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DEVELOPMENT AGREEMENT

BETWEEN

CITY OF SANTA MONICA

AND

**OCEAN AVENUE LLC,
A DELAWARE LIMITED LIABILITY COMPANY**

, 2020

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DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”), dated _____, 2020 is entered into by and between OCEAN AVENUE LLC, a Delaware limited liability company (“**Developer**”), and the CITY OF SANTA MONICA, a municipal corporation organized and existing pursuant to the laws of the State of California and the Charter of the City of Santa Monica (the “**City**”), with reference to the following facts:

RECITALS

A. Pursuant to California Government Code Section 65864 et seq., and Chapter 9.60 of the Santa Monica Municipal Code (collectively, the “**Development Agreement Statutes**”), the City is authorized to enter into binding development agreements with persons or entities having a legal or equitable interest in real property for the development of such real property.

B. Developer is the owner of approximately 192,063 square feet of land located in the City of Santa Monica, State of California, commonly known as 1133 Ocean Avenue, as more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (the “**Property**”). The Property is currently improved with a 301-room hotel comprised of the following: (1) the six-story City-designated Landmark Palisades Building, constructed in 1924, which runs along the northern portion of Second Street and the eastern portion of California Avenue (the “**Palisades Building**”), (2) the ten-story Ocean Tower that lies in the middle portion of the Property, with an elevator tower rising to approximately twelve stories (the “**Existing Ocean Tower**”), (3) the two-story Administration Building that includes meeting and back of house space and is located on the southern portion of the Property near Second Street (the “**Existing Administration Building**”), (4) a one-story building that houses The Bungalow lounge/bar located between the parking lot on Wilshire Boulevard and Ocean Avenue and the Ocean Tower, (5) several single-story and two-story buildings on the northwestern portion of the Property along Ocean Avenue and California Avenue (the “**Existing Bungalows**”), (6) 103 parking spaces in two surface parking lots located adjacent to Wilshire Boulevard, (7) and extensive perimeter walls that limit pedestrian and visual access to/from the Property. The Moreton Bay Fig Tree, planted in 1879 and landmarked by the City on August 17, 1976, is also located on the Property. The existing improvements on the Property were added piecemeal over the years with no cohesive plan; consequently, the hotel is long-overdue for redevelopment in order to remain competitive in the greater Los Angeles luxury hotel marketplace.

C. Developer is also the owner of approximately 15,000 square feet of land located in the City of Santa Monica, State of California, commonly known as 1127-1129 Second Street, as more particularly described in Exhibit “B” attached hereto and incorporated herein by this reference (the “**Second Street Property**”). The Second

Street Property is currently improved with a surface parking lot with 64 parking spaces that is utilized by the Hotel's valet parking operation.

D. The City has included the Property within the Downtown Core land use designation under the City's Land Use and Circulation Element of its General Plan (the "**LUCE**"). LUCE Policy D1.5 designates the Property as one of seven sites in the Downtown District to focus new investment given its accessibility to transit and ability to accommodate mixed-use development, contribute to the pedestrian-oriented environment, and support substantial community benefits. The LUCE did not establish maximum building height limits, floor area ratios ("**FAR**"), or other specific development standards (e.g., setbacks and step backs) for new buildings within the Downtown Core designation; instead, the LUCE deferred such standards to a future Downtown specific plan.

E. On April 27, 2011, Developer filed an application for a Development Agreement, pursuant to Santa Monica Municipal Code ("**SMMC**") Section 9.60.020 (the "**Development Application**"). The Development Application was designated by the City as Application No. 011DEV-003. The Development Application proposes a mixed-use hotel/residential project with ground floor retail and subterranean parking. The originally-filed plans proposed, among other things, 265 hotel rooms, 120 residential condominiums units, a maximum height of 135 feet and a 2.9 FAR (the "**2011 Plans**"). As further described below, the Development Application has been revised and refined since the initial filing but has always included hotel and pedestrian-oriented retail/restaurant uses, residential uses, and subterranean parking, as is more fully described in this Agreement.

