DEVELOPMENT AGREEMENT

by and between

THE CITY OF LOS ANGELES

and

CAPRI URBAN BALDWIN, LLC;

CAPRI URBAN CRENSHAW, LLC

dated as of

_____

DEVELOPMENT AGREEMENT

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This Development Agreement ("Agreement") is executed this _____ day of _____, 2017 by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), and Capri Urban Baldwin, LLC and Capri Urban Crenshaw, LLC, a Delaware Limited Liability Company ("Capri Urban Baldwin, LLC and Capri Urban Crenshaw, LLC" 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 the Developer recognize that the further development of the subject property, as defined below, will create significant opportunities for economic growth in the City, the Southern California region and California generally;

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

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

WHEREAS, this Agreement is necessary to assure the Developer that the Project will not be reduced in density, intensity 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;

WHEREAS, the Developer owns a 42-acre property in the City of Los Angeles located at 3650 and 3691 W. Martin Luther King, Jr. Boulevard; 3901-4145 S. Crenshaw Boulevard; 4020-4090 S. Marlton Avenue; 3701-3791 W. Santa Rosalia Drive; and 3625-3649 W. Stocker Street, generally bounded by West 39th Street, Crenshaw Boulevard, Stocker Street, Santa Rosalia Drive and Marlton Avenue; and bisected into two portions by Martin Luther King Jr. Boulevard (the "Property"). Developer intends to redevelop the existing Baldwin Hills Crenshaw Plaza, resulting in a mixed-use project resulting in a total net floor area of approximately 2,056,215 square feet consisting of: 331,838 square feet of retail/restaurant uses, 143,377 square feet of office uses, 346,500 square feet of hotel uses providing up to 400 hotel rooms, and 1,234,500 square feet of residential uses within 961 residential units (the "Project") at the Property.

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 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 herein or unless the context of this Agreement otherwise requires, the following words and phrases shall be defined as set forth below:

1.1 "Agreement" means this Development Agreement.

1.2 "Applicable Rules" means the rules, regulations, fees, ordinances and official policies of the City in force as of the Effective Date of this Agreement governing the use and development of real property and which, among other matters, govern the permitted uses of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, parking requirements, setbacks, development standards, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction guidelines, standards and specifications applicable to the development of the Property. Notwithstanding the language of this Section or any other language in this Agreement, all specifications, standards and policies regarding the design and construction of buildings and development projects, if any, shall be those that are in effect at the time the project plans are being processed for approval and/or under construction.

1.3 "Assignment Agreement" means an agreement entered into by the Developer to transfer in whole or in part the rights and obligations of Developer under this Agreement to a third party transferee.

1.4 "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.).

1.5 "City" means the City of Los Angeles, a charter city and municipal corporation.

1.6 "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.

1.7 "City Attorney" means the legal counsel for the City.

1.8 "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 (Development Agreement Act).

1.9 "Conditions of Approval" means the Conditions of Approval for the Project, including, but not limited to, any conditions associated with the Project Approvals, including, without limitation, those attached hereto as Exhibit B, Conditions of Approval.

1.10 "Days" means calendar days as opposed to working days.

1.11 "Developer" has the meaning as described in the opening paragraph of this Agreement.

1.12 "Development Agreement Act" means Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code.

1.13 "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, in the process of approving or disapproving a particular activity, as distinguished from Ministerial Permits and Approvals and any other activity which merely requires the City and/or any City Agency to determine whether there has been compliance with statutes, ordinances or regulations.

1.14 "Effective Date" has the meaning set forth in Section 7.1 below.

1.15 "General Plan" means the General Plan of the City.

1.16 "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 and the Mitigation Measures, 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 and the Mitigation Measures. Ministerial Permits and Approvals shall not include any Discretionary Actions.

1.17 "Mitigation Measures" means the mitigation measures described in the Environmental Impact Report (ENV-2012-1962-EIR, State Clearinghouse No. 2008101017) (the "EIR") certified by the City in accordance with the requirements of CEQA, and in the Mitigation Monitoring Program for the Project which is attached hereto as Exhibit C, Mitigation Monitoring Program.

1.18 "Parties" means collectively the Developer and the City.

1.19 "Party" means any one of the Developer or the City.

1.20 "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).

1.21 "Planning Director" means the Director of Planning for the City.

1.22 "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 applications, 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 of this Agreement, except as specifically provided for in this Agreement. 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. Processing Fees include those linkage fees, and exactions which are in effect as of the date Vesting Tentative Tract Map No. 73675 was deemed complete pursuant to California Government Code Section 65943, 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.

1.23 "Project" means maintenance of the existing enclosed mall structure and cinema, demolition of the existing free-standing structures, and the construction of a mixed-use project comprised of 331,838 square feet of retail/restaurant uses, 143,377 square feet of office uses, 346,500 square feet of hotel uses providing up to 400 hotel rooms, and 1,234,500 square feet of residential uses within 961 residential units (551 condominiums and 410 apartments) (the "Project") at the Property.

1.24 "Project Approvals" means those Discretionary Actions authorizing the Project which have been approved by the City on or before the Effective Date (irrespective of their respective effective dates) including, but not limited, to: (1) a Zone and Height District Change from C2-2D and [T][Q]C2-2D to [T][Q]C2-2D, respectively; (2) Special Permission for the Reduction of Off-Street Parking for a 10 percent parking reduction for the commercial use located within 1,500 feet of a transit facility; and (3) a Zoning Administrator's Determination for shared parking for commercial uses (Case No. CPC-2015-4398-GPA-ZC-HD-ZAD-CU); and (4) Vesting Tentative Tract Map No. 73675.

1.25 "Property" has the meaning in the recitals above and as fully described in the legal description attached as Exhibit "A".

1.26 "Property Owner" has the meaning as described in the opening paragraph of the Agreement.

1.27 "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 the Los

Angeles Building or Fire Codes 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.

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

1.29 "Transferee" means a third party that has entered into an Assignment Agreement with Developer.

1.30 "Vesting Tentative Tract Map" means Vesting Tentative Tract Map No. 73675 approved by the City on and which became final on January 30, 2017.

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 such 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."

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 such 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 July 13, 2017.

