RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:	

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DEVELOPMENT AGREEMENT

by and between

THE CITY OF LOS ANGELES

and

NOHO DEVELOPMENT ASSOCIATES, LLC

dated as of

_____

DEVELOPMENT AGREEMENT

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DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is executed this _____ day of _____, 2022, by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), and NOHO DEVELOPMENT ASSOCIATES, LLC, a Delaware limited liability corporation ("Developer"), pursuant to California Government Code Section 65864 et seq., and the implementing procedures of the City, with respect to the following:

1. DEFINITIONS.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context requires, the following words and phrases shall be defined as set forth below:

1.1 "Affordable Housing Units" means the 311 affordable housing within the Property, including 142 dwelling units at rents affordable to Low Income households in compliance with LAMC Section 11.5.11(a)(1)(iii), and 169 dwelling units at rents affordable to Low Income households pursuant to the Joint Development and Option Agreement by and between the Developer and the Los Angeles County Metropolitan Transit Authority.

1.2 "Agreement" means this Development Agreement and all amendments and modifications thereto.

1.3 "Applicable Rules" means the rules, regulations, ordinances and officially adopted policies of the City in full force and effect as of the Effective Date of this Agreement, including, but not limited to the City's General Plan and the proposed Specific Plan, as adopted by the Project Approvals. Additionally, notwithstanding the language of this Section or any other language in this Agreement, all specifications, standards and policies regarding the design and construction of public works facilities, if any, shall be those that are in effect at the time the Project plans are being processed for approval and/or under construction.

1.4 "Assignment Agreement" means a written agreement between the Developer and a Transferee of the Developer, consistent with the terms of this Agreement, in which the Parties agree to specific obligations of this Agreement being transferred from the Developer to the Transferee of the Developer.

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

1.6 "City" means the City of Los Angeles, a charter city and municipal corporation, including each and every agency, department, board, commission, authority, employee, and/or official acting under the authority of the City, including without limitation the City Council and the Planning Commission.

1.7 "City Council" means the City Council of the City and the legislative body of the City pursuant to California Government Code Section 65867.

1.8 "Development Agreement Act" means Section 65864 et seq., of the California Government Code.

1.9 "Developer" means NoHo Development Associates, LLC or its successors and assignees as described in Section 6.9.

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

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

1.12 "EIR" means Final Environmental Impact Report SCH 2020060573 prepared under Case No. ENV-2019-7241-EIR.

1.13 "Fees" means Impact Fees, Processing Fees and any other fees or charges imposed or collected by the City.

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

1.15 "Impact Fees" means impact fees, linkage fees, exactions, assessments or fair share charges or other similar impact fees or charges imposed on and in connection with new development by the City pursuant to rules, regulations, ordinances and policies of the City in full force and effect as of the Effective Date of this Agreement. Impact Fees do not include (i) Processing Fees or (ii) other City-wide fees or charges of general applicability, provided that such City-wide fees or charges are not imposed on impacts of new development.

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

1.17 "Mitigation Measures" means the mitigation measures described in the EIR and in the Mitigation Monitoring Program for the Project.

1.18 "Mortgagee" has the meaning set forth in Section 6.25.1.

1.19 "Parties" means collectively Developer and the City. Each shall be referred to in the singular as a "Party".

1.20 "Planning Commission" means the City Planning Commission and the planning agency of the City pursuant to California Government Code Section 65867.

1.21 "Planning Director" means the Planning Director for the City or his or her designee.

1.22 "Processing Fees" means all processing fees and charges required by the City including, but not limited to, fees for land use applications, Project permits and/or approvals, building applications, building permits, grading permits, encroachment permits, tract or parcel maps, lot line adjustments, air right lots, street vacations and certificates of occupancy which are necessary to accomplish the intent and purpose of this Agreement. Expressly exempted from Processing Fees are all Impact Fees which may be imposed by the City on development projects pursuant to rules, regulations, ordinances and policies enacted after the Effective Date of this Agreement, except as specifically provided for in this Agreement. The amount of the Processing Fees to be applied in connection with the development of the Project shall be the amount which is in effect on a City-wide basis at the time an application for the City action is made. Notwithstanding the language of this Section or any other language in this Agreement, Developer shall not be exempt from the payment of fees, if any, imposed on a City-wide basis as part of the City's program for storm water pollution abatement mandated by the Federal Water Pollution Control Act of 1972 and subsequent amendments thereto, unless a waiver of these fees is provided by the City in a subsequent agreement.

1.23 "Project" means the development of a transit-oriented development with up to 2,209,027 square feet of total floor area, including up to 1,527 multi-family residential units comprised of up 1,216 market rate units and 311 affordable units; up to 105,125 square feet of retail and restaurant space; up to 580,374 square feet of office space; vehicular and bicycle parking; creation of three public transit and event plazas that create a new amenity and gathering place for North Hollywood; redeveloped and expanded Metro Red Line portal entry, which reinforces the connection of the Project to Metro's Red and Orange lines; and redeveloped and consolidated transit center, including bus terminal for the Metro Orange Line, future Bus Rapid Transit, and other local and regional bus lines, with integration of retail within the historic Lankershim Depot. As a Project option, a land use exchange program is included, allowing for up to 75,000 square feet of retail and restaurant space to be exchanged for up to 75,000 square feet of office space.

1.24 "Project Approvals" means the following land use actions requested by Developer from the City: (a) General Plan Amendment to (1) amend the North Hollywood – Valley Village Community Plan to create a Regional Center land use designation and to include Specific Plan Zone as a corresponding Zone for the Regional Center land use designation, and (2) change the land use designation for the Project Site to Regional Center, and; (b) Vesting Zone Change for the entire Property from PF-1VL, C2-2D-CA, C4-2D-CA, C4-2, and CM-1VL to a Specific Plan zone and corresponding modification to the LAMC to add the Specific Plan zone; (c) proposed Specific Plan to regulate development within the Property; (d) Vesting Tentative Tract Map for the merger and re-subdivision of proposed Blocks 1-6 and Block 8 within the Property; (e) establishment of a Signage Supplemental Use District; (f) Building Line Removal; (g) Development Agreement; and (f) certification of the EIR.

1.25 "Property" means the real property as described in Exhibit A.

1.26 "Reserved Powers" means the rights and authority excepted from this Agreement's restrictions on the City's police powers and which are instead reserved to the City. The Reserved Powers include the powers to enact regulations or take future Discretionary Actions after the Effective Date of this Agreement that may be in conflict with the Applicable Rules and Project Approvals, but are: (1) necessary to protect the public health and safety, and are generally applicable on a Citywide basis (except in the event of natural disasters as found by the Mayor or City Council such as floods, earthquakes and similar acts of God); (2) amendments to Uniform Codes, as adopted by the City of Los Angeles, and/or the Los Angeles Municipal Code, as applicable, regarding the construction, engineering and design standards for private and public improvements to be constructed on the Property and which are: (a) necessary to protect the health and safety of the residents of the City, and (b) generally applicable on a Citywide basis (except in the event of natural disasters as found by the Mayor or City Council such as floods, earthquakes, and similar acts of God); or (3) are necessary to comply with state or federal laws and regulations (whether enacted previous or subsequent to the Effective Date of this Agreement) as provided in Section 3.2.3.3.

