8 Cooperation and Implementation.

7.8.1 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to affirmatively cooperate in defending said action. Developer and the City agree to cooperate in any legal action seeking specific performance, declaratory relief or injunctive relief, to set court dates at the earliest practicable date(s) and not cause delay in the prosecution/defense of the action, provided such cooperation shall not require any Party to waive any rights.

7.8.2 Relationship of the Parties. It is understood and agreed by the Parties hereto that the contractual relationship created between the Parties hereunder is that Developer is an independent contractor and not an agent of the City. Further, the City and Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers or partners.

7.9 Indemnification.

7.9.1 Obligation to Defend, Indemnify and Hold Harmless: The Developer hereby agrees to defend, indemnify, and hold harmless the City and its agents, officers, and employees, from any claim, action, or proceeding ("Proceeding") against the City or its agents, officers, or employees (i) to set aside, void, or annul, all or any part of any Project Approval, or (ii) for any damages, personal injury or death which may arise, directly or indirectly, from such

Developer or such Developer's contractors, subcontractors', agents', or employees' operations in connection with the construction of the Project, whether operations be by such Developer or any of such Developer's contractors, subcontractors, by anyone or more persons directly or indirectly employed by, or acting as agent for such Developer or any of such Developer's contractors or subcontractors. In the event that the City, upon being served with a lawsuit or other legal process to set aside, void or annul all or part of any Project Approval, fails to promptly notify the Developer of the Proceeding, or fails to cooperate fully in the defense of the Proceeding, the Developer shall thereafter be relieved of the obligations imposed in this Section 7.9. However, if the Developer has actual notice of the Proceeding, it shall not be relieved of the obligations imposed hereunder, notwithstanding the failure of the City to provide prompt notice of the Proceeding. The City shall be considered to have failed to give prompt notification of a Proceeding if the City, after being served with a lawsuit or other legal process challenging the Approvals, unreasonably delays in providing notice thereof to the Applicant. As used herein, "unreasonably delays" shall mean any delay that materially adversely impacts Applicant's ability to defend the Proceeding. The obligations imposed in this Section 7.9 shall apply notwithstanding any allegation or determination in the Proceedings that the City acted contrary to applicable laws. Nothing in this Section shall be construed to mean that Property Owner shall hold the City harmless and/or defend it from any claims arising from, or alleged to arise from, intentional misconduct or gross negligence in the performance of this Agreement.

7.9.2 Defending the Project Approvals The Developer shall have the obligation to timely retain legal counsel to defend against any Proceeding to set aside, void, or annul, all or any part of any Project Approval. The City shall have the right if it so chooses, to defend the Proceeding utilizing in-house legal staff, in which case the Developer shall be liable for all legal costs and fees reasonably incurred by the City, including charges for staff time charged. In the event of a conflict of interest which prevents Developer's legal counsel from representing the City, and in the event the City does not have the in-house legal resources to defend against the Proceeding, the City shall also have the right to retain outside legal counsel, in which case the Developer shall be liable for all legal costs and fees reasonably incurred by the City. Provided that the Developer is not in breach of the terms of this Section 7.9, the City shall not enter into any settlement of the Proceeding which involves modification to any Project Approval or otherwise results in the Developer incurring liabilities or other obligations, without the consent of the Developer.

7.9.3 Breach of Obligations. Actions constituting a breach of the obligations imposed in this Section 7.9 shall include, but not be limited to: (i) the failure to timely retain qualified legal counsel to defend against the Proceedings; (ii) the failure to promptly pay the City for any attorneys fees or other legal costs for which the City is liable pursuant to a judgment or settlement agreement in the Proceeding seeking to set aside, void or annul all or part of any Project Approval; or (iii) the breach of any other obligation imposed in this Section 7.9, in each case after written notice from the City and a reasonable period of time in which to cure the breach, not to exceed thirty-days. For purposes of this Section 7.9, the Developer shall be considered to have failed to timely retain qualified legal counsel if such counsel is not retained within fourteen (14) days following the City's provision of the notice of Proceedings to the Developer required hereunder. As used herein, qualified legal counsel shall mean competent counsel retained by the Developer that does not have a conflict of interest with the City as a result of representing the Developer in the Proceeding. In the event that Developer breaches the

obligations imposed in this Section 7.9, the City shall have no obligation to defend against the Proceedings, and by not defending against the Proceedings, the City shall not be considered to have waived any rights in this Section 7.9.

