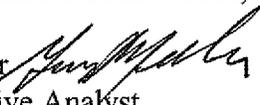


REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: June 05, 2012

TO: Honorable Members of the Trade, Commerce & Tourism Committee

FROM: Gerry F. Miller 
Chief Legislative Analyst

Assignment No: 12-05-0439

SUBJECT: Olympic North Hotels Project Subvention Agreement

SUMMARY

In January 2012, the Council approved a Memorandum of Understanding (MOU) (CF# 11-0966) outlining the terms of assistance that could be provided to assist the development of the Olympic North Hotels (Project) to be developed by 901 West Olympic Boulevard Limited Partnership, comprised of American Life, Inc. and Williams/Dame & Associates (Developer). This development would create two hotels with a combined total of 392 rooms in the Los Angeles Sports and Entertainment District (LASED) in Downtown Los Angeles. The Developer, 901 West Olympic Boulevard Limited Partnership, has entered into an agreement with Marriott Hotels to build a single structure that will contain both a Residence Inn and a Courtyard at the site (both of which are Marriott products), with support parking and amenities. Project development is consistent with all requirements laid out in the LASED and is fully entitled.

In its action of January 2012, the Council instructed the Chief Legislative Analyst (CLA) to analyze the financial needs of the project, determine if financial assistance from the City is necessary, and if so, how much, and negotiate final documents to implement terms to provide assistance.

In accordance with the approved MOU, negotiations have resulted in a proposed Subvention Agreement which would provide up to \$21.9 million net present value (NPV) over 25 years (Agreement, Attachment A) to support development of the hotels. The Developer would implement a community benefits package that includes a room block agreement that would provide up to 295 rooms in support of Los Angeles Convention Center citywide events, streetscape improvements, and healthcare, welfare, and severance agreements with local unions.

RECOMMENDATIONS

That the Council, subject to the approval of the Mayor:

1. DETERMINE that the Olympic North Hotels Project is not subject to California Environmental Quality Act (CEQA) pursuant to City CEQA Guidelines, Article II, Section 2(i), because it is an activity for which the underlying project has previously been evaluated for environmental significance per Council File 09-0370 and therefore will not result in a direct reasonably foreseeable indirect physical change in the environment;

2. DETERMINE that, in the alternative, the information contained in the previously certified Environmental Impact Report (EIR) and adopted addenda (Council File 09-0370) have been reviewed and considered and adequately describe the potential impacts of the project, and that no additional environmental review is necessary under CEQA Guidelines 15162;
3. APPROVE the Subvention Agreement between the City of Los Angeles and 901 West Olympic Boulevard Limited Partnership (Developer) (Attachment A) concerning the Olympic North Hotels Project, and authorize the Mayor to execute said agreement; and
4. AUTHORIZE the City Administrative Officer (CAO), with the consent of the CLA and the City Attorney, to negotiate and execute additional non-material changes to the Agreement as necessary.

FISCAL IMPACT STATEMENT

The Olympic North Hotels Project is estimated to generate present value net new public revenues of \$44 million net present value (NPV) in various General Fund revenues over 25 years. The Olympic North Hotels Project would retain up to a present value \$21.9 million NPV in Transient Occupancy Tax, a General Fund revenue source, for up to 25 years.

BACKGROUND

On October 18, 2011, the City Council approved a Motion (Perry-Reyes) instructing the CLA to evaluate the proposed Olympic North Hotels Project and recommend appropriate forms of economic development to support the project. This Project is located within the LASED and is fully entitled within the provisions of that specific plan.

The Olympic North Hotels Project would result in the construction of two hotels in one building with a total of 392 rooms. Both hotels are Marriott products, including a Courtyard which will have 174 rooms and a Residence Inn which will have 218 rooms. Both hotels are 3-star rated products, providing a good quality hotel at a lower price-point than other hotels in close proximity to the LACC.

In October 2011, the Developer indicated that they would require assistance from the City in a form similar to that provided to other recent hotel developments. Without this assistance, they contend that construction of these new hotels would not be feasible and that an alternate project would be developed at the site that does not include a hotel. At that time, Council instructed the CLA to review the proposed project and determine the Developer's request.

On January 25, 2012, the City Council considered a CLA report that recognized assistance may be required to ensure that the project could move forward and that the project was an important resource in support of the Los Angeles Convention Center. Council approved (C.F. 11-0966) recommendations instructing the CLA to evaluate the detailed finances and economic impact of the project in an effort to determine whether the Project qualifies for assistance and how much assistance would be available. To complete this analysis, the CLA conducted a competitive bidding process for

qualified consultants and selected Keyser Marston Associates (KMA) to conduct the required analysis.

Upon review of the pro forma for the project, which details the costs associated with development of these hotels, the revenues that would be generated, and the funds available to complete the project, the City's consultant verified that the project has a financing gap of approximately \$35.8 million. The project will be financed through a combination of Developer equity, funds raised through the federal EB5 program, and retail lease and signage revenues.

Analysis of revenues the City would earn if this project is completed indicates that the City's General Fund would receive approximately \$134.5 million, or \$44 million net revenue present value (NPV) over the next 25 years. In addition, KMA estimates that the project would create 800 construction jobs and 252 permanent jobs onsite. The Developer advises that the project is expected to create 4,240 jobs region-wide, including direct, indirect, and induced jobs.

City policy maintains that projects such as this may receive no more than 50% of net new revenues generated by the project. As determined in the KMA analysis, compliance with the City policy would allow the project to receive a maximum of \$21.9 million in financial assistance (50% of the \$44 million in net new revenue). The Developer indicated that they would require \$28 million in assistance, but compliance with the City policy only allows for support of \$21.9 million. The Developer will be required to identify additional financial resources to fill the remaining financing gap in this project.

Subvention Agreement

The attached Subvention Agreement is the result of those negotiations directed by the City Council to provide support to the Olympic North Hotels Project. The Subvention Agreement agrees with terms established in the Council-approved, non-binding MOU executed by the Developer and the City and it was not necessary to deviate from the initial terms as approved by Council. The Subvention Agreement provides the following:

1. Transient Occupancy Tax (TOT): An amount equivalent to the TOT generated by the Olympic North Hotels project at a present value of \$21.9 million (determined using a discount rate of 10%) over a term of 25 years.
2. Construction Costs and Project Financing Audit: Upon completion of the project, Developer and City will conduct a review of construction costs and project financing to reevaluate the maximum amount of TOT funds that would be available to support the project. Upon completion of this review, the subvention of \$21.9 million could be revised, but may not exceed the present value cap of \$21.9 million.
3. Transfer of Hotels and Property: The Developer will not sell, assign, convey or transfer the Hotels without the prior written consent of the City.

4. Operator of Hotels: Any change in the Operator of the Hotels shall require the prior written approval of the City until the financial assistance which may be provided by the Community Taxing District (CTD) to the Developer has terminated.
5. Hotel Standards: The Hotels shall be operated, furnished, serviced, maintained and refurbished to the standard of at least a three star lodging establishment.
6. Construction Sales Tax: The Developer will cause the City to be designated as the “point of sale” for all construction related purchases.
7. Community Benefits Package: A Community Benefits Package has been proposed by the Developer and will be implemented in association with development of the Project, including healthcare, welfare, and severance agreements with local unions; a room block agreement to ensure that at least 295 rooms are available to serve Los Angeles Convention Center citywide events; designation of the City as the “point of sale” for the purchase of materials, fixtures, machinery, equipment and supplies during construction of the Project; and streetscape improvements along Francisco Street.

Transient Occupancy Tax

Upon formation of the CTD, the Hotels will be exempt from remitting the TOT and will instead pay a special tax that will be equal to the City’s TOT rate. The special tax will then be transferred back to the Developer. The special tax established by the CTD will cease either when the 25 year period is completed or when the hotels generate a present value of \$21.9 million in special tax revenues, whichever comes first.

No later than 180 days after issuance of a Certificate of Occupancy for the Hotels, a final review of the actual construction costs will be conducted by the CAO. The purpose of this review is to determine the actual amount of subsidy assistance needed for this project. If the review determines that the subsidy needed for the hotels is lower than a present value of \$21.9 million, the amount of subsidy provided will be reduced. If the amount needed is higher than a present value of \$21.9 million, there will be no adjustment. It should be noted that the current estimated subsidy needed for this project is a present value of \$35.8 million, but that only \$21.9 million will be provided in order to comply with the City policy that no more than 50% of net new revenue generated by the project will be provided as a subvention.

Construction Sales Tax

The Developer will commit to ensure that all contractors and subcontractors working on this project designate the City as the “point-of-sale” for all construction related purchases. All contractors and subcontracts with contracts valued at more than \$5 million will be required to obtain a State job site sub-permit. The contractors and subcontractors would then report their sales tax directly to the State based on that sub-permit. The City would have the right to obtain a copy of these contracts and sales tax filings, would be a third party beneficiary to these contracts, and would have the ability to audit and seek compliance with this requirement. Contractors and subcontractors with contracts valued at \$500,000 to \$5 million will only be required to report out-of-state purchases. The Office of Finance

will work with the Developer to ensure that all contractors and subcontractors on the project understand their responsibilities.

Community Taxing District

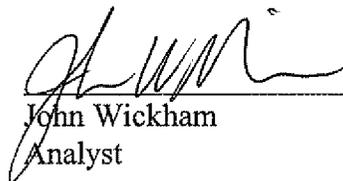
In September of 2005, the Mayor and Council approved various actions and documents required to implement the development of a Convention Center Headquarters Hotel (C.F. 04-2566-S2). Among these documents were two ordinances to enable the creation of a CTD. The Council adopted the Special Tax Improvements Ordinance, which set forth procedures for establishing special taxing districts similar to Mello-Roos taxing districts.

At that time, the Council also adopted an ordinance to waive remittance of the City's TOT if the CTD adopts a special tax equivalent to the TOT.

The subvention to be received by the Olympic North Hotels Project would be provided through the formation of a new CTD. The City Attorney will present the appropriate CTD formation documents following approval of this Agreement and commencement of construction of the Project by the Developer.

California Environmental Quality Act (CEQA)

City staff have evaluated the entitlement requirements of the Project and have determined that it complies with the development requirements and approvals associated with the LASED Specific Plan. As such, it is an activity for which the underlying project has previously been evaluated for environmental significance per Council File 09-0370 and therefore will not result in a direct reasonably foreseeable indirect physical change in the environment. City staff have therefore determined that no additional CEQA analysis is required.