1.27 "Term" means the period of time for which this Agreement shall be effective in accordance with Section 6.2 hereof.

1.28 "Transferee" means individually or collectively, Developer's successors in interest, assignees or transferees of all or any portion of the Property.

1.29 "Uniform Codes" means those building, electrical, mechanical, plumbing, fire and other similar regulations of a Citywide scope which are based on recommendations of a multi-state professional organization and become applicable throughout the City, such as, but not limited to, the Uniform Building Code, the Uniform Electrical Code, the Uniform Mechanical Code, Uniform Plumbing Code, or the Uniform Fire Code (including those amendments to the promulgated uniform codes which reflect local modification to implement the published recommendations of the multi-state organization and which are applicable City-wide).

2. RECITALS OF PREMISES, PURPOSE AND INTENT.

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

> The Legislature finds and declares that:
>
> (a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which

would make maximum efficient utilization of resources at the least economic cost to the public.

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

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

2.2 City Procedures and Actions.

2.2.1 City Planning Commission Action. The City Planning Commission held a duly noticed public hearing on September 28, 2023 and recommended certification of the EIR and approval of this Agreement on the same date.

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

2.3 Purpose of this Agreement.

2.3.1 Public Benefits. This Agreement provides assurances that the public benefits identified below in section 3.1.3 will be achieved and developed in accordance with the Applicable Rules and Project Approvals and with the terms of this Agreement and subject to the City's Reserved Powers. The Project will provide local and regional public benefits to the City, including without limitation those public benefits listed in Section 3.1.3 below.

2.3.2 Developer Objectives. In accordance with the legislative findings set forth in the Development Agreement Act, and with full recognition of the City's policy of judicious restraints on its police powers, the Developer wishes to obtain reasonable assurances that the Project may be developed in accordance with the Applicable Rules and Project Approvals and with the terms of this Agreement and subject to the City's Reserved Powers. To the extent of Project development, and as provided by Section 3.1.1, Developer anticipates making capital expenditures or causing capital expenditures to be made in reliance upon this Agreement. In the absence of this Agreement, Developer would have no assurance that it can

complete the Project for the uses and to the density and intensity of development set forth in this Agreement and the Project Approvals. This Agreement, therefore, is necessary to assure Developer that the Project will not be: (1) reduced or otherwise modified in density, intensity or use from what is set forth in the Project Approvals, or (2) subjected to new rules, regulations, ordinances or official policies or plans which are not adopted or approved pursuant to the City's Reserved Powers.

2.3.3 Mutual Objectives. Development of the Project in accordance with this Agreement will provide for the orderly development of the Property in accordance with the objectives set forth in the General Plan. Moreover, a development agreement for the Project will eliminate uncertainty in planning for and securing orderly development of the Property, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted. The Parties believe that such orderly development of the Project will provide public benefits, as described in Section 2.3.1, to the City through the imposition of development standards and requirements under the provisions and conditions of this Agreement, including without limitation increased tax revenues, creation and retention of jobs, improvements to the Metro North Hollywood Station as determined in accordance with the Joint Development and Option Agreement with Metro, creation of new market-rate and affordable housing as part of a transit-oriented development at a transit station, implementation of a comprehensive public art program, implementation of streetscape improvements and enhancement of the pedestrian environment, resulting in benefits to the City. Additionally, although development of the Project in accordance with this Agreement will restrain the City's land use or other relevant police powers, this Agreement provides the City with sufficient Reserved Powers during the Term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to City, the Developer will receive assurance that the Project may be developed during the Term of this Agreement in accordance with the Applicable Rules, Project Approvals and Reserved Powers, subject to the terms and conditions of this Agreement.

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

3. AGREEMENT AND ASSURANCES.

3.1 Agreement and Assurance on the Part of Developer. In consideration for the City entering into this Agreement, and as an inducement for the City to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the premises, purposes and intentions set forth in Section 2 of this Agreement, Developer hereby agrees as follows:

3.1.1 Project Development. Developer agrees that it will use commercially reasonable efforts, in accordance with its own subjective business judgment and taking into account market conditions and economic considerations, to undertake any development of the Project in accordance with the terms and conditions of this Agreement and the Project Approvals, which include:

1. Dedication of Land for Public Purposes. Provisions for the dedication of land for public purposes are set forth in the District NoHo Specific Plan and Vesting Tentative Map.

2. Transportation Improvements. The transportation improvements to be included within the scope of the Project are set forth in the District NoHo Specific Plan.

3. Intensity of Project. The maximum development intensity of the Project is set forth in the District NoHo Specific Plan.

4. Maximum Height of the Project. The maximum height for each of the Project's proposed building areas is shown in the District NoHo Specific Plan.

However, nothing in this Agreement shall be deemed to obligate Developer to initiate or complete development of the Project or any portion thereof within any period of time or at all, or deemed to prohibit Developer from seeking any necessary land use approvals for any different land use project on the Property.

3.1.2 Timing of Development. The Parties acknowledge that Developer cannot at this time predict when or at what rate the Property would be developed. Such decisions depend upon numerous factors which are not all within the control of Developer, such as market orientation and demand, availability of funds, interest rates, and competition. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal. 3d 465 (1984), that the failure of the parties therein to provide for the timing of development permitted a later adopted initiative restricting the timing of development and controlling the parties' agreement, it is the intent of Developer and the City to hereby acknowledge and provide for the right of Developer to develop the Project in such order and at such rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement; provided, however, that this Section 3.1.2 does not in any way affect the specific timing or implementation of improvements or other requirements of development to the extent such provisions are set forth in the Project Approvals.

Notwithstanding anything to the contrary in this Agreement, a Transferee of Developer of all or any portion of the Property shall only be responsible for satisfying the obligations set forth in the applicable Assignment Agreement which relate solely to the development of that portion of the Property transferred, assigned or conveyed to such Transferee and which the Transferee has agreed to perform pursuant to the Assignment Agreement applicable to such Transferee's portion of the Property.