7.9.4 Cooperation: The City shall cooperate with the Developer in the defense of the Proceeding; provided however, that such obligation of the City to cooperate in its defense shall not require the City to (i) assert a position in its defense of the Proceeding which it has determined, in its sole discretion, has no substantial merit; (ii) advocate in its defense of the Proceeding legal theories which it has determined, in its sole discretion, lack substantial merit; or (iii) advocate in its defense of the Proceeding legal theories which it has determined, in its sole discretion, are contrary to its best interests, or to public policy. Nothing contained in this section shall require the Developer to refrain from asserting in its defense of the Proceeding positions or legal theories that do not satisfy the foregoing requirements.

7.9.5 Contractual Obligation: The Developer acknowledges and agrees that the obligations imposed in this Section 7.9 are contractual in nature, and that the breach of any such obligation may subject the Developer to a breach of contract claim by the City.

7.9.6 Waiver of Right to Challenge: The Developer hereby waives the right to challenge the validity of the obligations imposed in this Section 7.9.

7.9.7 Survival: The obligations imposed in this Section 7.9 shall survive any judicial decision invalidating the Project Approvals.

7.9.8 Preparation of Administrative Record: The Developer and the City acknowledge that upon the commencement of legal Proceedings, the administrative record of proceedings relating to the Project Approvals must be prepared. Those documents must also be certified as complete and accurate by the City. Developer, as part of its defense obligation imposed in this Section 7.9, shall prepare at its sole cost and expense the record of proceedings in a manner which complies with all applicable laws; in accordance with reasonable procedures established by the City; and subject to the City's obligation to certify the administrative record of proceedings and the City's right to oversee the preparation of such administrative record. The Developer agrees that its failure to prepare the administrative record as set forth herein, and in compliance with all time deadlines imposed by law, shall constitute a breach of its obligation to defend the City. In the event that the Developer fails to prepare the administrative record, the City may do so, in which event the City shall be entitled to be reimbursed by Developer for all reasonable costs associated with preparation of the administrative record, including reasonable charges for staff time.

7.9.9 Deposit: Following the filing of a lawsuit, or other legal process seeking to set aside, void or annul all or part of any Project Approval, the Developer shall be required, following written demand by the City, to place funds on deposit with the City, which funds shall be used to reimburse the City for expenses incurred in connection with defending the Project Approvals. For Project Approvals which included the certification of an environmental impact report by the City, the amount of said deposit shall be ten thousand (\$10,000) dollars. For all other Project Approvals, the amount of the deposit shall be five thousand (\$5,000) dollars. The City, at its sole discretion, may require a larger deposit upon a detailed showing to the Developer

of the basis for its determination that the above stated amounts are insufficient. Any unused portions of the deposit shall be refunded to the Developer within thirty (30) days following the resolution of the challenge to the Project Approvals. All Deposits must be paid to the City within thirty (30) days of the Developer's receipt of the City's written demand for the Deposit.

7.10 Notices. Any notice or communication required hereunder between the City or Developer must be in writing, and shall be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party hereto may at any time, by giving ten (10) days' written notice to the other Party hereto, designate any other address in substitution of the address, or any additional address, to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the City:

Director of City Planning
City of Los Angeles
200 N. Spring Street, 5th Floor
Los Angeles, CA 90012

with copies to

City Attorney
City of Los Angeles
Real Property/ Environment Division
700 City Hall East, 200 N. Main Street
Los Angeles, CA 90012

If to Developer:

Hanjin International Corporation, Inc.
c/o Thomas Properties Group, Inc.
515 S. Flower Street, 6th Floor
Los Angeles, CA 90071

with copies to

Paul, Hastings, Janofsky & Walker
LLP
515 S. Flower Street, 25th Floor
Los Angeles, CA 90071
Attn: Mitchell B. Menzer

7.11 Recordation. As provided in Government Code Section 65868.5, this Agreement shall be recorded with the Registrar-Recorder of the County of Los Angeles within ten (10) days following its execution by all Parties. Developer shall provide the City Clerk with the fees for such recording prior to or at the time of such recording, should the City Clerk effectuate the recordation.