John Wickham
Analyst

Attachment A Subvention Agreement

Attachment A
Subvention Agreement

SUBVENTION AGREEMENT

Between the

**CITY OF LOS ANGELES,
a charter city and municipal corporation**

and

**901 WEST OLYMPIC BOULEVARD LIMITED PARTNERSHIP,
a Washington limited partnership**

Dated as of June ___, 2012

**City of Los Angeles
(Courtyard by Marriott and Residence Inn Project)**

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 DEFINITIONS.....	2
Section 1.1 Definitions	2
Section 1.2 Exhibits.....	5
ARTICLE 2 POLICIES AND PURPOSES	6
Section 2.1 Recitals	6
Section 2.2 Economic Revitalization.....	6
Section 2.3 Municipal Policy.....	6
Section 2.4 Public Benefit	6
ARTICLE 3 FINANCIAL ASSISTANCE BY CITY.....	6
Section 3.1 Tax Subvention by City	6
Section 3.2 Project Related City Revenues Limitation	7
Section 3.3 Construction Costs and Project Construction Cost Reconciliation	7
Section 3.4 Financing Documents.....	8
Section 3.5 Room Block Agreement.....	8
Section 3.6 Hotel Operating Agreements	8
Section 3.7 Hotel Operating Covenant.....	9
Section 3.8 Sales Tax Origin	9
Section 3.9 Progress Reports.....	10
ARTICLE 4 OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION.....	11
Section 4.1 Use of the Hotel Project.....	11
Section 4.2 Maintenance.....	11
Section 4.3 Employment Opportunity	11
Section 4.4 Community Benefits Program	11
ARTICLE 5 ASSIGNMENT AND TRANSFERS.....	12
Section 5.1 Definitions	12
Section 5.2 Purpose of Restrictions on Transfer	12
Section 5.3 Prohibited Transfers	12
Section 5.4 Permitted Transfers.....	13
Section 5.5 Effectuation of Permitted Transfers	14
Section 5.6 Transfers of Interest in Developer	14
Section 5.7 Transfers of Interests in Non-Controlling Membership Interests In Developer.....	14
Section 5.8 Change in Hotel Operator.....	14
ARTICLE 6 MORTGAGEE PROTECTIONS.....	15
Section 6.1 No Termination.....	15
Section 6.2 Notices	15
Section 6.3 Performance of Covenants.....	15

Section 6.4	Default by Developer.....	15
Section 6.5	Default Accounts	16
Section 6.6	No Obligation to Cure	17
Section 6.7	Separate Agreement.....	17
Section 6.8	Form of Notice.....	17
Section 6.9	Further Assurances	17
ARTICLE 7 DEFAULT AND REMEDIES.....		18
Section 7.1	Application of Remedies	18
Section 7.2	No Fault of Parties	18
Section 7.3	Fault of City.....	18
Section 7.4	Fault of Developer	19
Section 7.5	Rights and Remedies Cumulative.....	20
Section 7.6	Termination of TOT Subvention	20
ARTICLE 8 GENERAL PROVISIONS		20
Section 8.1	Representations and Warranties	20
Section 8.2	Notices Demands and Communications.....	21
Section 8.3	Non-Liability of Officials, Employees and Agents	22
Section 8.4	Enforced Delay	23
Section 8.5	Estoppel Certificates.....	23
Section 8.6	Inspection of Books and Records	23
Section 8.7	Title of Parts and Sections.....	23
Section 8.8	Applicable Law.....	23
Section 8.9	Severability	23
Section 8.10	Binding Upon Successors; Covenants to Run With Land.....	24
Section 8.11	Parties Not Co-Venturers.....	24
Section 8.12	Entire Understanding of the Parties.....	24
Section 8.13	Discretion Retained By City.....	24
Section 8.14	Counterparts.....	24
Section 8.15	Amendments.....	24
Section 8.16	Recordation of Memorandum of Agreement.....	24
Section 8.17	Standard of Approval.....	25
Section 8.18	Indemnity: City.....	25
Section 8.19	Effectiveness of Subvention Agreement	25
Section 8.20	Further Assurances	25
Section 8.21	Time of the Essence.....	25

SUBVENTION AGREEMENT

THIS SUBVENTION AGREEMENT (“**Agreement**”) is made as of June ____, 2012, between the City of Los Angeles, a charter city and municipal corporation (the “**City**”) and 901 West Olympic Boulevard Limited Partnership, a Washington limited partnership (“**Developer**”), with reference to the following facts, purposes, and understandings.

RECITALS

A. Developer is proposing to develop a new project consisting of two hotels totaling 392 rooms, 174 of which are branded as Courtyard Marriott’s limited service brand hotel providing a high quality offering at 3-star rates. The other 218 are branded as Residence Inn rooms, Marriott’s extended stay offering, also at 3-star rates. The project will also consist of approximately 5,100 square feet of ground floor retail space, an approximately 11,474 square feet of project-serving conference and meeting rooms, spa, fitness center, and ancillary hotel office areas (collectively, the “**Hotel Project**”).

B. The City owns and operates the Los Angeles Convention Center (“**LACC**”). The City’s goal is to increase the use of the LACC by providing additional hotel rooms, specifically hotel rooms for families and needed “workforce” lodging to complement the offerings at the LACC, and amenities for conventions, trade shows and events which will create significant economic benefit to the City.

C. The City’s willingness to contribute to the financial feasibility of the Hotel Project is based on the projected development and operation of the proposed Hotel Project as a source for hotel rooms and amenity areas to support the LACC and the public benefits resulting therefrom such as local hiring, living wage requirements, job training and job creation, open space and art elements.

D. The City engaged various consulting firms to review the financial analysis of the Project. These firms concluded that the Hotel Project is not feasible without significant public assistance. Further, the analysis indicates that the returns on investment, without public assistance, are below industry standards for a project of this level of complexity and risk. The City’s financial analysis indicated that the Hotel Project would serve unmet and new market demands, and that gap financing is necessary for the Hotel Project’s successful completion.

E. The total cost of developing the Hotel Project is estimated to exceed One Hundred and Sixty Two Million Six Hundred Ninety-Six Dollars (\$162,696,000).

F. Pursuant to that certain Memorandum of Understanding approved by the City Council on January 25, 2012, the Developer requested assistance from the City in financing the construction of the Hotel Project through creation of a Community Taxing District (the “**District**”) that would permit the Developer to offset the Hotel Project Transient Occupancy Taxes (“**TOT**”) otherwise to be remitted to the City against the special taxes paid to the District for certain periods of time and/or until certain dollar amounts have been reached. The financial assistance which may be provided by the District and the offset of the TOT against the special taxes is integral to the ability of the Developer to proceed with the development of the Hotel Project.

G. The Developer has agreed to set aside Room Blocks under the terms and conditions of this Agreement and the Room Block Agreements (defined below) for a period of not less than thirty-five (35) years after the Completion Date of the Hotel Project to ensure that the LACC has adequate hotel capacity for future conventions and trade shows.

H. The development efforts made a part of this Agreement are in the vital and best interests of the City, and the health, safety and welfare of its residents and in accord with the public purposes and provisions of applicable state and local laws and requirements.

NOW, THEREFORE, in reference to the foregoing Recitals in consideration of the promises, covenants and agreements set forth in this Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, the City and the Developer hereby agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words shall have the following meanings:

- (a) **“Adjusted Project Construction Cost”** shall mean the Project Construction Cost as adjusted pursuant Section 3.3 of this Agreement.
- (b) **“Affiliate”** means any corporation, partnership, limited liability company or other organization or entity which is controlled by, controlling or under common control with (directly or indirectly) Developer.
- (c) **“Agreement”** shall mean this Subvention Agreement.
- (d) **“Assumption Agreement”** is defined in Section 5.5.
- (e) **“Business Day”** shall mean a calendar day which is not a weekend day or a federal or State holiday and on which the City is open for business.
- (f) **“CEQA”** shall mean the California Environmental Quality Act.
- (g) **“City”** shall mean the City of Los Angeles, California, a municipal corporation and charter city existing and organized pursuant to the California Constitution and the laws of the State of California, operating through its governing body, the City Council, and its various departments. Unless otherwise indicated, the City Administrative Officer shall be the City’s representative in providing any City approvals pursuant to this Agreement.
- (h) **“City Council”** shall mean the Council of the City.
- (i) **“City Event of Default”** shall mean any default by the City as set forth in Section 7.3, subject to any applicable notice and cure rights set forth therein.

(j) **“Community Taxing District”** or **“District”** shall mean the special tax district to be created by the City to implement certain obligations within this Agreement pursuant to the City’s Special Tax Improvements Ordinance, constituting Chapter 10 of Division 6 of the Los Angeles Administrative Code.

(k) **“Completion Date”** shall mean that date on which the City first issues a certificate of occupancy or temporary certificate of occupancy for the Improvements pursuant to Section 12.26 of the Los Angeles Municipal Code which permits either component of the Hotel Project to operate as a hotel.

(l) **“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity or person, whether through the ability to exercise voting power, by contract or otherwise.

(m) **“Convention Center”** or **“LACC”** shall mean the Los Angeles Convention Center.

(n) **“Developer”** shall mean 901 West Olympic Boulevard Limited Partnership, a Washington limited partnership, and its permitted successors and assigns.

(o) **“Developer Event of Default”** shall mean any default by the Developer as set forth in Section 7.4, subject to any applicable notice and cure rights set forth therein.

(p) **“Effective Date”** shall mean the date which is the latter of the date this Agreement is executed by the Developer, or the date the City Council approves and the City executes this Agreement.

(q) **“Funding Agreement”** shall mean that certain Funding Agreement entered into by and among the City, the Community Taxing District, the Developer, and a fiscal agent to implement and administer the District.

(r) **“Hotel Project”** shall mean a hotel containing no less than 392 rooms, 174 of which are branded as Courtyard Marriott’s limited service brand hotel and 218 rooms branded as Residence Inn rooms, together with ancillary facilities, including 5,100 square feet of ground floor retail space, an approximately 11,474 square feet of project-serving conference and meeting rooms, spa, fitness center, and ancillary hotel office areas, which shall be operated, furnished, serviced, maintained and refurbished to the standard of a three-star lodging establishment, as defined by the Mobile Travel Guide, or at an equivalent level by an alternative nationally recognized hotel rating service.

(s) **“Project Construction Cost”** shall mean the lesser of (i) One Hundred Sixty-Two Million Six Hundred Ninety-Six Thousand Dollars (\$162,696,000), or (ii) the Adjusted Project Construction Cost determined in accordance with Section 3.3.

(t) **“Hotel Financing”** is defined in Section 3.3(a).

(u) **“Hotel Operating Agreements”** shall mean (i) that certain Hotel Operating Agreement dated April 25, 2011, by and between Developer and Residence Inn and

(ii) that certain Hotel Operating Agreement dated April 25, 2011, by and between Developer and Marriott, for the operation of the Hotel Project.

(v) **“Hotel Operator”** shall mean initially Marriott and Residence Inn, or the hotel management companies selected by the Developer from time to time, subject to Section 5.8.

(w) **“Improvements”** shall mean the improvements consisting of the Hotel Project to be constructed on the Property as generally described in Recital “A” of this Agreement.

(x) **“Major Contractors and Subcontractors”** is defined in Section 3.8(a).

(y) **“Marriott”** shall mean Courtyard Management Corporation, a Delaware corporation.

(z) **“Mortgage”** shall mean any mortgage, deed of trust, pledge (including a pledge of equity interests in Developer), hypothecation, charge, encumbrance or other security interest granted to a lender, made in good faith and for fair value, encumbering all or any part of Developer’s interest in (i) this Agreement, (ii) the Property, (iii) the Improvements, or (iv) any equity interest in Developer. “Mortgage” shall not include any mortgage, deed of trust, pledge, encumbrance or other security interest granted to a lender (i) in which Developer or an Affiliate of Developer has an interest of 20% or more, or (ii) which has an interest of 20% or more in Developer or an Affiliate of Developer.

(aa) **“Mortgagee”** shall mean any mortgagee, beneficiary under any deed of trust, trustee of any bonds, holder of a pledge of an equity interest in Developer, or , if the Property is the subject of a sale-leaseback transaction, the person acquiring fee title to the Property.