3.1.3 Additional Obligations of Developer as Consideration for this Agreement. As additional consideration for this Agreement, Developer shall provide the additional public benefits listed below:

1. **Art Gallery.**
    a. The Developer shall provide and fit out 2,300 square feet of floor area, within the building developed on Subarea 8, suitable for occupation and use as an art gallery ("Art Gallery") contemporaneous with its construction of the building. The fit out shall include concrete floors, white drywall, code-compliant lighting, and code-compliant restroom facilities of a reasonable quality, consistent with similar gallery spaces within the City of Los Angeles.
    b. The Developer shall have no obligation to install or upkeep other tenant improvements to the space, including but not limited to artwork, highlight lighting, audio/visual or other low voltage installations, café, or furniture, fixtures, and equipment, which shall be the sole obligation of the operator of the Art Gallery ("Art Gallery Operator").
    c. For a period of ten (10) years from issuance of a certificate of occupancy for the Art Gallery ("Art Gallery Term"), the Developer shall make the space available rent-free and without charge to the Art Gallery Operator for janitorial services, property management, utilities, and property taxes. The Developer shall have no responsibility for operating the Art Gallery or for operational or staffing costs, which shall be the sole obligation of the Art Gallery Operator.
    d. The initial Art Gallery Operator, as well as any replacement operator, shall be selected through a request for proposals ("RFP") that meets the best practices for similar RFPs issued for art galleries of a similar size and location.
    e. If the Art Gallery Operator desires to continue to operate the Art Gallery at the end of the Art Gallery Term, then no later than six (6) months prior to the end of the Art Gallery Term, the Art Gallery Operator shall provide written notice to the Developer of its request to extend the term, and the parties may, in their mutual discretion, negotiate a new lease in good faith under market terms. After the expiration of the Art Gallery Term, as may be extended, if the Art Gallery Operator elects not to negotiate a new lease, the Developer may in its sole discretion elect to lease the space for another use.

2. **Moderate Income Affordable Housing Units.** In addition to the 311 Affordable Housing Units within the Property that shall be restricted at rents affordable to Low Income households, pursuant to the Project Approvals, the Developer shall provide an additional 55 affordable housing units restricted at rents affordable to Moderate Income households ("Moderate Income Units"). The Moderate Income Units shall be provided within Subareas 1, 2, 4 and 5/6 and shall comprise at least five (5) percent of the total residential units developed within each of these subareas; provided, however, that the percentage of Moderate Income Units included within the last of these subareas to obtain a building permit shall be reduced or increased, as applicable, by the amount necessary to ensure the total number of Moderate Income Units with the Property meets 55 units.

3. **Class IV Bicycle Facility.** Prior to the issuance of a certificate of occupancy for the development on Subarea 4, the Developer shall complete a two-way Class IV bicycle facility on the west side of Fair Avenue from Chandler Boulevard to District Way, to the satisfaction of the Los Angeles Department of Transportation.

4. **"First Look" Leasing for Local Retailers and Eateries.**
   - **a.** The Developer shall make commercially reasonable efforts to offer leases of retail and restaurant floor area within the Project to local retailers and eateries to achieve a tenant mix that reflects the character of the North Hollywood Arts District and that supports a vibrant mixed-use destination.
   - **b.** For the first six (6) months of the initial marketing period of each retail and restaurant space, the Developer shall accept offers only from local retailers and eateries.
   - **c.** For the first five (5) years after issuance of a certificate of occupancy for a building with retail or restaurant space, the Developer shall include information in its marketing materials available online, through social media and provided to brokers, regarding opportunities for local retailers and eateries to lease space within the Project.
   - **d.** For the purposes of this section, a "local retailer or eatery" shall mean an establishment with five or fewer stores, with a principal place of business within the City of Los Angeles, and not doing business as a franchisee or under a licensed trade name.

5. **Public Art.** The Developer shall provide public art that exceeds the Arts Development Fee required for the Project under Los Angeles Municipal Code Section 91.107.4.6. Prior to the issuance of a certificate of occupancy for the development on each of the following subareas, the Developer shall provide evidence to the Department of Cultural Affairs that the Arts Development Program completed for the subarea exceeds the requirement of the Arts Development Fee for that subarea by the following amounts: (i) Subarea 1 ($40,000); (ii) Subarea 2 ($30,000); (iii) Subarea 3 ($30,000); (iv) Subarea 4 ($25,000); (v) Subarea 5/6 ($100,000); (vi) Subarea 7 ($50,000); and (vii) Subarea 8 ($40,000).

6. **Community Events and Programming.** Prior to the opening of the Central Open Space, as defined in the Specific Plan, the Developer shall organize and hold at least three community events, such as a farmers' market, concert in the park, arts fair, or similar event, within the Property that are open to the public at no charge. The Developer shall incur at least $50,000 to organize and hold such events and shall, prior to the opening of the Central Open Space, make available receipts and invoices to the Director of Planning upon request to evidence such expenditures.

7. **Historical Plaques.** The Developer shall contribute $25,000 to the Council District 2 Real Property Trust Fund prior to the issuance of a certificate of occupancy for the development on each of Subarea 2, Subarea 5, and Subarea 8, for a total contribution

of $75,000, for the funding and installation of three historical plaques within the sidewalks adjacent to the Property commemorating the history of the North Hollywood area.

3.2 Agreement and Assurances on the Part of the City. In consideration for Developer entering into this Agreement, and as an inducement for Developer to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the premises, purposes and intentions set forth in Section 2 of this Agreement, the City hereby agrees as follows:

3.2.1 Entitlement to Develop. Developer has the vested right to develop the Project subject to the terms and conditions of this Agreement, the Applicable Rules, Project Approvals and the Reserved Powers. Developer's vested rights under this Agreement shall include, without limitation, the right to remodel, renovate, rehabilitate, rebuild or replace the existing development and the Project or any portion thereof throughout the applicable Term for any reason, including, without limitation, in the event of damage, destruction or obsolescence of the existing development or the Project or any portion thereof, subject to the Applicable Rules, Project Approvals and Reserved Powers.

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

3.2.3 Changes in Applicable Rules.

3.2.3.1. Nonapplication of Changes in Applicable Rules. Any change in, or addition to, the Applicable Rules, including, without limitation, any change in any applicable general or specific plan, zoning or building regulation, adopted or becoming effective after the Effective Date of this Agreement, including, without limitation, any such change by means of ordinance, City Charter amendment, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City, the Mayor, City Council, Planning Commission or any other Board, Commission, Department or Agency of the City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Property and/or the Project and which would conflict in any way with the Applicable Rules, Project Approvals, or this Agreement, shall not be applied to the Property or the Project unless such changes represent an exercise of the City's Reserved Powers, or are otherwise agreed to in this Agreement. Notwithstanding the foregoing, Developer may, in its sole discretion, consent to the application to the Project of any change in the Applicable Rules.

3.2.3.2. Changes in Building and Fire Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes which may occur from time to time in the Uniform Codes, as such Codes are adopted by the City of Los Angeles. In addition, development of the Project shall be subject to changes

occurring from time to time in Chapters V (Public Safety and Protection) and IX (Building Regulations) of the Municipal Code regarding the construction, engineering and design standards for both public and private improvements provided that these changes are (1) necessary to the health and safety of the residents of the City, and (2) are generally applicable on a Citywide basis (except in the event of natural disasters found by the Mayor or City Council, such as floods, earthquakes and similar disasters).