7.12 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title, interest in or to any portion of the Property, is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

7.13 Successors and Assignees. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties any subsequent owner of all or any portion of the Property and their respective Transferees, successors, and assignees.

7.14 Severability. If any provisions, conditions, or covenants of this Agreement, or the application thereof to any circumstances of either Party, shall be held invalid or unenforceable, the remainder of this Agreement or the application of such provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

7.15 Time of the Essence. Time is of the essence for each provision of this Agreement of which time is an element.

7.16 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought and refers expressly to this Section. No waiver of any right or remedy with respect to any occurrence or event shall be deemed a waiver of any right or remedy with respect to any other occurrence or event.

7.17 No Third Party Beneficiaries. The only Parties to this Agreement are the City and Developer and their successors-in-interest. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed to benefit or be enforceable by any other person whatsoever.

7.18 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the Parties and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations, understandings, or covenants shall be admissible in any proceedings of any kind or nature to interpret or determine the provisions or conditions of this Agreement.

7.19 Legal Advice; Neutral Interpretation; Headings, Table of Contents. Each Party acknowledges that it has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question. The headings and table of contents used in this Agreement are for the convenience of reference only and shall not be used in construing this Agreement.

7.20 Estoppel Certificate. At any time, and from time to time, Developer may deliver written notice to City and City may deliver written notice to Developer requesting that such Party certify in writing that, to the knowledge of the certifying Party (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended, or if amended, the identity of each amendment, and (iii) the requesting Party is not in breach of this Agreement, or if in breach, a description of each such breach (an "Estoppel Certificate"). The Planning Director shall be authorized to execute, on behalf of the City, any

Estoppel Certificate requested by Developer which complies with this Section. City acknowledges that an Estoppel Certificate may be relied upon by Transferees or successors in interest to Developer who requested the certificate and by Mortgagees holding an interest in the portion of the Property in which that Developer has a legal interest.

7.21 Counterparts. This Agreement is executed in duplicate originals, each of which is deemed to be an original. This Agreement, not counting the Cover Page and Table of Contents, consists of 37 pages and 2 Attachments which constitute the entire understanding and agreement of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

CITY OF LOS ANGELES, a municipal corporation of the State of California

APPROVED AS TO FORM:
CARMEN A. TRUTANICH, City Attorney

By: _____
Antonio Villaraigosa, Mayor

By: _____
Deputy City Attorney

DATE:

DATE:

ATTEST:
JUNE LAGMAY

By: _____
Deputy

DATE:

Hanjin International Corporation, a California corporation

APPROVED AS TO FORM:

Attorney

By: _____
Name:
Title:

By: _____
(Name)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

Parcels A and B of Parcel Map L.A. No. 5728, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 204, Pages 14 and 15 of Parcel Maps, in the Office of the County Recorder of said County, and Francisco Street, Bounded on the north by the southerly line of Wilshire Boulevard and bounded on the south by the northerly line of 7th Street, as shown on said Parcel Map.

EXHIBIT B

PROJECT DESCRIPTION

The demolition of an existing hotel, and the development of a hotel and mixed use project totaling not more than 2,397,304 square feet, located at 916, 925 and 937 West 7th Street; 655, 685, 695, and 699 Figueroa Street; and 900 and 930 West Wilshire Boulevard. The project is comprised of a maximum 560 hotel rooms and/or condo- hotel units, 100 residential units, 1,500,000 square feet of office, 275,000 square feet of amenity areas including retail and restaurant uses, conference and meeting rooms, ballrooms, spa, fitness center, and ancillary other hotel, residential, and office areas. The project includes one approximately 65-story structure, no more than 1,250 feet in height, one approximately 45-story structure, no more than 750 feet in height, and an approximately six-story podium structure, no more than 168 feet in height. The project includes a landscaped pedestrian plaza at the corner of Figueroa Street and 7th Street, as well as a rooftop heliport. Approximately 1,900 parking spaces will be provided in eight levels of subterranean parking. The project may be built in phases. The proposed project has been registered with the U.S. Green Building Council (USGBC) and will be designed and constructed to meet the Leadership in Energy and Environmental Design (LEED) Silver level or higher certification.