(bb) **“Other Material Contractors and Subcontractors”** is defined in Section 3.8(c).

(cc) **“Parties”** shall mean the City and Developer.

(dd) **“Project Related City Revenues”** shall mean revenues actually generated in connection with the Hotel Project and paid to the City during the Subvention Term. Project Related City Revenues shall be (i) construction related tax revenues, (ii) 1% property taxes (without vehicle license fee or sales tax replacements), (iii) sales taxes, (iv) utility users taxes, (v) Transient Occupancy Taxes, (vi) gross receipts taxes, (vii) parking occupancy taxes, (viii) residential development tax, and (ix) documentary transfer tax.

(ee) **“Project Construction Cost Reconciliation”** is defined in Section 3.3(a).

(ff) **“Property”** shall mean the land described on Exhibit A attached hereto and any improvements constructed thereon.

(gg) **“Replacement Operator”** is defined in Section 5.8.

(hh) “**Residence Inn**” shall mean Residence Inn by Marriott, LLC, a Delaware limited liability company.

(ii) “**Room Blocks**” shall mean up to two hundred ninety-five rooms (295) at the Hotel Project regularly held by the Hotel Operator for the benefit of the LACC for the time periods specified in the Room Block Agreement.

(jj) “**Room Block Agreement**” means that certain Room Block Agreement, attached as Exhibit F, to be entered into by the City, the Developer and each Hotel Operator pursuant to which the Developer and each Hotel Operator agree to provide Room Blocks to the LACC.

(kk) “**Subvention Term**” shall mean the period commencing on the Completion Date and ending on the first to occur of (i) the twenty-fifth (25th) anniversary of the Completion Date, (ii) the date on which Developer has received TOT Subvention equal to the Maximum Hotel Special Tax Amount (as defined in the Funding Agreement which shall take into account the limitation set out in Section 3.2), or (iii) the termination of this Agreement or the Funding Agreement for any reason pursuant to the terms of this Agreement or the Funding Agreement.

(ll) “**Term**” shall mean the term of this Agreement, commencing as of the Effective Date and ending on the latter of (i) the expiration or termination of the Hotel Operating Covenant (as defined in Section 3.7), or (ii) the date of any termination of this Agreement in accordance with the provisions hereof.

(mm) “**TOT**” shall mean the transient occupancy taxes imposed pursuant to Article 1.7 of Chapter 2 of the Los Angeles Municipal Code.

(nn) “**Total Project Construction Costs**” is defined in Section 3.3(a).

(oo) “**Transfer**” shall mean a transfer defined in Section 5.1 of this Agreement.

Section 1.2 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

- Exhibit A: Legal Description of the Property
- Exhibit B: Form of Memorandum of Agreement
- Exhibit C-1: Form of Contract Provisions for Major Contracts
- Exhibit C-2: Form of Contract Provisions for Other Contracts
- Exhibit D: Project Construction Cost Reconciliation Methodology
- Exhibit E: Community Benefits Program
- Exhibit F: Form of Room Block Agreement

Exhibit G: Local Hiring/First Source/Minority Business Recruitment Program

ARTICLE 2

POLICIES AND PURPOSES

Section 2.1 Recitals. The Recitals are true and correct and are hereby incorporated by this reference.

Section 2.2 Economic Revitalization. The Hotel Project is projected to provide a significant positive impact to the downtown Los Angeles area, the City and the Los Angeles County regional economy. During the construction period, the economic impact of the Hotel Project is expected to generate thousands of direct and indirect jobs. The Hotel Project is anticipated to generate about \$4,275,000 in total City revenues when stabilized in 2016. During the Subvention Term as presently projected, the operation of the Hotel Project is expected to exceed \$136,400,000 in overall economic impact. Upon stabilization, the Hotel Project is estimated to create over 4,240 new permanent jobs.

Section 2.3 Municipal Policy. The City Council has determined that encouraging economic development, including private investment which involves creation of new jobs and income or the retention of existing jobs and income that would otherwise be lost to the City, is a valid and important public and municipal purpose.

Section 2.4 Public Benefit. By authorizing the City to enter into this Agreement, the City Council has determined that the benefits accruing as a result of the transactions contemplated by this Agreement, including, without limitation, (i) direct benefits such as revenues from the Hotel Project and increased revenues from property, sales, parking, business license, utility and hotel taxes, (ii) the enhanced economic opportunities for business surrounding the LACC and in the downtown Los Angeles area, and (iii) the benefits such as revitalization of the downtown Los Angeles area together with the Developer's obligations under this Agreement, represent fair consideration for all of the obligations to be undertaken by the City as contemplated by this Agreement. Exhibit E attached hereto and incorporated herein by this reference identifies additional public benefits.

ARTICLE 3

FINANCIAL ASSISTANCE BY CITY

Section 3.1 Tax Subvention by City. Subject to the terms and conditions of this Agreement, the City shall use its best efforts to form a Community Taxing District that implements the terms and conditions of this Agreement in order to provide for the reimbursement to the Developer of a portion of the Project Construction Cost (subject to the maximum amounts determined pursuant to Section 3.2) by the release of funds to the Developer from the Facilities Reimbursement Fund pursuant to the Funding Agreement (the "**TOT Subvention**"). Developer's obligations under this Agreement are expressly conditioned on the

establishment of the Community Taxing District, the implementation of the Funding Agreement and the TOT Subvention.

Section 3.2 Project Related City Revenues Limitation. The maximum amount of TOT Subvention to be received by Developer during the Subvention Term pursuant to this Agreement and the Funding Agreement shall not exceed Twenty-One Million Eight Hundred Ninety Thousand Dollars (\$21,890,000), which represents an amount that is the net present value (discounted at a ten percent (10%) annual rate) of not greater than fifty percent (50%) of the estimated Project Related City Revenues.

Section 3.3 Construction Costs and Project Construction Cost Reconciliation.

(a) No later than one hundred eighty (180) days after the Completion Date, the Developer and City Administrative Officer will commence to determine the Adjusted Project Construction Cost by conducting a final review of the Total Hotel Construction Costs and the Hotel Financing ("**Project Construction Cost Reconciliation**") to confirm the maximum amount of TOT Subvention that would be available to the Developer pursuant to this Agreement and the Funding Agreement. As used herein, "Total Hotel Construction Costs" means all costs incurred by the Developer in connection with the planning, development, entitlement and construction of the Hotel Project, including, without limitation, land costs, hard costs and soft costs, direct and indirect costs, and construction financing costs (including, without limitation, fees, costs, and interest), and equity procurement costs (including without limitation fees and costs). The "Hotel Financing" shall mean the terms and conditions of the permanent or take-out financing (including, without limitation, mezzanine financing) arranged by Developer to repay the construction financing and construction equity, including, without limitation, the principal amount, amortization, interest rate, loan to cost ratio, loan to value ratio, debt service coverage, mandatory prepayment terms, term and other material terms.

(b) The City Administrative Officer will employ an outside consultant to perform the Project Construction Cost Reconciliation. The Developer shall be responsible for the costs and payment of the outside consultant services, but the City shall be the consultant's client for purposes of the consultant's services. The City's preliminary review of Hotel Project construction cost analysis was based upon the development pro forma provided by the Developer prior to the approval of this Agreement that was used to calculate the original Project Construction Cost. The City's financial analysis of the pro forma information established that the Developer would be required to obtain a nine and a half percent (9.5%) commercial rate of return on Total Hotel Construction Costs. At such time as the Project Construction Cost Reconciliation occurs, the maximum amount of TOT Subvention that will be made available to the Developer (i.e., the Adjusted Project Construction Cost) will be recalculated using the same methodology that was used to determine the original Project Construction Cost but updated solely for Total Hotel Construction Costs and the Hotel Financing. All other assumptions and amounts used in the methodology for determining the original Project Construction Cost shall be used in connection with the Project Construction Cost Reconciliation, which methodology is set forth in detail in Exhibit D attached hereto. Developer shall have the right to select the type, terms and conditions of the Hotel Financing at its sole and absolute discretion; provided, however, that for purposes of the Project Construction Cost Reconciliation and the calculation of Adjusted Project Construction Cost (i.e., the maximum amount of TOT Subvention present value

available to Developer), the equity utilized by Developer in owning the Hotel, if any, shall be calculated at the lesser of (i) the actual construction financing plus the actual equity investment contributed, or (ii) one hundred percent (100%) of the Total Hotel Construction Costs incurred.

(c) As part of the Project Construction Cost Reconciliation, Developer shall submit to the City its determination of the Total Hotel Construction Costs and the Hotel Financing, together with supporting documentation. The City's consultant shall review such submission and Developer shall promptly respond to any comments or questions provided by the consultant. Upon completion of this Project Construction Cost Reconciliation, the maximum amount of the TOT Subvention by the City may be adjusted lower pursuant to this Agreement, such amount being the Adjusted Project Construction Cost, and may not be higher than the Maximum Hotel Special Tax Amount specified in Section 3.2. Upon completion of the Project Construction Cost Reconciliation, Developer and the City shall execute a certificate memorializing the Adjusted Project Construction Cost pursuant to the Funding Agreement.

(d) Commencement of the TOT Subvention shall not be conditioned on completion of the Project Construction Cost Reconciliation.

(e) If the Parties determine that under all circumstances the Maximum Hotel Special Tax Amount determined pursuant to Section 3.2 will be less than any Adjusted Project Construction Cost, the Parties may mutually agree not to undertake the determination of the Adjusted Project Construction Cost.

Section 3.4 Financing Documents. The Developer shall submit to the City, for the City's review and reasonable approval, a proposed final construction budget for the Improvements including details of construction financing and/or capital commitments sufficient to cover the cost of constructing the Improvements. The Developer shall submit such items within six (6) months after the issuance of a building permit for the Hotel Project.

The City's review of the foregoing construction budget shall be solely for the purpose of determining: (i) if the contemplated financing will be reasonably available and provide sufficient funds for development of the Improvements consistent with the terms of this Agreement, (ii) that the proposed use of the funds complies with the requirements of the funding source, and (iii) that the funds will otherwise be provided on terms consistent with the terms and conditions of this Agreement.

Section 3.5 Room Block Agreement. The Developer shall enter into an agreement with the City to provide a minimum number of hotel rooms to be used by events at the Convention Center ("**Room Block Agreement**"). The Room Block Agreement shall, at a minimum, guarantee that 295 rooms shall be available for use by events at the Convention Center provided those rooms are booked pursuant to schedules and terms set forth in the Room Block Agreement. The Room Block Agreement shall remain in effect for a period of thirty-five (35) years after the Completion Date.

Section 3.6 Hotel Operating Agreements. The City acknowledges and agrees that it has reviewed and approved the Hotel Operating Agreements with Marriott and Residence Inn (collectively, the "**Hotel Operators**"). Any termination or transfer of either of the Hotel

Operating Agreements prior to at least thirty-five (35) years after the Completion Date shall require City's approval of the subsequent Hotel Operator in accordance with Section 5.8. The City shall respond to such request for approval or subsequent approval of the Hotel Operator and the applicable Hotel Operating Agreement and within thirty (30) days after receipt of the Hotel Operating Agreement.