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

3.2.4 Subsequent Development Review. The City shall not require Developer to obtain any approvals or permits for the development of the Project in accordance with this Agreement other than those permits or approvals that are required by the Applicable Rules, the Reserved Powers and/or the Project Approvals. However, any subsequent Discretionary Action initiated by Developer, which substantially changes the permitted uses or substantially increases the height, density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect; provided, however, that no such subsequent Discretionary Action, when approved, will constitute grounds for the termination of this Agreement or otherwise affect the enforceability of this Agreement with respect to the development of the Property hereunder. The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that future Discretionary Actions may require additional environmental review pursuant to CEQA. In the event that additional environmental review is required by CEQA, the City agrees to utilize tiered environmental documents to the fullest extent permitted by law, as determined by the City, and as provided in California Public Resources Code Sections 21093 and 21094.

3.2.5 Effective Development Standards. The City agrees that it is bound to permit the uses, intensities of use and densities on this Property which are permitted by this Agreement and the Project Approvals, insofar as this Agreement and the Project Approvals so provide or as otherwise set forth in the Applicable Rules or the Reserved Powers. The City hereby agrees that it will not unreasonably withhold or unreasonably condition any Discretionary Action which must be issued by the City in order for the Project to proceed, provided that Developer reasonably and satisfactorily complies with all Citywide standard procedures for processing applications for Discretionary Action.

3.2.6 Interim Use. The City agrees that Developer may use the Property during the Term of this Agreement for any use which is otherwise permitted by the applicable zoning regulations and the General Plan in effect at the time of the interim use or pursuant to any approvals, permits, or other entitlements previously granted and in effect as of the Effective Date.

3.2.7 Moratoria or Interim Control Ordinances. In the event an ordinance, resolution, policy, or other measure is enacted, whether by action of the City, by initiative, or otherwise, which relates directly or indirectly to the Project or to the rate, amount, timing, sequencing, or phasing of the development or construction of the Project on all or any part of the Property or the implementation of the Mitigation Measures adopted in connection with approval of the Project, City agrees that such ordinance, resolution or other measure shall not apply to the Property, the Project or this Agreement, unless such changes are adopted pursuant to the Reserved Powers or other applicable provisions of this Agreement.

3.2.8 Special Taxes and Assessments. Developer shall not be obligated to support infrastructure financing undertaken by the City or others. Developer shall have the right, to the extent permitted by law, to protest, oppose and vote against any and all special taxes, assessments, levies, charges and/or fees imposed with respect to any assessment districts, Mello-Roos or community facilities districts, maintenance districts or other similar districts.

3.2.9 Impact Fees. Impact Fees imposed by the City with respect to the Project shall be only those Impact Fees in full force and effect as of the Effective Date, the amounts of which are subject to ongoing annual increases which shall be calculated at time of payment. The installation of improvements identified in the Mitigation Measures and/or the Conditions of Approval implemented in connection with the Project shall be accepted by the City in lieu of otherwise applicable Impact Fees. This Agreement shall not limit any impact fees, linkage fees, exaction, assessments or fair share charges or other similar fees or charges imposed by other governmental entities and which the City is required to collect or assess pursuant to applicable law (e.g., school district impact fees pursuant to Government Code Section 65995).

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

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

4. ANNUAL REVIEW.

4.1 Annual Review. During the Term of this Agreement, the City shall review annually good faith compliance with this Agreement by Developer and/or any Transferee(s). Such periodic review shall be limited in scope to good faith compliance with the provisions of this Agreement as provided in the Development Agreement Act and Developer and/or a Transferee shall have the burden of demonstrating such good faith compliance relating solely to such parties' portion of the Property and any development located thereon.

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

4.3 Director's Determination. On or before the yearly anniversary of the Effective Date of the Agreement, the Planning Director shall make a determination regarding whether or not Developer and/or any Transferee has complied in good faith with the provisions and conditions of this Agreement. This determination shall be made in writing with reasonable specificity, and a copy of the determination shall be provided to Developer and/or any Transferee, as the case may be, in the manner prescribed in Section 6.15. Copies of the determination shall also be made available to members of the public. If the Planning Director determines that the Developer has complied in good faith with the provisions and conditions of this Agreement, the annual review process for that year shall end.

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

4.5 Period to Cure Non-Compliance. If, as a result of this Annual Review procedure, it is found and determined by the Planning Director or the Planning Commission, on appeal, that Developer, and/or any Transferee, as the case may be, has not complied in good faith with the provisions and conditions of this Agreement, the City, after denial of any appeal or, where no appeal is taken, after the expiration of the appeal period described in Section 6.3, shall submit to Developer, and/or any Transferee, as the case may be, by registered or certified mail, return receipt requested, a written notice of non-compliance in the manner prescribed in Section 6.15, stating with specificity those obligations of Developer and/or any Transferee, as the case may be, which have not been performed. Upon receipt of the notice of non-compliance, Developer, and/or any Transferee, as the case may be, shall promptly commence to cure the identified items of non-compliance at the earliest reasonable time after receipt of the notice of non-compliance and shall complete the cure of such items of non-compliance not later than sixty (60) days after receipt of the notice of non-compliance, or such longer period as is reasonably necessary to remedy such items of non-compliance, provided that Developer, and/or any Transferee, as the case may be, shall continuously and diligently pursue such remedy at all times until such item of non-compliance is cured.

4.6 Failure to Cure Non-Compliance Procedure. If the Planning Director finds and determines that Developer, or Transferee, as the case may be, has not cured or commenced to cure an item of non-compliance pursuant to this Section, and that the City intends to terminate or modify this Agreement or those transferred or assigned rights and obligations, as the case may be, the Planning Director shall make a report to the Planning Commission. The Planning Director shall then set a date for a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after such public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Developer, or its Transferee, as the case may be, has not brought the Project into compliance pursuant to this Section, and that the City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the finding and determination shall be appealable to the City Council in accordance with Section 6.3 hereof. In the event of a finding and determination of compliance, there shall be no appeal by any person or entity. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245 (City Council's review of Commission and Council actions).

4.7 Termination or Modification of Agreement. The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after a finding or determination of noncompliance by the City Council or, where no appeal is taken, after the expiration of the appeal periods described in Section 6.3. There shall be no modifications of this Agreement unless the City Council acts pursuant to Government Code Sections 65867.5 and 65868, irrespective of whether an appeal is taken as provided in Section 6.3.

4.8 Reimbursement of Costs. Developer or Transferee, as the case may be, shall reimburse the City for its actual costs, reasonably and necessarily incurred, to accomplish the required annual review.