2.2.2 Advisory Agency Certification of the EIR. The Deputy Advisory Agency on January 18, 2017,after conducting a duly-noticed public hearing, certified the EIR for the Project.

2.2.3 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 its adoption, found that its provisions are consistent with the City's General Plan and the Los Angeles 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 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 Public Benefits to the City, including without limitation:

(a) **Restricted Affordable Housing**

(1) Workforce Housing (Rental). The Project shall provide five (5) percent of the 410 for-rent units (21 units) to be reserved for workforce housing (defined as families earning 150 percent of the median income and adjusted for household size) as determined annually by HCIDLA. The Developer shall be responsible for the payment of recording and monitoring fees as determined necessary by HCIDLA.

A. Prior to the issuance of a building permit for any portion of the project which proposes for-rent housing, the developer shall record a covenant and agreement with HCIDLA restricting the rental housing units to families earning 150 percent of the median income (adjusted for family size) for a period of 55 years.

B. If the 410 units of rental housing are constructed in phases, then the Developer(s) shall provide 5% of the units for each phase until such time as a total of 21 units have been provided on the project site.

(2) Workforce Housing (For-Sale). The Project shall provide five (5) percent of the approved number of 551 for-sale units (28 units) to be reserved for workforce housing (defined as families earning 150 percent of the median income and adjusted for household size) as determined annually by HCIDLA.

A. Prior to the issuance of a building permit for any portion of the project which proposes for-sale housing, the developer shall record a covenant and agreement with HCIDLA restricting the for-sale housing units to families earning 150 percent of the median income (adjusted for family size) for a period of 55 years.

B. If the 551 units of for-sale housing are constructed in phases, then the Developer(s) shall provide 5% of the units for each phase until such time as a total of 28 units have been provided on the project site.

C. If all, or a portion, of the 551 units of for-sale housing are instead developed as rental units, then 5% of the 551 units, or portion thereof, shall be set aside for families earning 150 percent of the median income.

D. In no instance shall less than 49 units of Workforce Housing be located on the site, as rental or for-sale units.

(3) Very Low Income Housing (Rental). The Project shall provide five (5) percent of the 410 for-rent units (21 units) to be reserved for Very Low Income households (defined as families earning 50 percent of the median income and adjusted for household size) as determined annually by HCIDLA. The Developer shall be responsible for the payment of recording and monitoring fees as determined necessary by HCIDLA.

A. Prior to the issuance of a building permit for any portion of the project which proposes for-rent housing, the developer shall record a covenant and agreement with HCIDLA restricting the rental housing units to families earning 50 percent of the median income (adjusted for family size) for a period of 55 years.

B. If the 410 units of rental housing are constructed in phases, then the Developer(s) shall provide 5% of the units for each phase until such time as a total of 21 units have been provided on the project site.

(4) Very Low Income Housing (For-Sale). The Project shall provide five (5) percent of the approved number of 551 for-sale units (28 units) to be reserved for Very Low Income households (defined as families earning 50 percent of the median income and adjusted for household size) as determined annually by HCIDLA.

A. Prior to the issuance of a building permit for any portion of the project which proposes for-sale housing, the developer shall record a covenant and agreement with HCIDLA restricting the for-sale housing units to families earning 50 percent of the median income (adjusted for family size) for a period of 55 years.

B. If the 551 units of for-sale housing are constructed in phases, then the Developer(s) shall provide 5% of the units for each phase until such time as a total of 28 units have been provided on the project site.

C. If all, or a portion, of the 551 units of for-sale housing are instead developed as rental units, then 5% of the 551 units, or portion thereof, shall be set aside for families earning 50 percent of the median income.

D. In no instance shall less than 49 units of Very Low Income Households be located on the site, as rental or for-sale units.

(5) Applicable Terms.

A. Housing Cost. The Workforce Household purchasing a restricted unit, shall include all of the following associated with that Restricted Unit: (1) principal interest and loan on a mortgage including and including rehabilitation loans, and any loan insurance fees associated therewith, (2) property taxes and assessments, (3) fire and casualty insurance covering replacement value of the restricted unit, (4) maintenance and repairs for the Restricted Unit, (5) a reasonable utility allowance, (6) homeowner association fees, (7) space rent, if the restricted unit is situated on rented land. Items 1 through 7 shall be an average of estimated costs for the next 12 months.

B. Maximum Purchase Price. Means the maximum price, including Housing Costs, to be paid by Households earning 150 percent of the median income for the purchase of the Workforce restricted unit and 50 percent of the median income for the purchase of the Very Low Income restricted affordable unit, as determined by HCIDLA on an annual basis. In the event of a purchase by an eligible household which does not qualify, the maximum purchase price shall be negotiated between the owner of the unit and buyer with no maximum purchase price set by HCIDLA.

C. Rent. Means the consideration, including any bonus, benefits, or gratuity, demanded by or received by the Owner for, or in connection with: (1) the use or occupancy of a housing unit and land and facilities associated therewith, (2) any separately charged fees or service charges assessed by the Owner which are required of all tenants, other than security deposits, (3) a reasonable utility allowance, and (4) possessory interest, taxes, or other fees or charges assessed for use of the land and facilities associated therewith by a public or private entity other than Owner (such as the Code Enforcement Program Fee). Items 1 and 2 may not exceed 150% of the median income and Items 3 and 4 may not exceed 50% of the median income, as established by HCIDLA, from

time to time to reflect HCD updates of Median Income estimates, divided by twelve 12).

D. Penalties/Prohibitions.

i). Owner is subject to any applicable penalties as determined by HCIDLA, for renting a restricted unit to a tenant whose income exceeds permissible limits.

ii). Owner shall use a form of rental/lease agreement: 1) for no less than one year for the initial rental of the restricted unit; 2) provide for termination of the rental;/lease agreement and consent by a tenant to immediate eviction for failure to provide information required by HCIDLA or to qualify as an eligible household; 3) prohibit the subleasing of a restricted unit; and, 4) permit the termination of an existing tenancy or an eviction upon good cause, such as non-payment of rent, repeated violation of terms/conditions of agreement, violations of applicable federal, state, or local law, and when a restricted units is to be initially placed on the market for sale.