Section 3.7 Hotel Operating Covenant. The Parties shall enter into a hotel operating covenant which shall be recorded against the Property and which shall run with the land (the "**Hotel Operating Covenant**"). The Hotel Operating Covenant shall (i) require that the Property be used for the Hotel Project for a term equal to thirty-five (35) years after the Completion Date, (ii) provide that the Developer not be in default under the Hotel Operating Covenant if the Hotel Project is damaged or destroyed or there occurs a force majeure event (including, without limitation, a condemnation event) that precludes the operation of the Hotel Project and Developer takes commercially reasonable steps to repair and restore the Hotel Project or to address the force majeure event within a reasonable period of time, and (iii) contain such other provisions as mutually acceptable to the Parties.

Section 3.8 Sales Tax Origin. The Developer shall comply with the provisions of this Section 3.8 to provide, to the extent possible under applicable laws and regulations, that local sales and use taxes generated in connection with all eligible purchases of materials, fixtures, machinery, equipment and supplies for the Hotel Project during the construction thereof are allocated directly to the City, subject to Regulation 1521 titled "Construction Contractors" and resolution titled "Contractors No. 260,20" under the Compliance Policy and Procedures Manual of the California State Board of Equalization. In order to accomplish this allocation, the Developer shall comply with the following:

(a) Meeting with the Office of Finance. Prior to issuance of the first building permit for the Hotel Project, the Developer, and its contractors and its subcontractors then providing services or materials to the Hotel Project in excess of Five Million Dollars (\$5,000,000) ("**Major Contractors and Subcontractors**") (to the extent such contractors and subcontractors have been identified and contracted with at such time) shall meet with the City's Office of Finance to review the process that the Developer's contractors and subcontractors should follow with respect to sales and use taxes. Developer agrees to advise any Major Contractors and Subcontractors that do not attend this initial meeting of the requirements of this Section, and, upon reasonable request, the City agrees to meet and review with such contractors and/or subcontractors the process that they should follow.

(b) Contract Provisions for Major Contracts. Developer shall include, and shall cause its general contractor to include, a provision in all construction contracts entered into with Major Contractors and Subcontractors substantially in the form attached as Exhibit C-1.

(c) Contract Provisions for Other Contracts. Developer shall include, and shall cause its general contractor to include, a provision in all construction contracts entered into with Other Material Contractors and Subcontractors (as defined below) substantially in the form attached as Exhibit C-2. "Other Material Contractors and Subcontractors" shall mean any contractors providing services or materials to the Hotel Project in excess of Five Hundred Thousand Dollars (\$500,000) but less than Five Million Dollars (\$5,000,000).

(d) Major Contractor Information. Developer shall, when reasonably requested by the City, provide the City's Office of Finance with:

(A) A list of Developer's Major Contractors and Subcontractors who will or have performed construction services or who will or have furnished materials for the construction of the Hotel Project, which list shall include the following items:

- i. Name of contractor
- ii. Address and telephone number of headquarters or office
- iii. Name and telephone number of contact person
- iv. Estimated value of contract
- v. Estimated completion date
- vi. Scope of Work

(B) A copy of the contract with each such contractor (which may have confidential information redacted),

(e) City's Remedies. If the City determines that any Major Contractor or Subcontractor has not complied with the provisions set forth in its agreement with the Developer or Developer's contractor, as the case may be, the City's sole remedy, subject to the last sentence of this clause (e), shall be to enforce the relevant provision(s) directly against the applicable Major Contractor or Subcontractor. Upon the reasonable request of the City, Developer shall cooperate with the City in any such enforcement action; provided that Developer shall have no obligation to incur any costs in connection therewith. Nothing in this Section 3.8(e) shall limit the City's remedies against the Developer in the event that the Developer has failed to comply with its obligations in this Section 3.8; provided, however that the Developer shall have no liability for the failure of the Major Contractor or Subcontractor to comply with their respective obligations if the Developer complies with its obligations in this Section 3.8.

(f) Subject to Applicable Law. The obligations set forth in this Section 3.8 shall in all cases be subject to applicable laws and regulations, including without limitation the California Sales and Use Tax Law, and in no event shall Developer (or any of its contractors or subcontractors) be required to do anything that is in violation of or inconsistent with such laws and regulations.

Section 3.9 Progress Reports. Until the Completion Date, the Developer shall provide the City with periodic progress reports, as reasonably requested by the City (but not more than once every calendar quarter), regarding the status of the construction of the Improvements. Such report shall consist of an executive summary of the work to date, including, but not limited to, the causes for any delays and the work that is anticipated for the following quarter, a reasonable number of construction photographs taken since the last report submitted to the City, and shall be in a form reasonably acceptable to the City. The City shall be entitled to utilize and reproduce the information and photographs contained in the progress reports for government activities and other governmental purposes as determined by the City.

ARTICLE 4

OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION

Section 4.1 Use of the Hotel Project. The Developer shall use the Property for the operation of the Hotel Project for a term not less than thirty-five (35) years after the Completion Date; provided, however that the Developer shall not be in default of this Section 4.1 if the Hotel Project is damaged or destroyed or there occurs a force majeure event (including, without limitation, a condemnation event) that precludes the operation of the Hotel Project and Developer takes commercially reasonable steps to repair and restore the Hotel Project or to address the force majeure event, as the case may be, within a reasonable period of time.

Section 4.2 Maintenance. The Developer hereby agrees that prior to completion of construction of the Hotel Project, the Property shall be maintained in a neat and orderly condition to the extent practicable and in accordance with industry health and safety standards, and that the Hotel Project shall be well maintained as to both external and internal appearance of the buildings, the common areas, and the parking areas. The Developer shall maintain or cause to be maintained the Hotel Project in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, parking areas and landscaping, and from time to time make all necessary and proper repairs, renewals, and replacements. If the Developer fails to implement and continuously maintain the standard described above/then the City shall notify the Developer in writing of such condition, giving the Developer thirty (30) days from receipt of such notice to commence and thereafter diligently to proceed to cure said condition. In the event the Developer fails to cure or commence to cure the condition within the time allowed, the City shall notify the Developer in writing and thereafter they shall have the right to perform all acts necessary to cure such a condition, or to take other recourse at law or equity that the City may then have. The Developer shall reimburse the City's reasonable costs, plus ten percent (10%) interest from the date of expenditure, in taking such action. The Parties hereto further mutually understand and agree that the rights conferred upon the City expressly include the right to enforce or establish a lien or other encumbrance against any of the parcels comprising the Property not complying with this Agreement. The provisions of Sections 4.1 and 4.2 shall be assumed by all successors to Developer and shall be in effect until expiration or termination of Section 4.1 hereof and the Hotel Operating Covenant, enforceable by the City, its successors and assigns.

Section 4.3 Employment Opportunity. During the operation of the Hotel Project, there shall be no discrimination by the Developer on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry, or handicap in the hiring, firing, promoting, or demoting of any person engaged in the operation of the Hotel Project.

Section 4.4 Community Benefits Program. The Developer shall comply with the Community Benefits Program requirements as follows:

(a) Developer shall enter into a Room Block Agreement, pursuant to which the Hotel Project will make at least 295 rooms available in connection with events at the LACC in accordance with the terms of such agreement;

(b) Developer shall comply with Section 3.8 of this Agreement in order to cause the City to be designated as the “point of sale” so that it will receive sales and use taxes generated from the purchase of materials, fixtures, machinery, equipment and supplies during the construction of the Hotel Project; and

(c) Developer shall provide the public benefits described in Exhibit E attached hereto.

ARTICLE 5

ASSIGNMENT AND TRANSFERS

Section 5.1 Definitions. As used in this Article 5, the term “**Transfer**” means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement, or of the Hotel Project, or any part thereof or any interest therein or of the Improvements constructed thereon, or any contract or agreement to do any of the same; or

(b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to more than fifty percent (50%) ownership interest in the Developer, or any contract or agreement to do any of the same, provided that such transfer results in a change of Control.

Section 5.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Hotel Project and its subsequent use in accordance with the terms of this Agreement, The qualifications and identity of the Developer are of particular concern to the City, in view of:

(a) The importance of the development of the Hotel Project to the general welfare of the community;

(b) The financial resources, reputation and experiences of the Developer in development of projects; and

(c) The fact that a Transfer as defined in Section 5.1 above is for practical purposes a transfer or disposition of the Hotel Project.

It is because of the qualifications and identity of the Developer that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 5.3 Prohibited Transfers. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior administrative approval of the City, which approval shall not be unreasonably withheld. Any Transfer made in contravention of this Section 5.3 shall be void and

shall be deemed to be a default under this Agreement, whether or not the Developer knew of or participated in such Transfer.

Section 5.4 Permitted Transfers. Notwithstanding the provisions of Section 5.3, the Developer shall have the right to effect the following Transfers after the Completion Date without the prior approval of the City (subject to satisfaction of the conditions of Section 5.5):

- (a) Any Transfer creating a Mortgage or other security or financing for the Hotel Project, including, but not limited to the Hotel Financing.
- (b) Any Transfer directly resulting from the foreclosure of a Mortgage or other security financing interest or the granting of a deed in lieu of foreclosure of a Mortgage (including, without limitation, a conveyance in lieu of foreclosure of a pledge of equity interests) or other security financing interest and any subsequent transfer to any buyer or successor after such foreclosure or granting of a deed or conveyance in lieu of foreclosure.
- (c) The leasing of restaurant, residential, commercial and retail space or other space within the Improvements.
- (d) The conveyance or dedication of a portion of the Property to any public entity, including a public utility, required to allow for the development of the Improvements.
- (e) The granting of temporary or permanent easements or permits to facilitate development of the Hotel Project.
- (f) A Transfer which may result from any merger, consolidation or reorganization involving Developer so long as the same shall possess all or substantially all of the business and assets of Developer immediately prior thereto.
- (g) The Transfer of a non-controlling interest in the equity interests in the Developer.
- (h) A Transfer of the limited partnership interests in the Developer; provided, that there is no change of control in the Developer.
- (i) A Transfer to the Hotel Operator or to a new entity consisting of an entity directly or indirectly owned or controlled by the initial Hotel Operator.
- (j) A Transfer to a wholly-owned Affiliate of Developer.
- (k) A Transfer to a person or entity which (a) has a net worth or assets under management (whether through a separate account or other investment vehicle) in excess of One Hundred Million Dollars (\$100,000,000), and (b) owns, leases, operates or has under management (whether through a separate account or other investment vehicle) at least ten (10) hotels with at least two thousand (2,000) total aggregate rooms and at least a 3-star rating, as defined by the Mobile Travel Guide, or at an equivalent level by an alternative nationally recognized hotel rating service.

(l) A Transfer by Developer in connection with a lease-back of the Hotel Project to Developer.

All Transfers other than those enumerated in this Section 5.4 shall require the administrative approval of the City, which approval shall not be unreasonably withheld. The City shall respond to such request for approval within thirty (30) days after receipt of the request.

Section 5.5 Effectuation of Permitted Transfers. No transfer of Developer's interest in this Agreement shall be permitted unless, at the time of the transfer, the person or entity to which such transfer is made, by an agreement reasonably satisfactory to the City (the "**Assumption Agreement**"), expressly agrees to perform and observe, from and after the date of such transfer, all the obligations, terms and conditions of this Agreement and the Hotel Operating Agreement, and if less than all of the Hotel is transferred, the transferee shall agree to perform the obligations, terms and conditions of this Agreement and the Hotel Operating Agreements relating to the portion of the Hotel Project that is transferred to the transferee; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation. The Assumption Agreement shall be executed by Developer and the assignee or transferee, and shall name the City as express third party beneficiary with respect to such agreement with a copy thereof delivered to the City within thirty (30) days after the effective date thereof. Upon transfer of this Agreement pursuant to an Assumption Agreement, the assignor shall be relieved of liability with respect to any such obligations relating to the Hotel Project accruing from and after the date of such assignment or transfer. Notwithstanding the foregoing, unless such assignee specifically assumes pursuant to the Assumption Agreement the obligation under Section 8.18 of this Agreement to indemnify the City, the assignor will retain such obligation and remain jointly and severally liable for such indemnity obligation with such assignee.