4.9. Evidence of Compliance Applicable to a Particular Property. Notwithstanding anything to the contrary in this Article 4 or any other provision of this Agreement, a Transferee of all or any portion of the Property shall only be responsible for submitting evidence of compliance with this Agreement as it relates solely to that portion of the Property transferred, assigned or conveyed to such Transferee in an Assignment Agreement authorized by Section 6.9 of this Agreement.

4.10. City's Rights and Remedies Against a Transferee. The City's rights in Article 4 of this Agreement relating to compliance with this Agreement by a Developer shall be limited to only those rights and obligations assumed by a Transferee under this Agreement and as expressly set forth in the applicable Assignment Agreement authorized by Section 6.9 of this Agreement.

4.11. Confirmation. From time to time, a Developer of any portion of the Property may, separate from the Annual Review process, submit a written request for confirmation from the Director that certain obligations of the Development Agreement have been satisfied. Within thirty (30) days of the submission of a written request, the Director shall issue a written

confirmation stating either that such obligations have been satisfied or setting forth the reasons why such obligations have not been satisfied.

5. DEFAULT PROVISIONS

5.1 Default by Developer.

5.1.1 Default. In the event Developer or a Transferee of any portion of the Property does not perform its obligations under this Agreement applicable to its portion of the Property, as specified in the applicable Assignment Agreement, in a timely manner and in compliance with this Agreement, the City's rights and remedies provided by this Agreement, including without limitation modifying or terminating this Agreement shall relate exclusively to the defaulting party and such defaulting party's portion of the Property provided that the City has first complied with the applicable notice and opportunity to cure provisions in Section 5.1.2 hereof. In no event shall a default by a Developer or a Transferee of any portion of the Property constitute a default by any non-defaulting Developer or Transferee with respect to such non-defaulting parties' obligations hereunder nor affect such non-defaulting parties' rights hereunder, or respective portion of the Property.

5.1.2 Notice of Default. The City through the Planning Director shall first submit to Developer or Transferee, as applicable, by registered or certified mail, return receipt requested, a written notice of default in the manner prescribed in Section 6.18, stating with specificity those obligations of Developer or Transferee, as applicable, that have not been performed. Upon receipt of the notice of default, Developer or Transferee, as applicable, shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than sixty (60) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that Developer or Transferee, as applicable, shall continuously and diligently pursue such remedy at all times until such default(s) is cured. In the event that Developer has assigned all or any portion of the Property pursuant to Section 6.9, Developer shall have the right but not the obligation to cure any defaults of any Transferee. Further, any Transferee shall have the right but not the obligation to cure any defaults of Developer. In the case of a dispute as to whether Developer (or its Transferee) has cured the default, the Parties shall submit the matter to dispute resolution pursuant to Section 6.5 of this Agreement.

5.1.3 Failure to Cure Default Procedures. If after the cure period has elapsed, the Planning Director finds and determines that Developer or a Transferee, as the case may be, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Planning Director shall make a report to the Planning Commission and then set a public hearing before the Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Developer or Transferee, as the case may be, has not cured such default pursuant to this Section, and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, Developer and or Transferee, shall be entitled to appeal that finding and determination to the City Council in accordance with Section 6.3. In the event of a finding and determination that all defaults are

cured, there shall be no appeal by any person or entity. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245 (City Council review of Commission and Board actions).

5.1.4. **Termination or Modification of Agreement.** The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, relating solely to the defaulting Developer or Transferee and such defaulting parties' portion of the Property after the final determination of the City Council or, where no appeal is taken, after the expiration of the appeal periods described in Section 6.3 relating to the defaulting parties' rights and obligations hereunder. There shall be no termination or modification of this Agreement unless the City Council acts pursuant to Section 6.3 hereof.

5.2 Default by the City.

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

5.2.2 Notice of Default. Developer or Transferee, as the case may be, shall first submit to the City a written notice of default stating with specificity those obligations that have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than one hundred and twenty (120) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City shall continuously and diligently pursue such remedy at all times until such default(s) is cured. In the case of a dispute as to whether the City has cured the default, the Parties shall submit the matter to dispute resolution pursuant to Section 6.5 of this Agreement.

5.3 No Monetary Damages. It is acknowledged by the Parties that neither the City nor the Developer would have entered into this Agreement if it were liable in monetary damages under or with respect to this Agreement or the application thereof. Therefore, the Parties agree that the Parties shall not be liable in monetary damages and the Parties covenant not to sue for or claim any monetary damages for the breach of any provision of this Agreement. The Parties in this paragraph shall include any successor or assign of the Parties, including, a Transferee of Developer.

6. GENERAL PROVISIONS.

6.1 Effective Date. This Agreement shall be effective as set forth in Section 1.11 above.

6.2 Term. The Term of this Agreement shall commence on the Effective Date and shall extend for a period of fifteen (15) years after the Effective Date, unless said Term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties hereto. Following the expiration of this Term, this Agreement shall terminate and be of no further force and effect; provided, however, that this termination shall not affect any right or duty arising from entitlements or approvals, including the Project Approvals on the Property, approved concurrently with, or subsequent to, the Effective Date of this Agreement. The Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from any enactments pursuant to the Reserved Powers or moratoria, or from legal actions, administrative proceedings such as appeals or delays of ministerial actions, or appeals which enjoin performance under this Agreement or act to stay performance under this Agreement (other than bankruptcy or similar procedures), or for the period of time during which a lawsuit or litigation (including appeals) relating to the Project or the Project Approvals, including this Development Agreement, has been filed and is pending in a court of competent jurisdiction.

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

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

respect to bankruptcy or receivership initiated by or on behalf of Developer or, if not dismissed within ninety (90) days, by any third parties against Developer. If written notice of such delay is given to either Party within thirty (30) days of the commencement of such delay, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

6.5 Dispute Resolution.

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

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

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

6.5.4 Extension Of Term. The Term of this Agreement as set forth in Section 6.2 shall automatically be extended for the period of time in which the Parties are engaged in dispute resolution to the degree that such extension of the Term is reasonably required because activities which would have been completed prior to the expiration of the Term are delayed beyond the scheduled expiration of the Term as the result of such dispute resolution.

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

occur**Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California.

6.8 Amendments. This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868, and any Transferee, in the event such amendment affects the rights and obligations of the Transferee under this Agreement in connection with the development, use and occupancy of its portion of the Property and/or any improvements located thereon. Any amendment to this Agreement which relates to the Term, permitted uses, density or intensity of use, height, or size of buildings, provisions for reservation and dedication of land, conditions, restrictions, and requirements relating to subsequent Discretionary Action or any conditions or covenants relating to the use of the Property, which are not allowed or provided for under the Project Approvals or Applicable Rules, shall require notice and public hearing before the Parties may execute an amendment thereto.