(6) HCIDLA Covenant. The restricted affordable units shall be subject to the terms and conditions of HCIDLA's "Rental or Purchase Covenant Agreement Running with the Land, City Of Los Angeles," as may be amended by HCIDLA.

(7) Covenant Preparation, Covenant Recordation, Annual Monitoring. The Developer and/or property owner shall be responsible for the payment of the applicable fees associated with the Covenant Preparation ($5,770), Covenant Recordation ($43.00), and Annual Monitoring ($173.00) per restricted affordable unit, as may be updated by HCIDLA.

(b) **Hotel Labor Agreement.** The developer for the Hotel shall enter into an agreement with UNITE HERE Local 11 with respect to the employees of the proposed 400-room hotel.

Prior to the issuance of a Building Permit for the Hotel, written confirmation that a Hotel Labor Agreement has been submitted to the Department of City Planning, Major Projects Section. A letter from UNITE HERE Local 11 confirming that an agreement has been effectuated between UNITE HERE and the Hotel developer may satisfy this provision.

(c) **Local Hiring (Construction).** For all phases of the development, the developer shall employ a hiring goal of 25% of local residents, minority-owned, women-owned, and disadvantaged business enterprises for construction jobs within the Master Plan.

Prior to the issuance of Building Permit for each phase and/or structure within the Master Plan, the developer shall draft and institute a hiring target, marketing and outreach plan, and either establish or partner with an established job-skills training program(s) to give local residents, minority, women, and disadvantages business enterprises access to the project. "Local" shall be defined as: Tier 1: Workers residing within the boundaries of Council District 8 and 10; Tier 2: Workers residing within five (5) miles of the Project; Tier 3: Workers who reside in the City; and Tier 4: Workers who reside in the County of Los Angeles. Priority shall be towards workers in Tier 1. If the Developer can demonstrate that additional outreach is necessary to meet the 25% hiring goal, the Developer can expand outreach to Tier 2, etc.

(d) **Local Hiring (Operation).** For all phases of construction and operation of the project, the developer shall employ a hiring goal of 25% of local residents, minority-owned, women-owned, and disadvantaged business enterprises for operational jobs within the Master Plan, and shall host on-site job fairs on an annual basis, prior to the issuance of a building permit for the first 100,000 square feet of net new retail and on an annual basis thereafter. The job fairs shall be hosted in coordination with, or involve participation of, non-profit and job placement programs to hire qualified at-risk residents within Council Districts 8 and 10.

As part of the developer's Annual Reporting obligations, the developer shall demonstrate to the City of its ability to meet the 25% target and provide evidence of marketing and outreach efforts, job-skills training program(s), and report as to the number of local residents, minority, women, and disadvantages business enterprises that are either employed or operate businesses within the project. "Local" shall be defined as: Tier 1: Workers residing within the boundaries of Council District 8 and 10; Tier 2: Workers residing within five (5) miles of the Project; Tier 3: Workers who reside in the City; and Tier 4: Workers who reside in the County of Los Angeles. Priority shall be towards workers in Tier 1. If the Developer can demonstrate that additional outreach is necessary to meet the 25% hiring goal, the Developer can expand outreach to Tier 2, etc.

As part of the developer's Annual Reporting obligations on the job fair program, the developer shall provide evidence demonstrating date/time job fairs were hosted, the contact information of participating organizations, sign-in information, and the number of eligible residents who have participated in interviews and/or were hired as a result of the job fairs.

(e) **Youth Workforce Development.** The Developer shall provide funding in the amount of $2,000,000 to the Los Angeles Trade Technical College (LATTC), to provide comprehensive workforce development, job training, educational programs and certification to local youth (ages 17-25). Workers will work on small construction and beautification projects, including, but not limited to:

sidewalk repair, graffiti removal, power washing, façade and landscape improvements.

Prior to the issuance of building permits for the first phase of construction of the Project (North or South Area), a total of $2,000,000 shall be made to LATTC. A copy of the check(s) and a letter from the administrator of LATTC confirming receipt of the funds shall be used to demonstrate compliance with the terms of this provision.

(f) **Job Training Center.** The Developer shall construct a job training center within the project site to support residents within Council Districts 8 and 10. The Developer shall establish a jobs training program or coordinate with an established jobs training provider to operate the center. The Job Training Center shall be located within any non-residential phase of the project and shall not have a floor area of less than 1,200 square feet.

Prior to the issuance of a Building Permit, the developer shall submit site plans identifying the location, hours of operation, anticipated programming, and the jobs training provider for the Job Training Center. The Department of City Planning, Major Projects Section shall confirm in writing that the plans provided are satisfactory.

Additionally, as part of the developer's Annual Reporting obligations, the developer shall demonstrate to the City of its ongoing efforts to promote and sustain the Job Training Center, and shall provide programming materials and attendance information.

(g) **Community Room**. The Developer shall maintain a Community Room within the project to be made available to area organizations within a one mile radius of the project boundaries. The Community Room shall be equipped with audiovisual equipment, shall be ADA accessible, shall have windows, and have a capacity of no less than 75 seats.

Prior to the issuance of a Building Permit, the developer shall submit site plans evidencing the location, type and location of audiovisual equipment, seating plan, and the system for reserving the Community Room. The Department of City Planning, Major Projects Section shall confirm in writing that the plans provided are satisfactory.

Additionally, as part of the developer's Annual Reporting obligations, the developer shall demonstrate to the City of its ongoing efforts to promote and sustain the Community Room, and shall provide materials evidencing reservation information.

(h) **Commercial Corridor and Economic Revitalization**. Prior to the issuance of Building Permits for the first phase of development, the developer shall deposit $200,000 to the CD 8 Public Benefits Trust Fund to establish a Business Improvement District to support local community and business efforts, spur transit-oriented development and revitalize commercial corridors. A resolution

of intention to establish a Business Improvement District, together with the types of improvements and activities to be financed shall be submitted to the Department of City Planning demonstrating compliance with this provision. Progress of BID establishment must be included as part of the Developer's annual reporting obligations.