Section 5.6 Transfers of Interest in Developer. Notwithstanding Section 5.3, the City shall not unreasonably withhold its approval of a Transfer of a controlling equity interest in Developer if the replacement member, partner or shareholder has sufficient financial resources and liquidity to fulfill Developer's obligations under this Agreement. For purposes hereof an individual or entity shall be considered to have sufficient financial resources and liquidity if it has a net worth (whether through a separate account or other investment vehicle), including the Property, equal to or exceeding Five Hundred Million Dollars (\$500,000,000) prior to the Completion Date or One Hundred Million Dollars (\$100,000,000) after the Completion Date, determined in accordance with United States generally accepted accounting principles, at the time of the Transfer. The City shall respond to such request for approval within thirty (30) days after receipt of the request and supporting documentation.

Section 5.7 Transfers of Interests in Non-Controlling Membership Interests In Developer. The prohibition on Transfers of interests in Developer shall not restrict transfers of non-controlling interests in Developer pursuant to Article 5 of this Agreement.

Section 5.8 Change in Hotel Operator. A change in the identity of the Hotel Operator, by way of transfer of the Hotel Operating Agreement or otherwise, shall not constitute a Transfer. During the Term of this Agreement, any change in the Hotel Operator (a "**Replacement Operator**") shall require the prior written approval of the City, which approval

shall not be unreasonably withheld. The City shall respond to such request for approval within thirty (30) days after receipt of the request and supporting documentation.

ARTICLE 6

MORTGAGEE PROTECTIONS

Provided that any Mortgagee provides the City with a conformed copy of each Mortgage that contains the name and address of such Mortgagee, the City hereby covenants and agrees to faithfully perform and comply with the following provisions with respect to such Mortgage:

Section 6.1 No Termination. No action by Developer or the City to cancel, surrender, or materially modify the terms of this Agreement or the provisions of this Article 6 shall be binding upon a Mortgagee without its prior written consent, which such Mortgagee shall not unreasonably withhold, condition or delay, unless the Mortgagee shall have failed to cure a default within the time frames set forth in this Article 6.

Section 6.2 Notices. If the City shall give any Notice of Default to Developer hereunder, the City shall simultaneously give a copy of such Notice of Default to the Mortgagee at the address theretofore designated by it. No Notice of Default given by the City to Developer shall be binding upon or affect said Mortgagee unless a copy of said Notice of Default shall be given to Mortgagee pursuant of this Article 6. In the case of an assignment of such Mortgage or change in address of such Mortgagee, said assignee or Mortgagee, by written notice to the City, may change the address to which such copies of Notices of Default are to be sent. The City shall not be bound to recognize any assignment of such Mortgage unless and until the City shall be given written notice thereof, a copy of the executed assignment, and the name and address of the assignee. Thereafter, such assignee shall be deemed to be the Mortgagee hereunder with respect to the Mortgage being assigned. If such Mortgage is held by more than one person, corporation or other entity, no provision of this Agreement requiring the City to give Notices of Default or copies thereof to said Mortgagee shall be binding upon the City unless and Until all of said holders shall designate in writing one of their number to receive all such Notices of Default and copies thereof and shall have given to the City an original executed counterpart of such designation.

Section 6.3 Performance of Covenants. The Mortgagee shall have the right (but not the obligation) to perform any term, covenant or condition and to remedy any default by Developer hereunder within the time periods specified herein, and the City shall accept such performance with the same force and effect as if furnished by Developer; provided, however, that said Mortgagee shall not thereby or hereby be subrogated to the rights of the City. Notwithstanding the foregoing, nothing herein shall be deemed to permit or authorize such Mortgagee to undertake or continue the construction or completion of the Improvements without first having expressly assumed Developer's obligations to the City or its designee by written agreement satisfactory to the City.

Section 6.4 Default by Developer. In the event of a default by Developer, the City agrees not to terminate this Agreement (1) unless and until Developer's notice and cure periods have expired and the City thereafter provides written notice of such default to any Mortgagee

and such Mortgagee shall have failed to cure such Event of Default within thirty (30) days of delivery of such notice, and (2) as long as:

(i) In the case of a default which cannot practicably be cured by the Mortgagee without taking possession of the Improvements, said Mortgagee shall proceed diligently to obtain possession of the Improvements as Mortgagee (including possession by receiver) and, upon obtaining such possession, shall proceed diligently to cure such default; or

(ii) In the case of a default which is not susceptible to being cured by the Mortgagee, the Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion (unless in the meantime it shall acquire Developer's right, title and interest hereunder, either in its own name or through a nominee, by assignment in lieu of foreclosure) and upon such completion of acquisition or foreclosure such default shall be deemed to have been cured.

The Mortgagee shall not be required to obtain possession or to continue in possession as Mortgagee of the Improvements pursuant to Subsection (i) above, or to continue to prosecute foreclosure proceedings pursuant to Subsection (ii) above, if and when such default shall be cured. Nothing herein shall preclude the City from exercising any of its rights or remedies with respect to any other default by Developer during any period of such forbearance, but in such event the Mortgagee shall have all of its rights provided for herein. If the Mortgagee, its nominee, or a purchaser in a foreclosure sale, shall acquire title to Developer's right, title and interest hereunder and shall cure all defaults which are susceptible of being cured by the Mortgagee or by said purchaser, as the case may be, then prior defaults which are not susceptible to being cured by the Mortgagee or by said purchaser shall no longer be deemed defaults hereunder. References herein to defaults which are "not susceptible of being cured" by a Mortgagee or purchaser (or similar language) shall not be deemed to refer to any default which the Mortgagee or purchaser is not able to cure because of the cost or difficulty of curing such default, but rather shall be deemed to refer only to defaults specifically relating to the identity of Developer which by their nature can be cured only by Developer (such as Developer bankruptcy or a change in control of Developer). Any acquisition or acceptance of title or any right or interest in or with respect to the Hotel Project or any portion thereof by a Mortgagee, pursuant to foreclosure, trustee's sale, deed or conveyance in lieu of foreclosure, 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.

Section 6.5 Default Accounts. Notwithstanding the rights given Mortgagees to cure a default by Developer, the City shall have the right to have the fiscal agent transfer funds deposited in the TOT Account to the Hotel Default Account in accordance with the provisions of the Funding Agreement to be entered into by and among the City, the District, the fiscal agent and the Developer, provided that the City shall instruct the fiscal agent to transfer all funds from the Hotel Default Account to the Hotel Reimbursement Account in the event the Developer default is cured.

Section 6.6 No Obligation to Cure. Mortgagee shall not have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of Developer or other affirmative covenants of Developer hereunder, or to guarantee such performance and nothing herein contained shall require any Mortgagee to cure any default of Developer referred to above. No default by Developer or termination of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage.

Section 6.7 Separate Agreement. The City shall, upon request, execute, acknowledge and deliver to each Mortgagee, an agreement prepared at the sole cost and expense of Developer, in form satisfactory to each Mortgagee, between the City, Developer and the Mortgagees, agreeing to all of the provisions hereof.

Section 6.8 Form of Notice. Any Mortgagee under a Mortgage shall be entitled to receive the notices required to be delivered to it hereunder provided that such Mortgagee shall have delivered to the City a notice substantially in the following form:

The undersigned, whose address is _____, does hereby certify that it is the Mortgagee (as such term is defined in that certain Subvention Agreement (“Subvention Agreement”) dated as of _____, 2012 between 901 West Olympic Boulevard Limited Partnership and the City of Los Angeles, of the parcel of land described on Exhibit A attached hereto. In the event that any notice shall be given of a default of Developer under the Subvention Agreement, a copy thereof shall be delivered to the undersigned who shall have the rights of a Mortgagee to cure the same, as specified in the Subvention Agreement. Failure to deliver a copy of such notice shall in no way affect the validity of the notice to the Developer, but no such notice shall be effective as it relates to the rights of the undersigned under the Subvention Agreement with respect to the Mortgage, including the commencement of any cure periods applicable to the undersigned, until actually received by the undersigned.

All notices to be provided by the Mortgagee to the City shall be provided in accordance with Section 8.2.

Section 6.9 Further Assurances. The City and Developer agree to cooperate in including in this Agreement, by suitable amendment, any provision which may be reasonably requested by the Mortgagee or any proposed Mortgagee for the purpose of (i) more fully or particularly implementing the Mortgagee protection provisions contained herein, (ii) adding mortgagee protections consistent with those contained herein and which are otherwise commercially reasonable, (iii) allowing such Mortgagee reasonable means to protect or preserve the security interest of the Mortgagee in the collateral, including its lien on the Property and the collateral assignment of this Agreement and/or (iv) clarifying terms or restructuring elements of the transactions contemplated hereby; provided, however, in no event shall the City be obligated to materially modify any of Developer’s obligations or the City’s rights under this Agreement in any manner not already contemplated in this Article 6.

ARTICLE 7

DEFAULT AND REMEDIES

Section 7.1 Application of Remedies. The provisions of this Article 7 shall govern the Parties' remedies for breach of this Agreement.

Section 7.2 No Fault of Parties.

(a) Basis for Termination. The lack of performance by either Party shall not be deemed a default where performance is prevented due to a court order or final judgment is rendered in a lawsuit and all applicable appeal periods have expired, successfully challenging the Final Environmental Impact Report, any governmental approval for the Hotel Project, the Development Agreement, this Agreement, or the Developer's or City's authority to perform their respective obligations hereunder. The preceding events constitute a basis for any Party to terminate this Agreement upon thirty (30) days notice to the other Party.

(b) No Liability. Upon the effective date of the notice of termination, no Party shall have any rights against or liability to the other, except further that the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

Section 7.3 Fault of City.

(a) Event of Default. Following notice and cure as set forth in subsection (b) below, a City breach of any material provision of this Agreement constitutes a "City Event of Default" and a basis for the Developer to take legal action against the City.

(b) Notice and Cure Procedure; Remedies. Upon the occurrence of the above-described event, the Developer shall first notify the City in writing of its purported breach or failure, giving the City thirty (30) days from receipt of such notice to cure such breach or failure. In the event the City does not then cure the default within such thirty-day period (or, if the default is not reasonably susceptible of cure within such thirty-day period, the City fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the Developer shall be entitled to any rights afforded it in law or in equity by pursuing any or all of the following remedies: (1) terminating this Agreement by written notice to the City; (2) prosecuting an action for damages (excluding punitive, exemplary and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive, exemplary and consequential damages). In no event shall any remedy include recovery of attorneys' fees. If the Developer elects to terminate this Agreement with respect to the portion of the Improvements to which the default relates, the provisions of this Agreement relating to the other portion of the Improvements with respect to which there is not a default and other provisions of this Agreement that are specified to survive termination shall remain in full force and effect.

Section 7.4 Fault of Developer.