F. The Property is located in the California Coastal Zone. The City has a 1992 Coastal Land Use Plan that is partially certified by the California Coastal Commission ("**1992 LUP**"). In October 2018, the City adopted the Local Coastal Program Update, Land Use Plan, Final Draft, October 2018 ("**2018 Draft LUP**") to replace the 1992 LUP. The 2018 Draft LUP has been submitted to the California Coastal Commission for certification but has not been certified as of this Agreement's Effective Date.

G. Developer filed an application to amend the 1992 LUP on April 27, 2011 and modified the application on September 27, 2019 to be consistent with the DCP and 2018 Draft LUP policies ("**1992 LUP Amendment**") as follows:

- 1) Revise 1992 LUP Policy #67 to allow a maximum height of 130 feet and FAR of 2.6 for the Property;
- 2) Revise 1992 LUP Policy #68 to clarify the allowed uses at the Second Street Property include a 100% Affordable Housing Project developed at the maximum development standards in 1992 LUP Policy #69; and

- 3) Revise 1992 LUP Policy #69 to allow a maximum height of 60 feet, 2.75 FAR on the Second Street Property and confirm that the development standards for medium-density multiple family residential areas do not apply to the Second Street Property.

H. On February 8, 2012, the Planning Commission held a public hearing to preliminarily review and provide feedback on the 2011 Plans.

I. In March 2012, Developer filed a Landmark application to augment the 1976 Landmark designation of the Property's Moreton Bay Fig Tree (the "**Moreton Bay Fig Tree**"). The Landmarks Commission held public hearings on the proposed amendment application (12LM-002) and on January 14, 2013 designated the Palisades Building as a City Landmark and the Property as a Landmark Parcel. In addition, the Landmarks Commission issued a Statement of Official Action documenting the following: (i) the Moreton Bay Fig Tree remains a City Landmark; (ii) the Palisades Building is a City Landmark under Landmarks Ordinance Criteria 1 and 4; (iii) the Property was described as a Landmark Parcel for its long-standing association with tourism and leisure, as well as with historic persons including one of Santa Monica's founding fathers; (iv) the other existing buildings on the Main Property were expressly excluded from the Landmark designation given their significant past alterations; and (v) no individual elements of the Property's landscape (other than the Moreton Bay Fig Tree) are historically significant, however the verdant landscape character was identified as significant under Criterion 6.

J. On April 24, 2012, the City Council held a public hearing to preliminarily review and provide feedback on the 2011 Plans.

K. In 2013, the 2011 Plans were revised in response to feedback from the Planning Commission, City Council and members of the public. The revised 2013 plans included, among other things, reduced density (2.8 FAR), increased height (maximum height of 262 feet), increased hotel rooms (280 rooms), and the same maximum number of residential condominiums (120 units) compared with the 2011 Plans (the "**2013 Plans**").

L. In August 2017, the City adopted the Downtown Community Plan ("**DCP**"), a specific plan governing the Downtown including the Property. The Property is located within both the DCP's Ocean Transition District and the Established Large Site ("**ELS**") Overlay designations. The ELS Overlay is provided for three sites in the Downtown that the DCP indicated have the potential to accommodate significant new development and provide significant community benefits. The ELS Overlay designation allows any project on the Property to request approval for development up to 130 feet in height and a 3.0 FAR subject to the project being processed through a development agreement, as well as compliance with other specified requirements. Table 2A.4 of the DCP lists three "preferred" community benefits for a project on the Property: affordable housing, public open space, and historic preservation, all of which are components of the proposed project.

M. After adoption of the DCP, the 2013 Plans were revised to conform with the DCP. Revised plans filed in 2018, included, among other things, reduced density (2.6 FAR), reduced height (maximum height of 130 feet), reduced number of condominium units (up to 60 units) and an increased number of hotel rooms (312 rooms) compared with the 2011 Plans and 2013 Plans (the “**2018 Plans**”).

N. On March 11, 2019, the Landmarks Commission held a public hearing to preliminarily review and provide feedback on the 2018 Plans.