(i) **Sanchez Adobe (3725 Don Felipe Drive).** Prior to the issuance of the Building Permits for the first phase of development, the Developer shall fund $300,000 to prepare and implement a Historic Structure Report (HSR) to identify rehabilitation strategies towards the evaluation of the Adobe Historical Cultural Monument LA-487, to identify noteworthy features and/or characteristics of the Adobe, and to prepare an assessment of needed repairs, rehabilitation, and other upgrades necessary to preserve the structure. The funds shall be deposited in the CD 8 Public Benefits Trust Fund.

(k) **Tree Trimming.** Prior to the issuance of the Building Permits for the 2nd phase of development, the Developer shall deposit $1,500,000 into the CD 8 Tree Trimming Fund to provide tree trimming services to high need residential and commercial corridors in the local area.

(l) **Community Improvement and Beautification (CD 10).** For those areas covering the 3900 block of Marlton Avenue, 3600-3900 blocks of Victoria Avenue (between Rodeo Rd. and MLK Jr. Blvd.), 3600-3900 blocks of Somerset Drive (between Rodeo Rd. and MLK Jr. Blvd.), 3600-3900 blocks of Wellington Road (between Rodeo Rd. and MLK Jr. Blvd.), 3600-3900 blocks of Virginia Road (between Rodeo Rd. and MLK Jr. Blvd.), and 3600-3900 blocks of Buckingham Road (between Rodeo Rd. and MLK Jr. Blvd.), the Developer shall provide the following services:

(1) *Tree Maintenance*. The Developer shall prune street trees for a minimum of nine-years in three 3-year cycles.

As part of the Developers Annual Reporting Obligations, the Developer shall submit evidence of tree pruning in Years 1, 3, 6, and 9, from the effective date of the Development Agreement. Evidence shall be provided in the form of before/after pictures and vendor/landscaper contracts specifically addressing the areas mentioned above.

(2) *Sidewalk Repair*. The Developer shall repair broken sidewalks.

As part of the Developers Annual Reporting Obligations, the Developer shall submit evidence of its ongoing sidewalk repair for the areas mentioned above. Evidence shall be provided in the form of before/after pictures and any permits as issued from Department of Public Works.

(3) *Traffic calming*. The Developer shall fund the implementation of bulb outs, speed humps, and stop signs, as determined by the Los Angeles Department of Transportation, to further traffic calming in the community.

As part of the Developers Annual Reporting Obligations, the Developer shall submit evidence of its efforts to fund or implement traffic calming improvements on streets mentioned above. Evidence shall be provided in the form of before/after pictures and any permits as issued from the Department of Public Works and/or the Department of Transportation.

(4) *Preferential Parking*. Upon the establishment of a preferential parking district for the areas described above, the Developer shall underwrite the purchase of one permit per household for a term of five (5) years. The 5-year term shall commence on the date that each preferential parking district is approved and established, not from the effective date of the Agreement.

As part of the Developers Annual Reporting Obligations, the Developer shall submit evidence of payments and/or reimbursements made on preferential parking permits for those areas where a preferential parking district has been established.

(m) **Bikeway Improvements-Expedited.** No later than ninety-days (90) after the effective date of the Development Agreement, the Developer shall contribute $100,000 to the Los Angeles Department of Transportation toward the implementation of bikeway improvements within a three (3) mile radius of the Project.

(n) **Neighborhood Traffic Management Plan-Expedited.** No later than one-hundred and eighty-days (180) after the effective date of the Development Agreement, the Developer shall conduct traffic counts to serve as a baseline for assessing project-related significant neighborhood intrusion impacts. Eligible communities shall include the residential neighborhoods within the boundaries listed:

- Adams Boulevard to the north, Crenshaw Boulevard to the east, Martin Luther King Jr. Boulevard to the south, and Buckingham Street to the west.
- Adams Boulevard to the north, Degnan Boulevard/11th Avenue to the east, Martin Luther King Jr. Boulevard to the south, and Crenshaw Boulevard to the west.
- Martin Luther King Jr. Boulevard to the north, Normandie Avenue to the east, 42nd Place to the south, and Leimert Boulevard to the west.
- Vernon Avenue to the north, 8th Avenue to the east, Slauson Avenue to the south, and Crenshaw Boulevard to the west.
- Stocker Street to the north, Crenshaw Boulevard to the east, Slauson Avenue to the south, and West Boulevard to the west.
- Martin Luther King Jr. Boulevard to the north, Marlton Avenue to the east, Santa Rosalia Drive to the south, and Coliseum Street to the west

Upon completion of the traffic counts, the Developer shall coordinate with the Los Angeles Department of Transportation on the appropriate traffic calming measures in the Neighborhood Traffic Management Plan. The Los Angeles Department of Transportation shall submit the results of the traffic counts and the traffic calming measures identified for implementation in the Inter-Departmental Correspondence Department of Transportation Assessment for the Baldwin Hills Crenshaw Plaza Redevelopment Project, dated November 26, 2014 (DOT Case No. CEN 12-40221) to the Department of City Planning.

No later than one-hundred and eighty-days (180) after the traffic calming measures have been submitted to the Department of City Planning, the Developer shall start the construction of the improvements in an amount up to $300,000.

(o) **Signage.** Signage for the project shall comply with the LAMC. A Supplemental Use District for signage shall not be filed or approved for the project.

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, the 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 this Agreement, including without limitation: increased tax revenues, installation of on-site and off-site improvements, creation and retention of jobs, and development of an aesthetically attractive Project. 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 residents. In exchange for these and other benefits to City, the 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; (5) amend the City's General Plan, or (6) amend the City of Los Angeles Zoning Ordinance. This Agreement has a fixed Term. Furthermore, in any subsequent actions applicable to the Property, the City may apply such 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 promises, 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 commercially reasonable 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.

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. Such decisions depend upon numerous factors which are not all within the control of Developer, such as market orientation and demand, availability of financing, interest rates and competition. Developer may therefore construct the Project in either a single phase or multiple phases (lasting any duration of time) within the Term of this Agreement. 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 that Developer has the right 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. The City acknowledges that this right is consistent with the intent, purpose and understanding of the Parties to this Agreement.