(a) Event of Default. Following notice and cure as set forth in subsection (b) below, each of the following events constitutes a “Developer Event of Default” and a basis for the City to take legal action against the Developer:

(1) The Developer fails to record the Hotel Operating Covenant in the manner set forth in Section 3.7.

(2) The Developer completes a Transfer except as permitted under Article 5.

(3) The Developer breaches any other material provision of this Agreement.

(4) The Developer’s: (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) days after the filing; or (4) failure, inability or admission in writing of its inability to pay its debts as they become due.

(5) The Developer defaults under the Funding Agreement and has not cured such default within the applicable time period contained in such agreement.

(6) The Developer defaults under any of the Room Block Agreements and has not cured such default within the applicable time period contained in such agreement.

(b) Notice and Cure Procedure: Remedies. Upon the occurrence of any of the above-described events contained in Section 7.4(a), the City shall first notify the Developer in writing of its purported breach or failure, giving the Developer thirty (30) days from receipt of such notice to cure such breach or failure. If the Developer does not cure the default within such thirty-day period (or if the default is not reasonably susceptible of being cured within such thirty-day period, the Developer fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the City shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (1) terminating this Agreement by written notice to the Developer; (2) prosecuting an action for damages (excluding punitive, exemplary and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive, exemplary and consequential damages). In no event shall any remedy include recovery of attorneys’ fees. If the City elects to terminate this Agreement, the provisions of this Agreement relating to the other portion of the Improvements with respect to which there is not a default and other provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

Section 7.5 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

Section 7.6 Termination of TOT Subvention. Upon termination of this Agreement under this Article 7 due to a Developer Event of Default, the Developer's right to receive the TOT Subvention pursuant to the Funding Agreement shall terminate and be of no further force and effect.

ARTICLE 8

GENERAL PROVISIONS

Section 8.1 Representations and Warranties.

(a) The Developer. The Developer represents and warrants to the City as of the Effective Date, as follows:

(1) Organization. The Developer is a limited partnership, duly formed in the State of Washington, validly existing and in good standing under the laws of the State of California, with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement.

(2) Authorization. The Developer has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement, performance of this Agreement. Upon the Effective Date, this Agreement shall constitute an obligation of the Developer.

(3) No Conflict. The execution, delivery and performance of this Agreement by the Developer does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the charter or incorporation documents of the Developer, (ii) any applicable law, rule or regulation binding upon or applicable to the Developer, or (iii) any material agreements to which the Developer is a party.

(4) No Litigation. Unless otherwise disclosed in writing or otherwise known to the City prior to the date of this Agreement, there is no existing or, to the Developer's actual knowledge, pending litigation, suit, action or proceeding before any court or administrative agency affecting the Developer or the Property that would, if adversely determined, materially and adversely affect the Developer or the Property or the Developer's ability to perform its obligations under this Agreement or to develop and operate the Hotel Project.

(5) Default Under Other Agreements. There is no event, act or omission which constitute, or but for the passage of time or the giving of notice, or both, would constitute a breach, violation or default by the Developer under

any agreement materially related to the development or operation of the Hotel Project, including but not limited to any partnership agreement, joint venture agreement, or loan agreement executed by the Developer.

Until the expiration or earlier termination of this Agreement, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 8.1 not to be true, promptly give written notice of such fact or condition to the City. The representations and warranties contained in this Section 8.1 shall be true for any transferee assuming the obligations of this Agreement as of the date of the Transfer.

(b) The City: The City represents and warrants to the Developer as of the Effective Date, as follows:

(1) Authorization. The City has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement, performance of this Agreement. Upon the Effective Date, this Agreement shall constitute an obligation of the City.

(2) No Conflict. The execution, delivery and performance of this Agreement by the City does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the charter or incorporation documents of the City, (ii) any applicable law, rule or regulation binding upon or applicable to the City, or (iii) any material agreements to which the City is a party.

(3) No Litigation. Unless otherwise disclosed in writing or otherwise known to the Developer prior to the date of this Agreement, there is no existing or, to the City's actual knowledge, pending litigation, suit, action or proceeding before any court or administrative agency affecting the City or the Property that would, if adversely determined, materially and adversely affect the City or the Property or the City's ability to perform its obligations under this Agreement.

Section 8.2 Notices Demands and Communications. Formal notices, demands, submittals and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, delivered personally, or dispatched by certified mail, return receipt requested, or by reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the City and the Developer as follows:

City: City of Los Angeles
Office of the City Administrative Officer
200 North Main Street
Los Angeles, CA 90012
Attn: City Administrative Officer

City of Los Angeles
Office of City Attorney
200 North Main Street
Los Angeles, CA 90012

Attn: Asst. City Attorney
Public Finance

With copies to: City of Los Angeles
Office of the Chief Legislative Analyst
200 North Spring Street, Suite 255
Los Angeles, CA 90012
Attn: Chief Legislative Analyst

City of Los Angeles
Office of the Mayor
200 North Spring Street, Suite 303
Los Angeles, CA 90012
Attn: Deputy Mayor for Economic Development

Developer: American Life Inc.
270 S. Hanford Street
Suite 100
Seattle, WA 98134
Attention: Henry Liebman, President/Chief Executive Officer
Telephone: (206) 381-1690
Email: hliebman@amlife.com

With copies to: 901 West Olympic Boulevard Limited Partnership
c/o Williams/Dame Associates, Inc.
1308 NW Everett Street
Portland, Oregon 97209
Attention: Dike Dame
Telephone: (503) 227-6593
Fax: (503) 227-7996
Email: dike@wddcorp.com

Goodwin|Procter LLP
601 South Figueroa Street, 41st Floor
Los Angeles, CA 90071
Attention: Lewis G. Feldman, Esq.
Telephone: (213) 426-2664
Fax: (213) 623-1673
Email: lfeldman@goodwinprocter.com

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 8.2. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 8.3 Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to the Developer, or any successor in

interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or on any obligation under the terms of this Agreement.

Section 8.4 Enforced Delay. In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; terrorist acts; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God or other deities; acts of the public enemy; epidemics; quarantine restrictions; moratoria, or other governmental restrictions; freight embargoes; the filing of a lawsuit challenging the Final Environmental Impact Report, any governmental approval, the TOT Subvention, this Agreement, the Funding Agreement, the establishment of the Community Taxing District, the Development Agreement, or the Developer's or the City's authority to perform their respective obligations hereunder (which shall be deemed to be a delay of the Parties); or court order; an act or omission of the other Party; or any other similar causes (other than lack of funds of the Developer or the Developer's inability to finance the Hotel Project) beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within thirty (30) days from the commencement of the cause. In no event shall the cumulative delays exceed twenty-four (24) months, unless otherwise agreed to by the Parties in writing.

Section 8.5 Estoppel Certificates. Any party to this Agreement shall, promptly upon the request of any other party, execute, acknowledge and deliver to or for the benefit of any other party, a certificate certifying: (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the modifications), (ii) whether there are then existing any defaults on the part of the party requesting the certificate known to the party delivering the certificate in the performance or observance of any agreement, covenant or condition hereof to be performed or observed and whether any notice has been given of any default which has not been cured (and, if so, specifying the same), and (iii) such other matters as may be reasonably requested.

Section 8.6 Inspection of Books and Records. The City has the right at all reasonable times during normal business hours and upon two (2) Business Days prior written notice to inspect on a confidential basis the books, records and all other documentation of the Developer pertaining to its obligations under this Agreement. The Developer also has the right at all reasonable times during normal business hours and upon two (2) Business Days prior written notice to inspect the books, records and all other documentation of the City pertaining to its obligations under this Agreement.

Section 8.7 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of its provision.

Section 8.8 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 8.9 Severability. If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or

unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 8.10 Binding Upon Successors; Covenants to Run With Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties; provided, however, that there shall be no Transfer except as permitted in Article 5. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

The terms of this Agreement shall run with the land, and shall bind all successors in title to the Property until the termination of this Agreement, except that the provisions of this Agreement that are specified to survive termination of this Agreement shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Property, or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases the Property, or the applicable portion of the Property, from the requirements of this Agreement. Upon the termination of this Agreement, the City shall execute and deliver such documents in recordable form as are reasonably necessary to release the Property from the requirements of this Agreement.

Section 8.11 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 8.12 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the Hotel Project. There are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein (or any such representations, understandings or ancillary covenants, undertakings or agreements are integrated in this Agreement).

Section 8.13 Discretion Retained By City. The City's approval, as called for in various sections of this Agreement, in no way limits the discretion of the City in the permit and approval process in connection with the Hotel Project.

Section 8.14 Counterparts. This Agreement may be executed in counterparts and multiple originals.

Section 8.15 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties.

Section 8.16 Recordation of Memorandum of Agreement. The Developer and the City consent to the recordation of a Memorandum of this Agreement against the Property in the Office of the Los Angeles County Recorder, in the form of Exhibit B attached hereto and

incorporated herein by this reference. The Memorandum of Agreement shall be modified at such time as the final tract map is recorded to reflect that this Agreement is recorded only against the hotel.

Section 8.17 Standard of Approval. Any consents or approvals required or permitted under this Agreement shall not be unreasonably delayed, conditioned or withheld, except where it is specifically provided that a sole discretion standard applies.

Section 8.18 Indemnity: City. Except for the gross negligence, fraud, intentional or willful misconduct of the City, the Developer undertakes and agrees to indemnify, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its Councilmembers, officers, employees, agents, from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation, damage or liability of any nature whatsoever, arising in any manner by reason of or incident to the performance of this Agreement. The Developer's indemnification obligation under this Section 8.18 shall include but not be limited to any litigation related to any Challenges made to the City's action regarding the approval of this Agreement or the environmental review conducted for the Hotel Project and the City's actions related thereto under CEQA.

Section 8.19 Effectiveness of Subvention Agreement. This Agreement is dated for convenience only and shall only become effective on the Effective Date.

Section 8.20 Further Assurances. Each Party hereto shall execute and deliver such further documents, papers and instruments and take such further action as is necessary, appropriate or helpful as the other Party may reasonably request in order to carry out the purposes, effect and intent of this Agreement.

Section 8.21 Time of the Essence. Time is of the essence for each provision of this Agreement of which time is an element.

[Signatures on following page]

WHEREFORE, the Parties have executed this Agreement as of the date first above written.

CITY:

Dated: _____

CITY OF LOS ANGELES,
a municipal corporation

APPROVED AS TO FORM:

CARMEN A. TRUTANICH,
CITY ATTORNEY

By: _____

Its: _____

By: _____
_____, Asst. City Attorney

ATTEST:

CITY CLERK

By: _____

Date:

DEVELOPER:

901 WEST OLYMPIC BOULEVARD LIMITED PARTNERSHIP,
a Washington limited partnership

By: American Life Inc.,
a Washington Corporation

Its: Managing General Partner

By: _____

Name: Henry Liebman

Its: President

Exhibit A

Legal Description of the Property

The land referred to herein is situated in the State of California, County of Los Angeles, City of Los Angeles, and is described as follows:

EXHIBIT 1

LEGAL DESCRIPTION

PARCEL A:

LOTS 10, 11, AND 12 OF THE RESUBDIVISION OF THE FRANCISCO TRACT, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 54, PAGE 64 OF MISCELLANEOUS RECORDS, RECORDS OF SAID COUNTY.