O. On April 15, 2019, the Architectural Review Board held a public hearing to preliminarily review and provide feedback on the 2018 Plans.

P. The current proposed project (the “**Project**”) now includes, among other things, (1) retention and celebration of the Moreton Bay Fig Tree, (2) preservation and adaptive reuse of the Palisades Building for hotel uses, (3) a new terraced two to ten-story building designed around the Moreton Bay Fig Tree with hotel, residential and ground floor retail/café uses and an above-grade six-floor physical connection to the six-floor Palisades Building (the “**Ocean Building**”), (4) a new seven-story building with hotel uses near the corner of Ocean Avenue and California Avenue with an above-grade six-floor physical connection to the Palisades Building (the “**California Building**”), (5) substantial open space, including publicly-accessible open space, (6) subterranean space including for parking, and (7) substantial other project features and community benefits. The Project is more particularly shown on the Project Plans dated _____, 2020 prepared by Pelli Clarke Pelli Architects and attached hereto as Exhibit “C” (the “**Project Plans**”).

Q. The Property is located within Subarea 3B (Ocean Avenue North of the Pier) in the 1992 LUP. The 2018 Draft LUP reflects the LUCE and DCP policies with respect to the Property’s development standards. The Property is located within Subarea 5, Downtown District of the 2018 Draft LUP.

R. To aid in the redevelopment of the Property, the City and Developer desire to allow Developer to demolish the existing improvements except for the Palisades Building and the Moreton Bay Fig Tree and construct a new mixed-use hotel and residential project with ground floor retail and subterranean parking.

S. The City prepared and circulated for public review and comment a Draft Environmental Impact Report (the “**DEIR**”) pursuant to the California Environmental Quality Act (“**CEQA**”) and designated SCH No. 2013047091 to evaluate the proposed Project’s potential environmental impacts. Following close of the comment period, the City prepared a Final Environmental Impact Report pursuant to CEQA (the “**EIR**”).

T. Developer has paid all necessary costs and fees associated with the City’s processing of the Development Application and this Agreement, including the full cost of the City’s preparation of the DEIR and the EIR.

U. The primary purpose of the Project is to redevelop the Property, which has been in hotel use for over 100 years, with a new mixed-use hotel/residential project that preserves and features the Palisades Building and Moreton Bay Fig Tree, is pedestrian-friendly, includes sufficient on-site parking, retains and creates union jobs, and includes substantial open space, affordable housing and other benefits to the community consistent with the LUCE, DCP and 2018 Draft LUP. The Parties desire to enter into this Agreement in conformance with the Development Agreement Statutes in order to achieve the development of the Project on the Property consistent with the Project Plans.

V. The City Council has determined that a development agreement is appropriate for the proposed development of the Project on the Property. This Agreement will (1) eliminate uncertainty in planning for the Project and result in the orderly development of the Project, (2) assure installation of necessary improvements on the Property, (3) provide for public infrastructure and services appropriate to development of the Project, (4) preserve substantial City discretion in reviewing the Project's design in accordance with Article 6 of this Agreement, (5) secure for the City improvements that benefit the public, (6) ensure the provision of community benefits as envisioned in the LUCE and DCP, and (7) otherwise achieve the goals and purposes for which the Development Agreement Statutes were enacted.

W. This Agreement is consistent with the public health, safety, and welfare needs of the residents of the City and the surrounding region. The City has specifically considered and approved the impact and benefits of the development of the Project on the Property in accordance with this Agreement upon the welfare of the region. Consistent with the DCP, the Project will provide a number of significant project features and community benefits as set forth in Sections 2.7 and 2.8 of this Agreement.

X. The City Council has found that the provisions of this Agreement are consistent with the relevant provisions of the City's General Plan, including the LUCE, the DCP, the 1992 LUP as amended by the 1992 LUP Amendment, and the 2018 Draft LUP.