6.9 Assignment. The Property, as well as the rights and obligations of Developer under this Agreement, may be transferred or assigned in whole or in part by Developer to a Transferee without the consent of the City, except as set forth in Sections 6.9.1 and 6.9.2 below. Upon such assignment the assignor shall be released from the obligations so assigned.

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

6.9.1.1. Written Notice of Assignment Required. Developer, or any successor transferor, gives prior written notice to the City of its intention to assign or transfer any of its interests, rights or obligations under this Agreement and a complete disclosure of the identity of the assignee or transferee, including copies of the Articles of Incorporation in the case of corporations and the names of individual partners in the case of partnerships. Upon request by Developer, City shall provide written acknowledgement of such assignment in the form reasonably requested by Developer. Any failure by Developer or any successor transferor to provide the notice shall be curable in accordance with the provisions of Section 5.1.

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

6.9.2 Liability Upon Assignment. Unless otherwise stated elsewhere in this Agreement to the contrary, each Transferee of any portion of the Property shall be solely and only liable for performance of such Transferee's obligations applicable to its portion of the Property under this Agreement as specified in the applicable Assignment Agreement. Upon the assignment or transfer of any portion of the Property, the Transferee shall become solely and only liable for the performance of those assigned or transferred obligations and shall have the rights of a "Developer" under this Agreement; which such rights and obligations shall be set forth specifically in the Assignment Agreement, acknowledged by the transferring Developer, and the Transferee, as of the date of such transfer, assignment or conveyance of the applicable

portion of the Property. The failure of any Transferee to perform the obligations assigned to it may result, at the City's option, in a declaration that this Agreement has been breached with regards to that specific Transferee, and an election to terminate this Agreement as provided for in Section 5.1 hereof, as it relates to that Transferee's holding only and no other portion of the Property. This partial termination is severable from the entire Agreement, and shall not affect the remaining entirety of the Agreement.

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

6.11 Cooperation And Implementation.

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

6.11.2 Other Governmental Permits. Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. The City shall cooperate with Developer in its endeavors to obtain such permits and approvals and shall, from time to time at the request of Developer, attempt with due diligence and in good faith to enter into binding agreements with any such entity to ensure the availability of such permits and approvals, or services, provided such agreements are reasonable and not detrimental to the City. These agreements may include, but are not limited to, joint powers agreements under the provisions of the Joint Exercise of Powers Act (Government Code Section 6500, et seq.), or the provisions of other laws to create legally binding, enforceable agreements between such parties. To the extent allowed by law, Developer shall be a party to any such agreement, or a thirdparty beneficiary thereof, entitled to enforce for its own benefit on behalf of the City, or in its own name, the rights of the City or Developer thereunder or the duties and obligations of the parties thereto. Developer shall reimburse the City for all costs and expenses incurred in connection with seeking and entering into any such agreement provided that Developer has requested such agreement. Developer or Transferee, as the case may be, shall defend the City in any challenge by any person or entity to any such agreement, and shall reimburse the City for any costs and expenses incurred by the City in enforcing any such agreement. Any fees, assessments, or other amounts payable by the City thereunder shall be borne by Developer or Transferee, as the case may be, except where Developer or Transferee, as the case may be, has notified the City in writing, prior to the City entering into such agreement, that it does not desire for the City to execute such agreement.

6.11.3 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to affirmatively cooperate in defending said action.

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

6.13 Indemnification.

6.13.1 Obligation to Defend, Indemnify, and Hold Harmless. Each Developer of any portion of the Property hereby agrees to defend, indemnify, and hold harmless the City and its agents, officers, and employees, from any claim, action, or proceeding ("Proceeding") against the City or its agents, officers, or employees: (i) to set aside, void, or annul, all or any part of any Project Approval, or (ii) for any damages, personal injury or death which may arise, directly or indirectly, from such Developer or such Developer's contractors, subcontractors', agents', or employees' operations in connection with the construction of the Project, whether operations be by such Developer or any of such Developer's contractors, subcontractors, by anyone or more persons directly or indirectly employed by, or acting as agent for such Developer or any of such Developer's contractors or subcontractors. In the event that the City, upon being served with a lawsuit or other legal process to set aside, void or annul all or part of any Project Approval, fails to promptly notify the Developer of the Proceeding, or fails to cooperate fully in the defense of the Proceeding, the Developer shall thereafter be relieved of the obligations imposed in this Section. However, if the Developer has actual notice of the Proceeding, it shall not be relieved of the obligations imposed hereunder, notwithstanding the failure of the City to provide prompt notice of the Proceeding. The City shall be considered to have failed to give prompt notification of a Proceeding if the City, after being served with a lawsuit or other legal process challenging the Project Approvals, unreasonably delays in providing notice thereof to the Developer. As used herein, "unreasonably delays" shall mean any delay that materially adversely impacts the Developer's ability to defend the Proceeding. The obligations imposed in this Section shall apply notwithstanding any allegation or determination in the Proceedings that the City acted contrary to applicable laws. Nothing in this Section shall be construed to mean that the Developer shall hold the City harmless and/or defend it from any claims arising from, or alleged to arise from the negligent acts, or failure to act intentional misconduct or gross negligence in the City's performance of this Agreement.

6.13.2 Defending the Project Approvals. The Developer shall have the obligation to timely retain legal counsel to defend against any proceeding to set aside, void, or annul, all or any part of any Project Approval. The City shall have the right if it so chooses, to defend the Proceeding utilizing in-house legal staff, in which case the Developer shall be liable for all legal costs and fees reasonably incurred by the City, including charges for staff time charged. In the event of a conflict of interest which prevents the Developer's legal counsel from representing the City, and in the event the City does not have the in-house legal resources to

defend against the Proceeding, the City shall also have the right to retain outside legal counsel provided that retaining outside legal counsel causes no delays, in which case the Developer shall be liable for all legal costs and fees reasonably incurred by the City. Provided that the Developer is not in breach of the terms of this Section, the City shall not enter into any settlement of the Proceeding which involves modification to any Project Approval or otherwise results in the Developer incurring liabilities or other obligations, without the consent of the Developer.

6.13.3 Breach of Obligations. Actions constituting a breach of the obligations imposed in this Section shall include, but not be limited to: (i) the failure to timely retain qualified legal counsel to defend against the Proceedings; (ii) the failure to promptly pay the City for any attorneys' fees or other legal costs for which the City is liable pursuant to a judgment or settlement agreement in the Proceeding seeking to set aside, void or annul all or part of any Project Approval; or (iii) the breach of any other obligation imposed in this Section, in each case after written notice from the City and a reasonable period of time in which to cure the breach, not to exceed thirty-days. For purposes of this Section, the Developer shall be considered to have failed to timely retain qualified legal counsel if such counsel is not retained within fourteen (14) days following the City's provision of the notice of Proceedings to the Developer required hereunder. In the event that the Developer breaches the obligations imposed in this Section, the City shall have no obligation to defend against the Proceedings, and by not defending against the Proceedings, the City shall not be considered to have waived any rights in this Section.