EXCEPT THAT PORTION OF LOT 12, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LOT, A DISTANCE OF 151.40 FEET TO THE MOST WESTERLY CORNER OF SAID LOT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST TANGENT TO SAID SOUTHWESTERLY LINE AND HAVING A RADIUS OF 1325.38 FEET, AN ARC DISTANCE OF 151.74 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT, DISTANT THEREON 8.68 FEET FROM SAID MOST SOUTHERLY CORNER; THENCE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY LINE 8.68 FEET TO THE POINT OF BEGINNING, AS CONVEYED TO THE CITY OF LOS ANGELES, BY DEED RECORDED IN BOOK 16559 PAGE 149, OFFICIAL RECORDS.

ALSO, EXCEPTING THEREFROM THAT PORTION OF SAID LOT 10 ALL MINERALS, ORES, PRECIOUS ORES OR USEFUL METALS, SUBSTANCES AND HYDROCARBONS OF EVERY KIND AND CHARACTERS, INCLUDING IN PART, PETROLEUM, OIL, GAS, ASPHALTUM AND TAR, IN OR UNDER SAID LAND LYING BELOW A DEPTH OF 500 FEET FROM THE SURFACE, BUT WITHOUT THE RIGHT TO ENTER UPON THE SURFACE OF SAID LAND, AS PER DEED RECORDED AUGUST 14, 1978 AS INSTRUMENT NO. 78-893726.

PARCEL B:

PARCELS 1 AND 2, AS SHOWN AND DESIGNATED ON THAT CERTIFICATE OF COMPLIANCE FOR LOT LINE ADJUSTMENT NO. AA-2006-10346 PMEX RECORDED DECEMBER 6, 2007 AS INSTRUMENT NO. 20072682276 OF OFFICIAL RECORDS, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND BEING LOTS 8 AND 9 OF THE RESUBDIVISION OF THE FRANCISCO TRACT, AS PER MAP RECORDED IN BOOK 54, PAGE 64 OF MISCELLANEOUS RECORDS OF SAID COUNTY.

Assessor Parcel Numbers: 5138-005-036; 5138-005-038; 5138-005-041; and 5138-005-045.

Exhibit B

Form of Memorandum of Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

The City of Los Angeles
200 North Main Street
Los Angeles, CA 90012
Attn:

No fee for recording pursuant to
Government Code Section 27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (the "**Memorandum**") is made as of May ____, 2012, by and between, the City of Los Angeles, a charter city and municipal corporation (the "**City**") and 901 West Olympic Boulevard Limited Partnership, a Washington limited partnership (the "**Developer**") to confirm that the City and the Developer have entered into that certain Subvention Agreement dated as of _____, 2012 (the "**Agreement**"). The Subvention Agreement imposes certain conditions, requirements, covenants, and restrictions with respect to a proposed project to be constructed on the real property described in Exhibit A attached hereto and incorporated herein (the "**Property**"). The Subvention Agreement is a public document and may be reviewed at the office of the Los Angeles City Clerk.

This Memorandum shall incorporate herein all of the terms and provisions of the Subvention Agreement as though fully set forth herein. This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Subvention Agreement, of which this is a memorandum.

This Memorandum may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Exhibit C-1

Form of Contract Provisions for Major Contracts

Construction Sales and Use Tax Insert for Major Contractors and Subcontractors

Contractor shall comply with the provisions of this Section to provide that local sales and use taxes generated in connection with all eligible purchases of materials, fixtures, furniture, machinery, equipment and supplies for the work to be performed hereunder are allocated directly to the City of Los Angeles (the "City"). In particular, Contractor shall:

- (a) Apply for a jobsite sub-permit with the California State Board of Equalization ("CBOE") prior to the purchase of any materials, fixtures, furniture, machinery, equipment and supplies for the work to be performed hereunder (a "Jobsite Sub-Permit"). Upon the request of Owner, Contractor shall furnish a copy of its application for Jobsite Sub-Permit. Promptly following Contractor's receipt of a Jobsite Sub-Permit from the CBOE, Contractor shall provide Owner and the City with a copy of such Jobsite Sub-Permit.
- (b) If Contractor is a seller and/or retailer of tangible items, apply for a seller's permit from the CBOE and provide the City with a copy of such seller's permit when it is received by Contractor from the CBOE.
- (c) (i) Incorporate a "transfer of title clause" in contracts for the purchase of materials and fixtures to be used in connection with the work to be performed hereunder and (ii) issue resale certificates to Contractor's suppliers, whether based in state or out of state, when purchasing materials and fixtures. The "transfer of title clauses" in such purchase contracts shall (A) explicitly provide for the transfer of title to the materials prior to the time materials are installed, and (B) separately state the price of materials, exclusive of the charge for installation.
- (d) Provide the Owner and the City, upon the reasonable request of either, with:
 - (A) a list of any of Contractors' subcontractors providing services or materials in excess of \$5,000,000 in connection with the work to be performed hereunder, which list shall include:
 - vii. Name of subcontractor
 - viii. Address and telephone number of headquarters or office
 - ix. Name and telephone number of contact person
 - x. Estimated value of contract
 - xi. Estimated completion date
 - xii. Scope of Work
 - (B) A copy of the subcontract
 - (C) Such additional information as may be reasonably requested in writing by the City to ensure compliance with the foregoing provisions, including without limitation copies

of the Contractor's sales and use tax returns and schedules of purchases of materials, fixtures, equipment, and machinery.

CONTRACTOR ACKNOWLEDGES AND AGREES THAT THE CITY IS A THIRD PARTY BENEFICIARY OF THE FOREGOING PROVISIONS AND THAT CONTRACTOR'S AGREEMENT TO COMPLY WITH SUCH PROVISIONS FOR THE BENEFIT OF THE CITY IS A MATERIAL INDUCEMENT TO OWNER IN ENTERING INTO THIS CONTRACT. CONTRACTOR FURTHER AGREES THAT ANY FAILURE BY CONTRACTOR TO COMPLY WITH THE FOREGOING PROVISIONS MAY BE DIRECTLY ENFORCED BY THE CITY. WITHOUT LIMITING THE REMEDIES OR OWNER OR THE CITY, THE CITY SHALL HAVE THE RIGHT TO SEEK, AS DAMAGES, THE FULL AMOUNT OF ANY SALES AND USE TAXES NOT ALLOCATED TO THE CITY AS A RESULT OF CONTRACTOR'S FAILURE TO COMPLY WITH THE FOREGOING PROVISIONS, WITHOUT REGARD TO WHETHER CONTRACTOR OR ITS SUBCONTRACTORS PAID SUCH SALES AND USE TAX, TOGETHER WITH INTEREST AT THE LOWER OF 10% OR THE HIGHEST INTEREST RATE ALLOWED BY LAW.

Exhibit C-2

Contract Provisions for Other Contracts

Contractor shall comply with the provisions of Section 3.8(c) to provide that local sales and use taxes generated in connection with all eligible purchases of materials, fixtures, furniture, machinery, equipment and supplies for the work to be performed hereunder are allocated directly to the City of Los Angeles (the "City"). In particular, Contractor shall:

- (a) If Contractor makes any purchases of materials and fixtures amounting to \$500,000 or more (but less than \$5,000,000) from an out-of-state retailer in connection with the work performed hereunder and such materials or fixtures are shipped directly to Contractor from a point outside of California, Contractor shall state the jobsite address (i.e. in the City of Los Angeles) in Schedule C of its sales tax return, and
- (b) If Contractor makes any purchases of furniture totaling \$500,000 or more (but less than \$5,000,000) from a retailer at an out-of-state location and has that property shipped directly to them from a point outside of California, Contractor shall state the jobsite address (i.e. in the City of Los Angeles) in Schedule C of its sales tax return.

Contractor acknowledges and agrees that the City is a third party beneficiary of the foregoing provisions and that Contractor's agreement to comply with such provisions for the benefit of the City is a material inducement to Owner in entering into this contract. Contractor further agrees that any failure by Contractor to comply with the foregoing provisions may be directly enforced by the City.

Exhibit D

Project Construction Cost Reconciliation Methodology

(See Attached)

Exhibit E

Additional Public Benefits

The Hotel Project will provide public benefits to the City, consisting of the elements described below. The Developer's obligation to provide these benefits are hereby incorporated into the Subvention Agreement as if set forth therein.

1. The Developer shall make major improvements to the functionality of Francisco Street, which shall include a two foot dedication and two foot widening along the Hotel Project's Francisco Street frontage north of Olympic Boulevard to bring Francisco Street up to Collector Street Standards. The Hotel Project will provide the required pedestrian linkages as the public sidewalk will include new and enhanced street lighting, special paving pattern, street trees, tree wells and street furniture. The LASED Streetscape Plan requirements will enhance the pedestrian experience and will serve to unify the district. The required 15-foot wide sidewalk will be provided on Olympic Boulevard. Portions of Francisco Street provide the required 15-foot wide sidewalk except on an 80-foot lineal portion with a minimum 8-foot wide sidewalk as referenced in the Hotel Project Permit Adjustment finding. The required 8-foot private Setback on Olympic Boulevard will be provided. The streetscape elements provided on Olympic Boulevard and Francisco Street will provide a visual and experiential link for pedestrians who live in the nearby neighborhoods and for Staples Center and LA Live patrons who park in the nearby areas.
2. The Developer shall enter into a Hotel Project Labor Agreement with the Building and Construction Trades Council pursuant to which the Developer shall cause its general contractor and subcontractors to employ union labor in certain trades at no less than prevailing wage.
3. The Developer shall implement a Local Hiring/First Source/Minority Business Recruitment program as more particularly described in Exhibit G attached to the Subvention Agreement, the provisions of which are incorporated into the Subvention Agreement.
4. The Developer shall satisfy a minimum LEED Silver sustainability requirement for the Hotel Project.
5. The Developer shall redevelop the pedestrian streetscape environment at the intersection across from LA Live! These improvements will include a 1,000 square feet street level plaza at the corner of Olympic Boulevard and Francisco Street that will provide additional pathways for pedestrians to travel by foot to LA Live and will function as the focal point for the LA Live north/south Paseo. Additionally, an 8-foot private setback along Olympic Boulevard will provide 1,215 square feet of open space. The plaza will planters and benches for public use.
6. The Developer shall enter into the Hotel Room Block Agreement attached to the Subvention Agreement as Exhibit F.

Exhibit F

Form of Room Block Agreement

(See Attached)

ROOM BLOCK AGREEMENT

This Room Block Agreement (this “**Agreement**”) is made as of _____ by and among the City of Los Angeles (“**City**”), the Los Angeles Convention and Visitors Bureau (“**LACVB**”), 901 West Olympic Boulevard Limited Partnership (“**Owner**”), and together with Residence Inn by Marriott, LLC, a Delaware limited liability company (“**Residence Inn**”), and Courtyard Management Corporation, a Delaware corporation (“**Marriott**” and collectively, with Residence Inn, “**Operator**”). The City, LACVB, Owner, and Operator are collectively referred to herein as the “**Parties**”.

RECITALS

A. Owner is constructing an approximately 392 room hotel on a one block site located at Olympic Boulevard between Georgia Street and Francisco Street, in downtown Los Angeles, California (the “**Hotel**”). Pursuant to the Hotel Management Agreements, 218 rooms will be managed by Residence Inn and 174 rooms will be managed by Marriott.