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 promises, purposes 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, prevent or encumber the full completion and occupancy of the Project in accordance with the uses, intensities, densities, designs and heights, 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, any City Agency, 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 such 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 changes 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 which may occur from time to time in the California Building Code and other uniform construction codes. In addition, development of the Project shall be subject to any changes occurring from time to time in the Los Angeles 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 such 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, such provisions shall be modified or suspended as may be necessary to comply with such 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 which are required by the Reserved Powers and/or the Project Approvals. Any subsequent Discretionary Action initiated by Developer which substantially changes the entitlements allowed under the Project Approvals, shall be subject to rules, regulations, ordinances and official policies of the City then in effect. A substantial change to the entitlements allowed under the Project Approvals that would require subsequent Discretionary Action(s) include: (a) a net increase in the amount of Project square footage, building heights and/or expansion of building footprints, and/or (b) a reduction in the number of automobile parking spaces identified in the Project Approvals (collectively referred to as "**Substantial Project Changes**"). The parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that future Discretionary Actions may require additional environmental review pursuant to CEQA. In the event that additional environmental review is required by CEQA, the City agrees to utilize tiered environmental documents to the fullest extent permitted by law, as determined by the City, and as provided in California Public Resources Code Sections 21093 and 21094.

3.2.5 Administrative Changes and Modifications. The Project may demonstrate that refinements and changes are appropriate with respect to the details and performance of the Parties under this Agreement. The Parties desire to retain a certain degree of flexibility with respect to the details of the Project development and with respect to those items covered in general terms under this Agreement and Project Approvals. If and when the Parties find that "Substantially Conforming Changes," as herein defined, are necessary or appropriate, they shall, unless otherwise required by law, effectuate such changes or adjustments through administrative modifications approved by the Parties. As used herein, "**Substantially Conforming Changes**" are changes, modifications or adjustments that are substantially consistent with the Project Approvals, and do not constitute Substantial Project Changes as defined in Section 3.2.4 of this Agreement.

3.2.6 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.

3.2.7 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 and for a use which does not require a new or additional Discretionary Action from the City, 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 Effective Date. Developer shall seek the City's approval of any interim use requiring Discretionary Action.

3.2.8 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, (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 and (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.

3.2.9 Time Period of Vesting Tentative Parcel Map and Project Approvals. The City acknowledges that the construction of the Project may be subject to unavoidable delays due to the factors outside the Developer's control. Pursuant to California Government Code Sections 66452.6(a), and any other applicable provision of the Subdivision Map Act, the City agrees that the duration of Vesting Tentative Tract Map and any new tract map or subdivision approval which is consistent with the Project Approvals, shall automatically be extended for the Term of this Agreement. The City further agrees that the duration of the Project Approvals shall automatically be extended for the Term of this Agreement. The City further agrees that the duration of the Project Approvals shall automatically be extended for the Term of this Agreement.

3.2.10 Processing Fees. Developer shall pay all Processing Fees for Ministerial Permits and Approvals in the amount in effect when such Ministerial Permit and Approvals are sought.

3.2.11 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 to the extent practicable, if any. Developer agrees to pay any applicable fee for expedited review and processing time.

3.2.12 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 reasonably cooperate with Developer in its endeavors to obtain such permits and approvals. Each Party shall take all reasonable actions, and execute, with acknowledgment or affidavit, if required, any and all documents and writings that may be reasonably 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 good faith 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 Property Owner, 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 the Project; the total number of parking spaces developed; provisions for open space; status of activities relating to streetscape improvements; summary of performance of Property Owner'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 thirty (30) days prior to the yearly anniversary of the Effective Date. If the public has comments regarding compliance, such comments must be submitted to the Planning Director at least thirty (30) 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 upon reasonable evidence of material non-compliance with the terms of this Agreement.

4.3 Planning Director's Determination. On or before the yearly anniversary of the Effective Date of the Agreement, the Planning Director shall make a determination regarding whether or not Developer 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 or Transferee in the manner prescribed in Section 7.11.

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 within twenty five (25) days from the Planning Director's decision. After a public hearing on the appeal, the Planning Commission within twenty five (25) days 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. A finding and determination of compliance by the Planning Commission shall be final and effective. Nothing in this Agreement shall be construed as modifying or abrogating the Los Angeles City Charter.

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 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 4.4, shall submit to Developer, by registered or certified mail, return receipt requested, a written notice of non-compliance in the manner prescribed in Section 7.11, stating with specificity those obligations of Developer 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 items of non-compliance at the earliest reasonable time after receipt of the notice of non-compliance and shall complete the cure of such items of non-compliance not later than sixty (60) days after receipt of the notice of non-compliance, or such longer period as is reasonably necessary to remedy such items of non-compliance, 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 non-compliance 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 an item of non-compliance 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 such 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 the Los Angeles City Charter.

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 a finding or 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. Developer shall reimburse the City for its actual costs, reasonably and necessarily incurred, to accomplish the required annual review.

4.9 City's Rights and Remedies Against 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 7.7 of this Agreement.

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 7.11 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 a 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 7.11, 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. In the case of a dispute as to whether Developer has cured the default, the Parties shall submit the matter to dispute resolution pursuant to Section 7.5 of this Agreement.

5.1.3 Failure to Cure Default Procedures. If after the cure period has elapsed (Section 4.5), 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 right and obligations, as the case may be, the 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 the Los Angeles City Charter.

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 party's 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 party's 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 defaults under the provisions of this Agreement, Developer and 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 which 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 such default(s) not later than one hundred and twenty (120) days after receipt of the notice of default, or such 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 such 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 dispute resolution 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 Encumbrances on the Property. The Parties hereto agree that this Agreement shall not prevent or limit the 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 Planning Department 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 the Developer and representatives of such lender(s) to negotiate in good faith any such request for interpretation or modification. The Planning Department will not unreasonably withhold, delay or condition its consent to any such requested interpretation or modification, provided such interpretation or modification is consistent with the intent and purposes of this Agreement.

6.2 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.

6.3 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 the Developer or other affirmative covenants of the 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.

6.4 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.

6.5 Mortgagee's Time to Cure. If the City timely receives a written 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 sixty (60) days after the Mortgagee receives written notice of non-compliance, or any longer period as is reasonably necessary, not to exceed 120 days, to remedy such items of non-compliance, by mutual consent of the City and the Mortgagee provided that Mortgagee shall continuously and diligently pursue the remedy at all times until the item of non-compliance is cured.

6.6 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 the 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.