Y. On June 9, 2020, Developer filed a vesting tentative tract map application for the Project (Application No. 20ENT-0153) for airspace and condominium purposes, to among other things, create a subdivision consisting of Lot 1 for the hotel ("**Lot 1**") and Lot 2 for the residential condominiums ("**Lot 2**") (the "**Tract Map**"). The subdivision application will both (a) allow the residential and commercial components of the Project to be separately leased, financed and/or sold (potentially in bulk) and (b) allow the residential condominiums to be separately sold. The Tract Map was designated as VTTM No. 82906.

Z. On [REDACTED], 2020 the City's Planning Commission held a duly noticed public hearing on the Development Application (as it has been modified), the EIR, the 1992 LUP Amendment, the Tract Map, and this Agreement, and at such hearing, the Planning Commission recommended that the City Council certify the EIR

and approve the 1992 LUP Amendment, the Project including this Agreement, and the Tract Map.

AA. On [REDACTED], 2020, the City Council held a duly noticed public hearing on the Development Application (as it has been modified), the EIR, the 1992 LUP Amendment, the Tract Map, and this Agreement, and at such hearing the City certified the EIR and adopted a Statement of Overriding Considerations and Mitigation Monitoring Plan, adopted Resolution [REDACTED] approving the 1992 LUP Amendment, introduced Ordinance No. [REDACTED] for first reading approving this Agreement, and approved the Tract Map.

BB. On [REDACTED], 2020, the City Council adopted Ordinance No. [REDACTED], approving this Agreement.

NOW THEREFORE, in consideration for the covenants and conditions hereinafter set forth, the Parties hereto do hereby agree as follows:

ARTICLE 1

DEFINITIONS

Capitalized terms not defined below shall have the meanings set forth in the City's Zoning Ordinance. The terms defined below, whether capitalized or not, have the meanings in this Agreement as set forth below unless the Agreement expressly requires otherwise:

1.1. **"100% Affordable Housing Project"** means the affordable housing project described in Section 2.8.1(b).

1.2. **"1992 LUP"** means the Coastal Land Use Plan in effect as of the Effective Date unless otherwise indicated in this Agreement.

1.3. **"2018 Draft LUP"** means the Local Coastal Plan Update Land Use Plan Final Draft, October 2018 adopted by the City Council which, as of the Effective Date, has not certified by the California Coastal Commission.

1.4. **"Agreement"** means this Development Agreement.

1.5. **"ARB"** means the City's Architectural Review Board.

1.6. **"Baseline Water Demand"** means the average potable water use over the previous five years from the time the first application for new development is filed consistent with SMMC Section 7.16.050(c)(2).

1.7. **"Building"** or **"Buildings"** means, individually or collectively as the circumstances may require, the Ocean Building, the California Building, and the

Landmark Palisades Building with subterranean Floor Area and subterranean parking to be developed on the Property.

1.8. **“Building Height”** means the vertical distance at any point in a given plane measured from the Average Natural Grade (ANG) as defined in Section 9.04.050 of the Zoning Ordinance. The Parties agree the ANG for the Project Site is 99.625’.

1.9. **“Building Permit”** means any permit required by SMMC Section 8.08.050(a) and any successors thereto, including, without limitation, a foundation only permit.

1.10. **“City Council”** means the City Council of the City of Santa Monica, or its designee.

1.11. **“City Parties”** mean the City, its City Council, boards and commissions, departments, officers, agents, employees, volunteers and other representatives.

1.12. **“Certificate of Occupancy”** means either temporary or permanent Certificate of Occupancy, unless otherwise expressly specified in this Agreement.

1.13. **“Days”** means calendar days.

1.14. **“DCP”** has the meaning set forth in Recital L.

1.15. **“Design Review”** means the design review process articulated for the Project in Article 6.

1.16. **“Discretionary Approvals”** are actions which require the exercise of judgment or a discretionary decision, and which contemplate and authorize the imposition of revisions or additional conditions, by the City, including any board, commission, or department of the City and any officer or employee of the City. Discretionary Approvals do not include Ministerial Approvals.

1.17. **“Effective Date”** has the meaning set forth in Section 9.1 below.

1.18. **“Floor Area”** has the meaning as defined in Section 9.52.020.0870 of the Zoning Ordinance.