B. Owner is party to a Transient Occupancy Tax (“**TOT**”) Subvention Agreement, dated _____ (the “**Subvention Agreement**”), with the City of Los Angeles, pursuant to which the City has agreed to provide financial assistance to Owner in connection with the construction of the Hotel.

C. Concurrently with the execution of the Subvention Agreement, and as partial consideration for the benefits conferred upon Owner therein, the Parties are entering into this Agreement, to preserve the availability of certain rooms at the Hotel, in order to promote the use of the Hotel and the Los Angeles Convention Center (“**LACC**”) by groups for meetings, tradeshows, conferences and conventions.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the : Parties agree as follows:

1. Term. The term of this Agreement (“**Term**”) shall coincide with the term of the Hotel Operating Agreement, as that term is defined in the Subvention Agreement.

2. Room Block. At all times during the Term of this Agreement, Operator shall reserve for the LACVB’s use on any given day, up to two hundred ninety-five (295) rooms (“**Held Rooms**”) at the Hotel for the number of days per year then available in accordance with Section 3 of this Agreement (“**Room Block Days**”). Operator may request a release of a portion of the Held Rooms and Room Block Days requirements, which request shall be subject to LACVB’s reasonable approval.

3. Booking Period. The Room Block Days during which Operator must retain the Held Rooms for LACVB’s use will vary depending upon the time frame between the date the request is submitted and the date of the event. The total allotment of rooms as outlined in the

Room Block Days may be consecutive or non-consecutive at the sole discretion of the Operator. The Room Block Days available will be as follows:

<u>Number of Months Prior to Event</u>	<u>Room Block Days</u>
Less than 24 Months	0 Days
24 to 36 Months	Up to 60 days
37 to 48 Months	Up to 90 days
49 to 60 Months	Up to 140 days
60 Months or Greater	Up to 183 days.

4. Room Block Request. The LACVB must submit all requests for Room Block Days for a specific group (“**Room Block Request**”) in writing. Operator may request that each Room Block Request be supported by a documented history of the group’s history for the same meeting for the two most recent meetings.

5. Operator’s Response. Operator shall have five (5) business days from its receipt of the Room Block Request to respond to the Room Block Request in writing, in the form of a “**Room Block Proposal.**”

6. Acceptance.

(a) If the group and the Operator fail to sign a convention contract within sixty (60) days of LACVB’s receipt of the Room Block Proposal, the Room Block Proposal shall be deemed withdrawn,

(b) If another group inquires or is solicited by the Operator for similar or overlapping dates and the group is prepared to book definite, the group with the first option date will be required to make a decision to either confirm or release the dates within five (5) business days.

7. Remaining Rooms in Hotel. Operator shall have the unrestricted right to commit to up to three hundred (300) rooms within the Hotel on any given date to the Hotel’s commercial or group guests, notwithstanding any obligations hereunder. In addition, Operator shall have the right to commit to a block of any number of rooms within the Hotel, so long as the satisfaction of such commitment will not prevent Operator from fulfilling its obligations under this Agreement.

8. Renovation. In connection with its operations of the Hotel, Operator may be permitted under the Management Agreement to periodically renovate the Hotel. Operator may, provided Operator has given advance written notice to the LACVB at least one (1) year prior to the date on which said renovations shall be commenced, during the course of said renovations, decrease the number of Held Rooms pursuant to Section 3 above by up to 40%; provided, however, that Operator shall make reasonable efforts to complete such renovations as quickly as practical (to the extent funding is available) and to accommodate customer requirements for events at the LACC to the extent practical during the course of said renovations.

9. Additional Rooms/Days. Notwithstanding the foregoing, the Owner and Operator will have in their sole and absolute discretion the right to provide a Room Block Proposal in

excess of the Held Rooms and/or Room Block Days contemplated hereunder, but shall be under no obligation to do so to any extent or in any event.

10. Notice and Cure. Upon a material default by any party hereto (a “**Breaching Party**”) in the performance of the terms and conditions of this Agreement, the non-breaching party (or parties) shall first notify such Breaching Party in writing of its purported breach or failure, giving such Breaching Party thirty (30) days from receipt of such notice to cure such breach or failure. If such Breaching Party does not cure the default within such thirty-day period (or if the default is not reasonably susceptible of being cured within such thirty-day period, such Breaching Party fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the non-breaching party (or parties) shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (1) terminating this Agreement by written notice to such Breaching Party; (2) prosecuting an action for damages (excluding punitive damages and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages).

11. Notices. Formal notices, demands, submittals and communications among Owner, Operator, the City, and LACVB shall be sufficiently given if, and shall not be deemed given unless, delivered personally, or dispatched by certified mail, return receipt requested, or by reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of Owner, Operator, the City, and LACVB as follows:

City: City of Los Angeles
Office of the City Administrative Officer
200 North Main Street, Room 1500
Los Angeles, CA 90012

With copies to: City of Los Angeles
Office of the Mayor
200 N. Spring St., Room 303
Los Angeles, CA 90012
Attn: Deputy Mayor for Economic Development

City of Los Angeles
Office of the Chief Legislative Analyst
200 N. Spring St., Room 255
Los Angeles, CA 90012

City of Los Angeles
Office of City Attorney
200 North Main Street
Los Angeles, CA 90012
Attn Asst. City Attorney
Real Estate and Economic Development

LACVB: Los Angeles Convention and Visitors Bureau
633 W. Fifth Street, Suite 6000
Los Angeles, CA 90071
Attention: Michael Collins

Owner: American Life Inc.
270 S. Hanford Street, Suite 100
Seattle, WA 98134
Attn: Henry Liebman, President/Chief Executive Officer

With copies to: 901 West Olympic Boulevard Limited Partnership
c/o Williams/Dame Associates, Inc.
1308 NW Everett Street
Portland, OR 97209

Operator: Courtyard Management Corporation
c/o Marriott International, Inc.
10400 Fernwood Road
Bethesda, MD 20817
Attention: Department 52/923 – Law Dept./Hotel Operations

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 11. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

12. Liability of Officials, Officers, Directors, Employees and Agents. No member, officer, director, official, employee or agent of any party shall be personally liable to any other party, or any successor in interest, in the event of any default or breach hereunder or for any amount which may become due to such other party or on any obligation under the terms of this Agreement.

13. Enforced Delay. In addition to specific provisions of this Agreement, performance by any Party shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God or other deities; acts of the public enemy; terrorist acts; epidemics; quarantine restrictions; moratoria, or other governmental restrictions; freight embargoes; the filing of a lawsuit challenging the Addendum to the Final Environmental Impact Report, any Governmental Approval, this Agreement, or any Party's authority to perform their respective obligations hereunder (which shall be deemed to be a delay of the Parties); or court order; an act or omission of the other Parties hereto; or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any cause will be deemed granted if notice by the Party claiming such extension is sent to the other within thirty (30) days from the commencement of the cause. In no event shall the cumulative delays exceed twenty-four (24) months, unless otherwise agreed to by all Parties in writing. Capitalized terms used in this Section 13 and not otherwise defined shall have the meanings ascribed to them in the Development Agreement.

14. Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

15. Severability. If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

16. Counterparts. This Agreement may be executed in counterparts and multiple originals.

17. Amendments. The Parties can amend this Agreement only by means of a writing signed by all the Parties.

18. Effect. This Agreement is intended to be a legally binding agreement enforceable against the Parties in accordance with the terms and conditions set forth herein.

19. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter.

[Signature pages to follow]

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

RESIDENCE INN

RESIDENCE INN BY MARRIOTT, LLC

By: _____

Name: _____

Title: _____

MARRIOTT

COURTYARD MANAGEMENT CORPORATION

By: _____

Name: _____

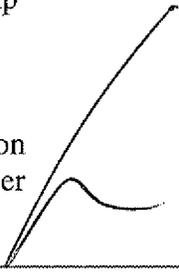
Title: _____

OWNER

901 W. OLYMPIC BOULEVARD LIMITED PARTNERSHIP,
a Washington limited partnership

By: American Life Inc.,
a Washington Corporation
Its: Managing General Partner

By: _____
Name: Henry Liebman
Its: President



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

RESIDENCE INN

RESIDENCE INN BY MARRIOTT, LLC

By: Kevin M. Kimball

Name: KEVIN M. KIMBALL

Title: VICE PRESIDENT

MARRIOTT

COURTYARD MANAGEMENT CORPORATION

By: Kevin M. Kimball

Name: KEVIN M. KIMBALL

Title: VICE PRESIDENT

OWNER

901 W. OLYMPIC BOULEVARD LIMITED PARTNERSHIP,
a Washington limited partnership

By: American Life Inc.,
a Washington Corporation

Its: Managing General Partner

By: _____

Name: Henry Liebman

Its: President

APPROVED AS TO FORM:

CITY ATTORNEY

By: _____

Name: _____

Title: _____

CITY OF LOS ANGELES

By: _____

Name: _____

Title: _____

LOS ANGELES CONVENTION AND VISITORS BUREAU

By: _____

Name: _____

Title: _____

Exhibit G

Local Hiring/First Source/Minority Business Recruitment Program

A. PURPOSE. The purpose of this Section is to facilitate the customized training and employment of targeted job applicants in the Hotel Project. Targeted job applicants include, among others, individuals living within a three-mile radius of the Hotel Project, and individuals living in low-income areas throughout the City. This Section (1) establishes a mechanism whereby targeted job applicants will receive job training in the precise skills requested by employers in the Hotel Project, and (2) establishes a non-exclusive system for referral of targeted job applicants to employers in the Hotel Project as jobs become available.

B. CUSTOMIZED JOB TRAINING PROGRAM. The First Source Referral System, described below, will coordinate job training programs with appropriate community-based job training organizations. Prior to hiring for living wage jobs within the Hotel Project, employers may request specialized job training for applicants they intend to hire, tailored to the employers' particular needs, by contacting the First Source Referral System. The First Source Referral System will then work with appropriate community-based job training organizations to ensure that these applicants are provided with the requested training.

C. FIRST SOURCE HIRING POLICY. Through the First Source Hiring Policy, qualified individuals who are targeted for employment opportunities as set forth in Section D below of the First Source Hiring Policy below will have the opportunity to interview for job openings in the Hotel Project. The Developer, Contractors, and Tenants shall participate in the First Source Hiring Policy. Under the First Source Hiring Policy, the First Source Referral System will promptly refer qualified, trained applicants to employers for available jobs. The Developer, Contractors, and Tenants shall have no responsibility to provide notice of job openings to the First Source Referral System if the First Source Referral System is not fulfilling its obligations under the First Source Hiring Policy. The terms of the First Source Hiring Policy shall be part of any deed, lease, or contract with any prospective Tenant or Contractor.

D. FIRST SOURCE REFERRAL SYSTEM. The First Source Referral System, to be established through a joint effort of the Developer and the City, will work with employers and with appropriate community-based job training organizations to provide the referrals described in this Section. A mutually agreeable nonprofit organization shall staff and operate the First Source Referral System, as described in the First Source Hiring Policy. The Developer will meet and confer with the nonprofit organization regarding the possibility of providing space on site for the First Source Referral System, for the convenience of Tenants and job applicants; provided, however, the Developer may in its sole and absolute discretion determine whether or on what terms it would be willing to provide space for the First Source Referral System. If the First Source Referral System becomes defunct, Employers shall have no responsibility to contact it with regard to job opportunities.