7. GENERAL PROVISIONS

7.1 Effective Date. This Effective Date of this Agreement shall be the date on which the Agreement is attested by the City Clerk of the City of Los Angeles after execution by the Property Owner and the 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, modified or extended 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 pursuant to Section 7.5 (Dispute Resolution), or from any litigation related to the Project or 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 fourteen (14) 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 eighty (80) days after such mailing, or within such additional period as may be agreed upon by the 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. Any amendment to this Agreement which relates to the Term, permitted uses, substantial increase in the density or intensity of use, and is not considered a Substantially Conforming Change (as defined in Section 3.2.5 of this Agreement), shall require notice and public hearing before the parties may execute an amendment thereto. The City hereby agrees to grant priority processing status to any Developer initiated request(s) to amend this Agreement. The City will use all reasonable and good faith efforts to schedule any noticed public hearings required to amend this Agreement before the Planning Commission and/or City Council as soon as practicable. 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 Assignment. The Property, as well as the rights and obligations of Developer under this Agreement, may only be transferred or assigned in whole, or in part, by Developer to a Transferee solely with the consent of the City, subject to the conditions set forth below in Sections 7.7.1.1 and 7.7.1.2. Upon such assignment the assignor shall be released from the obligations so assigned.

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

7.7.1.1 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 identity 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.

7.7.1.2 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 Property Owner and which are expressly set forth in the applicable Assignment Agreement.

7.7.2 Liability Upon Assignment. Each Transferee of any portion of the Property shall be solely and only liable for performance of such Transferee'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 Transferee of any portion of the Property to perform such Developer's obligations 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 Transferee's portion of the Property as provided for in Section 5.1 hereof, subject to such defaulting Transferee's right to notice and opportunity to cure the default in accordance with provisions of Section 5.1 hereof. Any partial termination of this Agreement as it relates to that Transferee's holding is severable from the entire Agreement, and shall not affect the remaining entirety of the Agreement.

7.7.3 Release of Property Owner. With respect to a transfer and assignment of the 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 7.7.3 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.

7.7.4 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.

7.8 Covenants. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property for the benefit thereof, subject to 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.

7.9 Cooperation and Implementation.

7.9.1. Processing. Upon satisfactory completion by Developer of all required preliminary actions and payment of appropriate Processing Fees, including the fee for processing this Agreement, the Planning Department shall commence and process all required steps necessary for the implementation of this Agreement and development of the Property in accordance with State law and the terms of this Agreement. Developer shall, in a timely manner, provide the Planning Department with all documents, plans, fees and other information necessary for the Planning Department to carry out its processing obligations pursuant to this Agreement.

7.9.2. Other Governmental Permits. Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to the Project. The City shall cooperate with Developer in its endeavors

to obtain such permits and approvals. Any fees, assessments, or other amounts payable by the City thereunder shall be borne by Developer or Transferee, as the case may be, except where Developer or Transferee, as the case may be, has notified the City in writing, prior to the City entering into an agreement, that it does not desire for the City to execute an agreement.

7.9.3. 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 to cause delay in the prosecution/defense of the action, provided such cooperation shall not require any Party to waive any rights.

7.9.4. **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 agency, 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 agents of one another or as joint venturers or partners.

7.9.5 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer. During the Term of this Agreement, clarifications to this Agreement and the Applicable Rules may be appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the terms of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarification through operating memoranda approved in writing by City and Developer, which, after execution, shall be attached hereto and become part of this Agreement and the same may be further clarified from time to time as necessary with future written approval by City and the Developer. Operating memoranda are not intended to and cannot constitute an amendment to this Agreement or allow a subsequent Discretionary Action to the Project but are mere ministerial clarifications, therefore public notices and hearings shall not be required. The City Attorney shall be authorized, upon consultation with, and approval of, the Developer, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment hereof which requires compliance with the provisions of Section 7.6 above. The authority to enter into such operating memoranda is hereby delegated to the City Planning Director (or his or her designee) who is hereby authorized to execute any operating memoranda hereunder without further City action.

7.9.6 Certificate of Performance. Upon the completion of the Project, or upon performance of this Agreement or its earlier revocation and termination, the City shall provide the Developer, upon the Developer's request, with a statement ("Certificate of Performance") evidencing said completion or revocation and the release of the Developer from further obligations hereunder, except for any ongoing obligations hereunder. The Certificate of Performance shall be signed by the appropriate agents of the Developer and the City and shall be recorded in the official records of Los Angeles County, California. Such Certificate of Performance is not a notice of completion as referred to in California Civil Code Section 8182.

7.10 Indemnification.

7.10.1 Obligation to Defend, Indemnify, and Hold Harmless. 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 the Development Agreement or 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 Developer in writing of the Proceeding, or fails to cooperate fully in the defense of the Proceeding, Developer shall thereafter be relieved of the obligations imposed in this Section 7.10. However, if Developer has actual written notice of the Proceeding, it shall not be relieved of the obligations imposed hereunder, notwithstanding the failure of the City to provide prompt written notice of the Proceeding. The City shall be considered to have failed to give prompt written notification of a Proceeding if the City, after being served with a lawsuit or other legal process challenging the Approvals, unreasonably delays in providing written notice thereof to the Developer. As used herein, "unreasonably delays" shall mean any delay that materially adversely impacts Developer's ability to defend the Proceeding. The obligations imposed in this Section 7.10 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 Developer shall hold the City harmless and/or defend it from any claims arising from, or alleged to arise from, its intentional misconduct or gross negligence in the performance of this Agreement.

7.10.2 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 including without limitation a lawsuit to challenge the approval of the Project or this Agreement in violation of CEQA. 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 reasonable 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 the 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 provided that retaining outside legal counsel causes no delays, 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, 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.

7.10.3 Breach of Obligations. Actions constituting a breach of the obligations imposed in this Section 7.10 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 7.10, 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 7.10, Developer shall be considered to have failed to timely retain qualified legal counsel if such counsel is not retained within thirty (30) days following the City's provision of the notice of Proceedings to Developer required hereunder. In the event that Developer breaches the obligations imposed in this Section 7.10, 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 7.10.

7.10.4 Cooperation. The City shall cooperate with 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 Developer to refrain from asserting in its defense of the Proceeding positions or legal theories that do not satisfy the foregoing requirements.