1.19. **“Floor Area Ratio”** and **FAR** means floor area ratio as defined in Section 9.52.020.0880 of the Zoning Ordinance.

1.20. **“General Plan”** or **“City General Plan”** means the General Plan of the City of Santa Monica, and all elements thereof including the LUCE, as of the Effective Date unless otherwise indicated in this Agreement.

1.21. **“Hotel Uses”** means Hotel uses as defined in SMMC Section 9.51.030(B)(15)(b) and uses accessory to the Hotel uses consistent with SMMC Section

9.52.020.2490 including, without limitation, amenities such as: (a) spa/fitness/personal services uses that may be open to the general public, including fitness centers that qualify as Commercial Entertainment and Recreation, Large- and Small-Scale Facilities uses as defined in SMMC Section 9.51.030(B)(7)(d) and (e), uses that qualify as General Personal Services as defined in SMMC Section 9.51.030(B)(21)(a), and uses that qualify as Personal Services, Physical Training as defined in SMMC Section 9.51.030(B)(21)(b); (b) meeting/conference and banquet space that may be open to the general public; (c) food and beverage service that may be open to the general public, including Restaurants, Full-Service, Restaurants, Limited Service & Take-Out, and Bar/Night Club/Lounge as defined in SMMC Section 9.51.030(B)(8)(b),(c), and (a) respectively with Outdoor Dining and Seating Area as defined in SMMC Section 9.51.030(B)(8)(e); and (d) a sundry shop that may be open to the general public, including General Retail Sales, Small-scale as defined in SMMC Section 9.51.030(B)(22)(b), Convenience Market as defined in SMMC Section 9.51.030(B)(10)(a) and/or General Market uses as defined in and SMMC Section 9.51.030(B)(10)(c).

1.22. “**Including**” means “including, but not limited to.”

1.23. “**LEED® Rating System**” means the Leadership in Energy and Environmental Design (LEED®) Green Building Rating System known as “LEED®v4”.

1.24. “**Landmarks Commission**” means the City’s Landmarks Commission.

1.25. “**Legal Action**” means any action in law or equity.

1.26. “**Life of the Project**” shall mean a period commencing on the date of Certificate of Occupancy is issued for the Project and ending on the date which is fifty-five (55) years from Certificate of Occupancy for the Project; provided, however, that if the Project is damaged or destroyed and cannot be rebuilt in accordance with the development standards permitted in this Agreement, then the Life of the Project shall be deemed to have ended as of the date of such damage or destruction.

1.27. “**Master Declaration**” means that certain Master Declaration of Covenants, Conditions and Restrictions and Grant of Reciprocal Easements for Miramar Santa Monica or similar instrument to be recorded against Lot 1 and Lot 2 in a form approved by the California Department of Real Estate, or successor thereto, and any amendments thereto.

1.28. “**Maximum Floor Area**” means 500,522 square feet of above-grade building Floor Area, 8,373 square feet of outdoor dining Floor Area, and 51,619 square feet of below-grade building Floor Area.

1.29. “**Ministerial Approvals**” mean any action which merely requires the City (including any board, commission, or department of the City and any officer or employee of the City), in the process of approving or disapproving a permit or other

entitlement, to determine whether there has been compliance with applicable statutes, ordinances, regulations, or conditions of approval. Without limiting the generality of the foregoing, the exercise of duties and/or professional judgment by any City official referenced in SMMC Article 7 (Public Works), as amended from time to time, including, without limitation, the City Engineer, shall be considered a Ministerial Approval.

1.30. “**Miramar Gardens**” means the open space area labeled on the Project Plans as “Miramar Gardens.”

1.31. “**New Water Demand**” means Projected Water Demand (defined below) for a proposed new development less Baseline Water Demand (defined above) at the proposed site consistent with SMMC Section 7.16.050(c)(5).

1.32. “**Palisades Gardens**” means the open space area labeled on the Project Plans as “Palisades Gardens.”

1.33. “**Parties**” mean both the City and Developer and “**Party**” means either the City or Developer, as applicable.

1.34. “**Person**” means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, domestic or foreign.