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

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

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

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

6.13.8 Deposit. Following the filing of a lawsuit, or other legal process seeking to set aside, void or annul all or part of any Project Approval, the Developer shall be required, following written demand by the City, to place funds on deposit with the City, which funds shall be used to reimburse the City for expenses incurred in connection with defending the Project Approvals. For Project Approvals which included the certification of an environmental impact report by the City, the amount of said deposit shall be ten thousand ($10,000) dollars. For all

other Project Approvals, the amount of the deposit shall be five thousand ($5,000) dollars. Any unused portions of the deposit shall be refunded to the Developer within thirty (30) days following the resolution of the challenge to the Project Approvals. All Deposits must be paid to the City within thirty (30) days of the Developer's receipt of the City's written demand for the Deposit.

6.14 Extension of Time for All Project Approvals. The duration of all Project Approvals shall automatically be extended for the Term of this Agreement.

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

If to the City:

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

with copies to:

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

If to Developer:

NoHo Development Associates, LLC
Attention: Greg Ames
2221 Rosecrans Avenue, Suite 200
El Segundo, CA 90245

with copies to:

Armbruster Goldsmith & Delvac LLP
Attention: David A. Goldberg
12100 Wilshire Blvd., Suite 1600
Los Angeles, CA 90025

6.16 Recordation. As provided in Government Code Section 65868.5, this Agreement shall be recorded with the Registrar-Recorder of the County of Los Angeles within ten (10) days following the Effective Date. Developer shall provide the City Clerk with the fees for such recording prior to or at the time of such recording should City Clerk record the Agreement.

6.17 Constructive Notice And Acceptance. Every person who now or hereafter owns or acquires any right, title, interest in or to any portion of the Property, is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether

or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

6.18 Successors And Assignees. Except as otherwise provided in Section 6.9, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties, any subsequent owner or ground lessee of all or any portion of the Property and their respective successors and assignees.

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

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

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

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

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

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

6.25 Mortgagee Protection.

6.25.1 Discretion to Encumber. This Agreement shall not prevent or limit Developer in any manner, at its sole discretion, from encumbering the Property or any portion of the Property or any improvement on the Property by any mortgage, deed of trust or other security device securing financing with respect to the Property or its improvements. The City acknowledges that the lender(s) providing such financing may require certain Agreement interpretations and agrees, upon request, from time to time, to meet with the Developer and representatives of such lender(s) to provide within a reasonable time period the City's response to such requested interpretations. The City will not unreasonably withhold its consent to any such requested interpretation, provided that such interpretation is consistent with the intent and purposes of this Agreement. Any mortgagee of a mortgage or a beneficiary of a deed of trust encumbering all or any portion of the Property or any successor or assign thereof, including without limitation any purchaser at a judicial or non-judicial foreclosure sale or a person or entity who obtains title by deed-in-lieu of foreclosure on any portion of the Property (individually or collectively, as the context requires, "Mortgagee") shall be entitled to the following rights and privileges:

6.25.2 Mortgage Not Rendered Invalid. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the priority of the lien of any mortgage or deed of trust on the Property made in good faith and for value. No Mortgagee shall have an obligation or duty under this Agreement to perform the Developer's obligations, or to guarantee such performance, prior to taking title to all or a portion of the Property (subject to the applicable provisions of this Section 6.25).

6.25.3 Request for Notice to Mortgagee. Each Mortgagee who has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive a copy of any notice of default, any notice or demand with respect to the Project or the development thereof (or of any portion thereof) or the Project Approvals, the amendment, modification, restatement, supplement or termination of this Agreement, and any other material notice or demand delivered to the Developer with respect to this Agreement.

6.25.4 Mortgagee's Time to Cure. With respect to any such notices or demands relating to breaches or defaults or alleged breaches or defaults by Developer under this Agreement, the City shall provide a copy of such notice to each Mortgagee within ten (10) days of sending such notice to the Developer. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of sixty (60) days after the later of: (a) the expiration of the notice and/or cure period that Developer is given to cure such default under this Agreement, or (b) such longer period as is reasonably necessary to remedy such default(s) and, at its option, to add the cost thereof to the security interest debt and the lien on its security interest, provided that the Mortgagee shall continuously and diligently pursue such remedy at all times until such default(s) is cured, subject to Force Majeure delays. Notwithstanding the foregoing, if such default is of a nature that can only be remedied by such Mortgagee obtaining possession of the Property, or any portion thereof, and such Mortgagee seeks to obtain possession, such Mortgagee (or its designee or nominee) shall have until sixty (60) days after the date of obtaining such possession to cure or, if such default cannot reasonably be cured within such period, to commence to cure such default, provided that such Mortgagee (or its designee or nominee) shall

continuously and diligently pursue such remedy at all times until such default(s) is cured, subject to Force Majeure delays.

6.25.5 Cure Rights. Any Mortgagee who takes title to all or any part of the Property pursuant to foreclosure of the mortgage or deed of trust, or a deed in lieu of foreclosure, and assumed in writing all applicable rights and obligations of Developer under this Agreement, shall succeed to the rights and obligations of the Developer under this Agreement as to the Property or portion thereof so acquired; provided, however, in no event shall such Mortgagee or any successor in interest to such Mortgagee be liable for any defaults or monetary obligations of the Developer arising prior to acquisition of title to the Property or applicable portion thereof by such Mortgagee or such successor in interest, and such Mortgagee's (or such successor in interest's) liability hereunder shall be limited to such period as such Mortgagee (or such successor in interest) is in possession of the Property or applicable portion thereof which such Mortgagee (or such successor in interest) has acquired and only to the extent of its interest in the Property or such portion thereof, except that any such Mortgagee (or such successor in interest) shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees and other monetary or nonmonetary obligations due under this Agreement for the Property, or portion thereof acquired by such Mortgagee (or such successor in interest), have been satisfied or otherwise waived by the City in its discretion.

6.25.6 Bankruptcy. If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving the Developer, the times specified in Section 6.25.4 above shall be extended for the period of the prohibition, except that any such extension shall not extend the maximum term of this Agreement.

6.25.7 Disaffirmation. If: (i) this Agreement is terminated as to any portion of the Property by reason of any default, or (ii) this Agreement is disaffirmed or otherwise cancelled by a receiver, liquidator, or trustee for the Developer or its property as a result of a bankruptcy or other insolvency proceeding, the City, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new development agreement for the Project as to such portion of the Property with the most senior Mortgagee requesting such new agreement and such new development agreement shall be prior to any security financing interest or lien, charge, or encumbrance on the Property in favor of any such security financing interest and each applicable party shall execute such additional consents and/or subordination agreements as may reasonably requested by the City or the new Developer to evidence the priority of such new development agreement to all security financing interests, whether recorded prior or subsequent to execution of such new development agreement. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this Section 6.25.7.