7.10.5 Contractual Obligation. Developer acknowledges and agrees that the obligations imposed in this Section 7.10 are contractual in nature, and that the breach of any such obligation may subject Developer to a breach of contract claim by the City.

7.10.6 Waiver of Right to Challenge. Developer hereby waives the right to challenge the validity of the obligations imposed in this Section 7.10.

7.10.7 Survival. The obligations imposed in this Section 7.10 shall survive any judicial decision invalidating the Project Approvals.

7.10.8 Preparation of Administrative Record. 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 7.10, 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. 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 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.

7.10.9. Deposit. Following the filing of a lawsuit, or other legal process seeking to set aside, void or annul all or part of this Development Agreement and/or any Project Approval,

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 fifty thousand ($50,000) dollars. For all other Project Approvals, the amount of the deposit shall be fifty thousand ($50,000) 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 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 Developer's receipt of the City's written demand for the Deposit.

7.11 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:

City of Los Angeles
Attention: Director of Planning
200 North Spring Street
Los Angeles, CA 90012

with copies to:

Los Angeles City Attorney's Office
Real Property/Environment Division
7th Floor, City Hall East
200 North Main Street
Los Angeles, CA 90012

If to the Developer:

Capri Urban Baldwin, LLC and
Capri Urban Crenshaw, LLC
Attention: Jason Lombard
3650 Martin Luther King Jr. Blvd,
Suite 243
Los Angeles, CA 90008

with a copy to:

Park & Velayos LLP
Attention: Marcos Velayos
801 S. Figueroa Street, Suite 450
Los Angeles, CA 90017

7.12 Recordation. As provided in Government Code Section 65868.5, this Agreement shall be recorded with the Register-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 recordation.

7.13 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.

7.14 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.

7.15 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.

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

7.17 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.

7.18 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.

7.19 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.

7.20 Legal Advice; Neutral Interpretation; Headings, Table of Contents, and Index. 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, table of contents, and index used in this Agreement are for the convenience of reference only and shall not be used in construing this Agreement.

7.21 Duplicate Originals. This Agreement is executed in duplicate originals, each of which is deemed to be an original, but all of which together shall constitute one instrument. This

Agreement, not counting the Cover Page, Table of Contents, Index, or signature page, consists of 27 pages and 3 Exhibits which constitute the entire understanding and agreement of the Parties.

(signatures on following page)

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

By: _____
Mr. Eric Garcetti, Mayor

DATE:

APPROVED AS TO FORM:
City Attorney

By: _____
Laura Cadogan Hurd, Deputy City Attorney

DATE:

ATTEST:

By: _____
Deputy

DATE:

PHILENA PROPERTIES, L.P.
a California Limited Partnership

By: _____
Name:
Title: Authorized Signatory

[SIGNATURE BLOCK TO BE INSERTED]

APPROVED AS TO FORM:

By: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

All that certain real property located in the City of Los Angeles, County of Los Angeles, State of California, more particularly described as follows:

(ASSESSOR'S PARCEL NO'S: 5032-002-066; 040; 04 T; 043; 045; 046; 047; 048; 049; 053; 057; 058; 059; 060 AND 061)

LOTS 1THROUGH 5, 7 THROUGH 11, 15 AND 19 THROUGH 23 OF TRACT NO. 48482, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1181 PAGES 82 TO 86 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

(ASSESSOR'S PARCEL NO: 5032-002-065)

LOTS 6, 12 AND 13 OF TRACT NO. 48482,IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1181 PAGES 82 THROUGH 86 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION OF SAID LAND DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY CORNER OF SAID LOT 13, SAID CORNER BEING ON THE SOUTHWESTERLY LINE OF MARTIN LUTHER KING JR. BOULEVARD, WIDTH VARIES, AS SHOWN ON SAID MAP;

THENCE NORTH 52°56'03" WEST, 94.33 FEET ALONG THE NORTHEASTERLY LINE OF SAID LOT 13 TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 37°03'57" WEST, 91.83 FEET;
THENCE SOUTH 52°56'03" EAST, 8.00 FEET;
THENCE SOUTH 37°03'57" WEST, 5.67 FEET;
THENCE NORTH 52°56'03" WEST, 8.00 FEET;
THENCE SOUTH 37°03'57" WEST, 86.66 FEET;
THENCE NORTH 52°56'03" WEST, 145.00 FEET;
THENCE SOUTH 37°03'57" WEST, 9.50 FEET;
THENCE NORTH 52°56'03" WEST, 57.67 FEET;
THENCE NORTH 37°03'57" EAST, 9.50 FEET;
THENCE NORTH 52°56'03" WEST, 72.00 FEET;
THENCE SOUTH 37°03'57" WEST, 14.67 FEET;
THENCE NORTH 52°56'03" WEST, 85.34 FEET;
THENCE NORTH 37°03'57" EAST, 142.33 FEET;
THENCE SOUTH 52°56'03" EAST, 4.67 FEET;
THENCE NORTH 37°03'57" EAST, 42.00 FEET;
THENCE SOUTH 52°56'03" EAST, 57.67 FEET;

THENCE SOUTH 37°03'57" WEST, 13.33 FEET;
THENCE SOUTH 52°56'03" EAST, 95.00 FEET;
THENCE NORTH 37°03'57" EAST, 8.00 FEET;
THENCE SOUTH 52°56'03" EAST, 57.67 FEET;
THENCE SOUTH 37°03'57" WEST, 8.00 FEET;
THENCE SOUTH 52°56'03" EAST, 125.00 FEET;
THENCE NORTH 37°03'57" EAST, 27.83 FEET TO SAID NORTHEASTERLY LINE OF SAID LOT 13;
THENCE SOUTH 52°56'03" EAST, 20.00 FEET ALONG SAID NORTHEASTERLY LINE TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPT THAT PORTION OF SAID LAND DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY CORNER OF SAID LOT 13, SAID CORNER BEING ON THE SOUTHWESTERLY LINE OF MARTIN LUTHER KING JR. BOULEVARD, WIDTH VARIES, AS SHOWN ON SAID MAP;