1.35. “**Community Development Director**” means the Community Development Department Director of the City of Santa Monica, or his or her designee.

1.36. “**Preliminary Preservation Plan**” means the Preservation Plan prepared by Chattel Inc. dated October 28, 2019 included in EIR Appendix D-1.

1.37. “**Project**” has the meaning set forth in Recital P.

1.38. “**Project Plans**” has the meaning set forth in Recital P.

1.39. “**Projected Water Demand**” means the total amount of projected potable water demand for a proposed new development in accordance with SMMC Section 7.16.050(c)(7).

1.40. “**Residential Amenities and Accessory Uses**” means amenities and accessory uses for residents and their guests, including but not limited to lobbies, reception areas/desk, resident/visitors lounges, pool/spa/jacuzzi and associated deck areas, property management/administrative/leasing offices, bicycle parking, dog wash facilities, mail/package delivery facilities and storage, exercise/fitness rooms, recreation rooms/areas (e.g. bowling alley, golf simulator, etc.), and screening rooms.

1.41. “**Residential Association**” means the nonprofit mutual benefit corporation formed pursuant to the Residential CC&Rs to govern the Residential Condominiums to be established in Lot 2.

1.42. “**Residential CC&Rs**” means Declaration of Covenants, Conditions and Restrictions of the Residential Condominiums or similar instrument to be recorded against Lot 2 in a form approved by the California Department of Real Estate, or successor thereto, and any amendments thereto.

1.43. “**Residential Condominium Owners**” means the owners of the Residential Condominiums in Lot 2.

1.44. “**Residential Condominium(s)**” means the market-rate residential condominium units in the Lot 2, including an undivided interest in the common area in Lot 2.

1.45. “**Second Street Property**” has the meaning set forth in Recital C.

1.46. “**Secretary of the Interior’s Standards**” means the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (2017), revised by Anne E. Grimmer.

1.47. “**SMMC**” means the Santa Monica Municipal Code, including the Zoning Ordinance, in effect on the Effective Date unless specifically stated to refer to the Santa Monica Municipal Code as it may be in effect at some other time.

1.48. “**Subterranean Space**” means all space in the Project below the ground floor as shown on the Project Plans attached as Exhibit “C”.

1.49. “**Transfer**” means the transfer of title to property by the execution of the deed or other instrument.

1.50. “**Zoning Ordinance**” means the City of Santa Monica Comprehensive Land Use and Zoning Ordinance (Chapters 9.01 to 9.68 of the SMMC) in effect on the Effective Date, set forth in its entirety as part of Exhibit “F” (Planning and Zoning).

ARTICLE 2

DESCRIPTION OF THE PROJECT

2.1 General Description. The Project includes all aspects of the proposed development of the Property as more particularly described in this Agreement and on the Project Plans. If there is a conflict or inconsistency between the text of this Agreement and the Project Plans, the Project Plans will prevail; provided, however, that omissions from the Project Plans shall not constitute a conflict or inconsistency with the text of this Agreement.

2.2 Principal Components of the Project. The Project consists of the following principal components, as well as the other components delineated in the Project Plans, all of which are hereby approved by the City subject to the other provisions of this

Agreement:

- (a) Retention of the Palisades Building and protection, nurturing and celebration of the Moreton Bay Fig Tree;
- (b) Except for the Palisades Building, demolition of all existing structures, surface parking and perimeter walls;
- (c) Rehabilitation of the Palisades Building with a maximum above-grade building Floor Area of 62,000 square feet and its basement/subterranean area consistent with the Secretary of the Interior's Standards for Hotel Uses consistent with Section 2.5 below;
- (d) Construction of two new multi-story buildings -- the California Building (including its decks and roof decks) and the Ocean Building (including its decks and roof decks) -- and above-grade connections from the California Building to the Palisades Building and from the Ocean Building to the Palisades Building, with a maximum above-grade building Floor Area of 438,552 square feet, consisting of Hotel Uses and accessory uses, up to 60 Residential Condominiums and Residential Amenities and Accessory Uses, and ground floor retail/restaurant uses as further described in Section 2.5 below with the California Building, Ocean Building and Palisades Building having a total of 312 hotel rooms;
- (e) Construction of a three-level subterranean parking garage (including connections to the Palisades Building basement/subterranean area) with (i) 428 vehicular parking spaces, (ii) bicycle parking, and (iii) up to 51,619 square feet of below-grade Floor Area (including the below-grade area beneath the Palisades Building described in Section 2.2(c) above) for (x) Hotel Uses including accessory/back-of-house uses including hotel offices, employee lockers, maintenance, storage, and miscellaneous related hotel service as described in Section 2.5 below and (y) Residential Amenities and Accessory Uses and circulation as described in Section 2.5 below, and (iii) other accessory uses in accordance with the Project Plans and as described further in Section 2.5.1(d) below;
- (f) Improvement of the Property for enhanced pedestrian, bicycle and vehicular access to/from the Property, including closure of the existing curb cut along Wilshire Boulevard, a new entry on Second Street, a secondary access on California Avenue, and a revised entry on Ocean Avenue;
- (g) Improvement of the Property with substantial open space, including a minimum of 50% of the total Property area being open space comprised of a minimum of 25% open space at the ground level and the remaining 25% open space located anywhere in the Property including on roof decks or balconies, with outdoor dining and a portion of the ground-level open space being publicly-accessible as described in Section 2.8.3 below; and

(h) Ensuring the transfer of the Second Street Property to a non-profit housing provider and providing other financial support for the development of affordable housing units by a non-profit housing provider at the Second Street Property in accordance with Sections 2.7.1 and 2.8.1.

2.3 No Obligation to Develop.

2.3.1 Except as specifically provided herein:

(a) Nothing in this Agreement shall be construed to require Developer to proceed with the construction of the Project or any portion thereof.

(b) The decision to proceed or to forbear or delay in proceeding with construction of the Project or any portion thereof shall be in Developer's sole discretion.

(c) Except as expressly provided in this Agreement, the failure by Developer to proceed with construction of the Project or any portion thereof shall not give rise to any liability, claim for damages or cause of action against Developer, except as may arise pursuant to a nuisance abatement proceeding under SMMC Chapter 8.96, or any successor legislation.

2.3.2 Failure by Developer to proceed with construction of the Project or any portion thereof shall not result in any loss or diminution of development rights, except upon expiration of Developer's Vested Rights pursuant to this Agreement, or the termination of this Agreement.

2.3.3 Notwithstanding any provision of this Section 2.3 to the contrary, Developer shall be required to implement all mitigation measures and conditions of approval required under this Agreement in accordance with and at the time specified in Exhibit "E" and may be subject to all remedies specified in this Agreement for the failure to implement these mitigation measures and conditions of approval as and when so required.

2.4 Vested Rights.

2.4.1 Approval of Project Plans. The City hereby approves the Project Plans. The City shall maintain a complete copy of the Project Plans, stamped "Approved" by the City, in the Office of the City Clerk, and Developer shall maintain a complete copy of the Project Plans, stamped "Approved" by the City, in its offices or at the Project site. The Project Plans to be maintained by the City and Developer shall be in a half-size set. Further detailed plans for the construction of the Building and improvements, including, without limitation, structural plans and working drawings shall be prepared by Developer subsequent to the Effective Date based upon the Project Plans.

2.4.2 Minor Modifications to Project. Developer with the approval of the Community Development Director, may make minor changes to the Project or Project Plans (“**Minor Modifications**”) without amending this Agreement; provided that the Community Development Director makes the following specific findings that the Minor Modifications: (i) are consistent with the Project’s approvals as approved by the City Council; (ii) are consistent with the provisions, purposes and goals of this Agreement; (iii) are not detrimental to the public health, safety, convenience or general welfare; and (iv) will not significantly and adversely affect the significant project features (Section 2.7) and/or community benefits (Section 2.8) associated with the Project, unless expressly authorized in Section 2.7 or Section 2.8. The Community Development Director shall notify the Planning Commission and City Council in writing of any Minor Modifications approved pursuant to this Section 2.4.2. Any proposed change which the Community Development Director denies as not qualifying for a Minor Modification based on the above findings must be processed as a Major Modification. Without limiting the generality of the foregoing, any increase in the total number of deed restricted affordable units required under Section 2.8.1, up to a maximum of 48 units, shall be deemed a Minor Modification.