6.25.8 Modifications. If any actual or potential Mortgagee should, as a condition of providing financing for all or a portion of the Property or any improvements thereon, request any modification of this Agreement in order to protect its interests in the Property, such portion thereof, such improvements thereon, or this Agreement, the City shall

consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the Parties under this Agreement.

6.25.9 Miscellaneous Provisions.

6.25.9.1. Limitation on Liability. In the event that any Mortgagee assumes the obligations of the Developer under this Agreement as to all or any portion of the Property, such Mortgagee shall only be liable or bound by the Developer's obligations hereunder for such period as such Mortgagee is in possession and/or control of the portion of the Property in which such Mortgagee has acquired its interest and, furthermore, notwithstanding anything to the contrary contained in this Agreement, shall only be liable to the extent of its interest (whether fee or leasehold) in the portion of the Property and the improvements thereon.

6.25.9.2. Termination. Notwithstanding any other provision of this Agreement to the contrary, if any uncured default by Developer shall occur which, pursuant to any provision of this Agreement, entitles the City to terminate this Agreement, the City shall not be entitled to terminate this Agreement unless (i) the City has provided each Mortgagee with notice of default pursuant to Section 6.25.4, and (ii) within the applicable cure period set forth in Section 6.25.4, each such Mortgagee shall fail to either cure such default or obtain possession of the Property (or applicable portion thereof) within the applicable time periods set forth in Section 6.25.4 (as the same may be extended by Section 6.25.6).

6.25.9.3. Amendment. No amendment or modification to this Section 6.25 may be entered into without the prior written consent of each Mortgagee who has submitted a request in writing to the City in the manner specified herein for giving notices pursuant to Section 6.25.3, such consent not to be unreasonably withheld.

6.25.9.4. Condemnation or Insurance Proceeds**.** The rights of any Mortgagee, pursuant to its security instrument, to receive condemnation or insurance proceeds which are otherwise payable to such Mortgagee or to a party which is its mortgagor shall not be impaired by any term or provision of this Agreement.

6.25.9.5. Loss Payable Endorsement to Insurance Policy**.** The City agrees that the name of the senior-most Mortgagee may be added as the primary loss payee to the "loss payable endorsement" attached to any and all insurance policies required to be carried by Developer under this Agreement.

6.25.9.6. Bankruptcy Affecting the Developer**.** The Developer and City hereby agree that the terms and provisions of this Agreement shall be covenants running with the land and that this Agreement shall be subject to rejection in bankruptcy and each of Developer and City hereby waives, to the extent permitted by applicable law, its rights to reject this Agreement in bankruptcy. If, notwithstanding the foregoing, the Developer, as debtor in possession, or a trustee in bankruptcy for the Developer seeks to and does reject this Agreement in connection with any proceeding involving the Developer under the United States Bankruptcy Code or any similar state or federal statute for the relief of debtors (a "Bankruptcy Proceeding"), then without waiver of any right of the City to challenge such rejection, the Developer and the City hereby agree for the benefit of the City and each and every Mortgagee

that such rejection shall, subject to such Mortgagee's acceptance, be deemed the Developer's assignment of the Agreement and the portions of the Property corresponding thereto, to the Developer's Mortgagee(s) in the nature of an assignment in lieu of foreclosure. Upon such deemed assignment, this Agreement shall not terminate and each Mortgagee shall become the Developer hereunder as if the Bankruptcy Proceeding had not occurred (subject to the limitations on liability set forth above in this Section 6.25), unless such Mortgagee(s) shall reject such deemed assignment by written notice to the City within ninety (90) calendar days after receiving notice of the Developer's rejection of this Agreement in a Bankruptcy Proceeding.

6.25.9.7. Estoppel Certificate. Upon written request by any Mortgagee, the City shall executed an estoppel certificate in connection with any security financing instrument, that certifies: (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 date and nature of such modifications, (ii) that there are no current uncured defaults under this Agreement or specifying the dates and nature of any such defaults, (iii) that such Mortgagee is a "Mortgagee" under and as each such term is defined in this Agreement, and is entitled to all of the rights and benefits afforded a Mortgagee under this Agreement, including, without limitation, Section 6.25 of this Agreement, and (v) to such additional matters as such Mortgagee shall reasonably require.

6.26. Tentative Maps. Pursuant to California Government Code Section 66452.6(a), the duration of tentative maps filed in connection with the Project shall automatically be extended for the Term of this Agreement.

6.27 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer. During the Term of this Agreement, clarifications to this Agreement and the Applicable Rules may be appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the terms of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarification through operating memoranda approved in writing by City and Developer, which, after execution, shall be attached hereto and become part of this Agreement and the same may be further clarified from time to time as necessary with future written approval by City and the Developer. Operating memoranda are not intended to and cannot constitute an amendment to this Agreement or allow a subsequent Discretionary Action to the Project but are mere ministerial clarifications, therefore public notices and hearings shall not be required. The City Attorney shall be authorized, upon consultation with, and approval of, the Developer, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment hereof which requires compliance with the provisions of Section 6.8 above. The authority to enter into such operating memoranda is hereby delegated to the City Planning Director (or his or her designee) who is hereby authorized to execute any operating memoranda hereunder without further City action

6.28 Certificate of Performance. Upon the completion of the Project, or upon performance of this Agreement or its earlier revocation and termination, the City shall provide the Developer, upon the Developer's request, with a statement ("Certificate of Performance") evidencing said completion or revocation and the release of the Developer from further obligations hereunder, except for any ongoing obligations hereunder. The Certificate of

Performance shall be signed by the appropriate agents of the Developer and the City and shall be recorded in the official records of Los Angeles County, California. Such Certificate of Performance is not a notice of completion as referred to in California Civil Code Section 8182.

6.30 Counterparts. This Agreement is executed in duplicate originals, each of which is deemed to be an original. This Agreement, not counting the Cover Page, Table of Contents or Index, consists of ___ pages and _____ (__) Exhibits.

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

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

By: _____

Karen Bass, Mayor

DATE:

APPROVED AS TO FORM:
HYDEE FELDSTEIN SOTO, City Attorney

By: _____

_____, Deputy City Attorney

DATE:

ATTEST:
_____, City Clerk

By: _____

Deputy

DATE:

NOHO DEVELOPMENT ASSOCIATES, LLC, a Delaware limited liability company

By: TC NOHO Member, LLC, a Delaware limited liability company, its sole member

By: TC LA Development, Inc., a Delaware corporation, its sole member

By: _____
Name:
Title:

By: _____
Name:
Title:

APPROVED AS TO FORM:

_____

By: _____

Exhibit A:

Legal Description of the Property