THENCE NORTH 52°56'03" WEST, 94.33 FEET ALONG THE NORTHEASTERLY LINE OF SAID LOT 13 TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 37°03'57" WEST, 91.83 FEET;
THENCE SOUTH 52°56'03" EAST, 8.00 FEET;
THENCE SOUTH 37°03'57" WEST, 5.67 FEET;
THENCE NORTH 52°56'03" WEST, 8.00 FEET;
THENCE SOUTH 37°03'57" WEST, 86.66 FEET;
THENCE SOUTH 52°56'03" EAST, 35.83 FEET;
THENCE NORTH 37°03'57" EAST, 156.33 FEET;
THENCE NORTH 52°56'03" WEST, 15.83 FEET;
THENCE NORTH 37°03'57" EAST, 27.83 FEET TO SAID NORTHEASTERLY LINE OF SAID LOT 13;
THENCE NORTH 52°56'03" WEST, 20.00 FEET ALONG SAID NORTHEASTERLY LINE TO THE TRUE POINT OF BEGINNING.

(ASSESSOR'S PARCEL NO: 5032-002-064)

THAT PORTION OF LOT 13 OF TRACT NO. 48482, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1181 PAGES 82 THROUGH 86 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY CORNER OF SAID LOT 13, SAID CORNER BEING ON THE SOUTHWESTERLY LINE OF MARTIN LUTHER KING JR. BOULEVARD, WIDTH VARIES, AS SHOWN ON SAID MAP;

THENCE NORTH 52°56'03" WEST, 94.33 FEET ALONG THE NORTHEASTERLY LINE OF SAID LOT

13 TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 37°03'57" WEST, 91.83 FEET;
THENCE SOUTH 52°56'03" EAST, 8.00 FEET;
THENCE SOUTH 37°03'57" WEST, 5.67 FEET;
THENCE NORTH 52°56'03" WEST, 8.00 FEET;
THENCE SOUTH 37°03'57" WEST, 86.66 FEET;
THENCE SOUTH 52°56'03" EAST, 35.83 FEET;
THENCE NORTH 37°03'57" EAST, 156.33 FEET;
THENCE NORTH 52°56'03" WEST, 15.83 FEET;
THENCE NORTH 37°03'57" EAST, 27.83 FEET TO SAID NORTHEASTERLY LINE OF SAID LOT 13;
THENCE NORTH 52°56'03" WEST, 20.00 FEET ALONG SAID NORTHEASTERLY LINE TO THE TRUE POINT OF BEGINNING.

(ASSESSOR'S PARCEL NO: 5032-002-063)

THAT PORTION OF LOTS 12 AND 13 OF TRACT NO. 48482, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1181 PAGES 82 THROUGH 86 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY CORNER OF SAID LOT 13, SAID CORNER BEING ON THE SOUTHWESTERLY LINE OF MARTIN LUTHER KING JR. BOULEVARD, WIDTH VARIES, AS SHOWN ON SAID MAP;

THENCE NORTH 52°56'03" WEST, 94.33 FEET ALONG THE NORTHEASTERLY LINE OF SAID LOT 13 TO THE TRUE POINT OF BEGINNING;
THENCE SOUTH 37°03'57" WEST, 91.83 FEET;
THENCE SOUTH 52°56'03" EAST, 8.00 FEET;
THENCE SOUTH 37°03'57" WEST, 5.67 FEET;
THENCE NORTH 52°56'03" WEST, 8.00 FEET;
THENCE SOUTH 37°03'57" WEST, 86.66 FEET;
THENCE NORTH 52°56'03" WEST, 145.00 FEET;
THENCE SOUTH 37°03'57" WEST, 9.50 FEET;
THENCE NORTH 52°56'03" WEST, 57.67 FEET;
THENCE NORTH 37°03'57" EAST, 9.50 FEET;
THENCE NORTH 52°56'03" WEST, 72.00 FEET;
THENCE SOUTH 37°03'57" WEST, 14.67 FEET;
THENCE NORTH 52°56'03" WEST, 85.34 FEET;
THENCE NORTH 37°03'57" EAST, 142.33 FEET;
THENCE SOUTH 52°56'03" EAST, 4.67 FEET;
THENCE NORTH 37°03'57" EAST, 42.00 FEET;
THENCE SOUTH 52°56'03" EAST, 57.67 FEET;
THENCE SOUTH 37°03'57" WEST, 13.33 FEET;
THENCE SOUTH 52°56'03" EAST, 95.00 FEET;

THENCE NORTH 37°03'57" EAST, 8.00 FEET;
THENCE SOUTH 52°56'03" EAST, 57.67 FEET;
THENCE SOUTH 37°03'57" WEST, 8.00 FEET;
THENCE SOUTH 52°56'03" EAST, 125.00 FEET;
THENCE NORTH 37°03'57" EAST, 27.83 FEET TO SAID NORTHEASTERLY LINE OF SAID LOT 13;
THENCE SOUTH 52°56'03" EAST, 20.00 FEET ALONG SAID NORTHEASTERLY LINE TO THE TRUE POINT OF BEGINNING.

(ASSESSOR'S PARCEL NO:5032-002-052 ,054)

LOT 14 &16 OF TRACT NO. 48482, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1181 PAGES 82 TO 86 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

(ASSESSOR'S PARCEL NO'S: 5032-002-055,056)

LOT 17&18 OF TRACT NO. 48482, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1181 PAGES 82 TO 86 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT "B"

CONDITIONS OF APPROVAL

1. Affirm that the EIR was certified, and that the Mitigation Monitoring Program, findings, and Statement of Overriding Considerations were adopted.

2. Zone Change and Height District Change from C2-2D and [T][Q]C2-2D to [T][Q]C2-2D, respectively, establishing an allowable FAR of 3:1 across the entire Property and two parking spaces per 1,000 square feet for the commercial and office use.

3. Special Permission for the Reduction of Off-Street Parking resulting in a 10 percent parking reduction for the commercial use located within 1,500 feet of a transit facility.

4. Zoning Administrator's Determination for shared parking for the commercial uses.

Case Nos: ENV-2012-1962-EIR; CPC-2015-4398-GPA-ZC-HD-ZAD-CU

EXHIBIT “C”

MITIGATION MONITORING PROGRAM