2.4.3 Modifications Requiring Amendment to this Agreement. Developer shall not make any “Major Modifications” (defined below) to the Project without first amending this Agreement to permit such Major Modifications. A “**Major Modification**” means the following:

(a) Reduction of any ground floor setback of the Project, as depicted on the Project Plans, if by such reduction the applicable setback would be less than the Building Frontage Line requirements in Section 9.10.060(D) of the DCP as of the Effective Date;

(b) Any change in use not consistent with the permitted uses defined in Section 2.5 below;

(c) Any reduction in the total number of hotel rooms specified in Section 2.2 by more than eleven (11) rooms or increase in the total number of hotel rooms in excess of 312 rooms;

(d) Any reduction in the total number of Residential Condominiums specified in Section 2.2 below thirty-five (35) or increase in the total number of Residential Condominiums in excess of sixty (60);

(e) Any reduction in the total number of deed restricted affordable units required under Section 2.8.1;

(f) Any change in the Residential Condominiums that results in the Project having less than 15% three or more bedroom units, less than 20% two or more bedroom units, or more than 15% studio units;

(g) Any increase in floor area above the Maximum Floor Area; provided, however, that (i) shifting Floor Area from building Floor Area (above or below-grade) to Floor Area for outdoor dining may be processed as a Minor Modification pursuant to Section 2.4.2 and (ii) conversion of vehicle parking spaces to Floor Area for other permitted uses in the Subterranean Space consistent with Section 2.5.1(e) if the City's Community Development Director determines such vehicle parking spaces are no longer necessary to meet the Project's peak parking demand may be processed as a Minor Modification pursuant to Section 2.4.2;

(h) Any increase in the maximum Building Height above 130 feet for the Ocean Building or 80 feet for the California Building;

(i) Any increase in the permitted height projections that exceeds 5% of the height projections allowed by Section 2.10(d) below.

(j) Any increase in the number of parking spaces by more than five percent (5%) above the 428 spaces provided for in Section 2.9 or any decrease in the number of parking spaces such that the aggregate number of parking spaces in the Project, after such reduction, would be less than the minimum number of spaces required by the SMMC;

(k) Any reduction of the Project's publicly-accessible open space, as described in Section 2.8.3 below, or open space, as depicted on the Project Plans, if the resulting open space would be less than required by DCP Section 9.10.080(C);

(l) Any material change in the number or location of curb cuts shown on the Project Plans;

(m) Any variation in the design, massing, open space, number of parking spaces, location of balconies, or building configuration, including but not limited to, Floor Area and building height, that renders such aspects out of substantial compliance with the Project Plans after Design Review pursuant to Article 6 and Coastal Commission approval of a Coastal Development Permit; and

(n) Any change that would substantially reduce or alter the significant project features as set forth in Section 2.7 and/or community benefits as set forth in Section 2.8, unless expressly authorized in Section 2.7 or Section 2.8.

If a proposed modification does not exceed the Major Modification thresholds established above, then the proposed modification may be reviewed in accordance with Section 2.4.2.

2.4.4 City Consent to Modification. The City may impose fees, exactions, conditions, and mitigation measures in connection with its approval of a Minor or Major Modification, subject to any applicable law. Notwithstanding anything to the contrary

herein or in the Existing Regulations, if the Community Development Director approves a Minor Modification or if the City approves a Major Modification (and the corresponding amendment to this Agreement for such Major Modification), as the case may be, Developer shall not be required to obtain any other Discretionary Approvals for such modification, except for Design Review approval in accordance with Article 6 below, in the case of certain Major Modifications.

2.4.5 Right to Develop. Subject to the condition that Developer record the final Tract Map in accordance with Section 5.6 and the provisions of Section 3.3 below, during the Term (as defined in Section 9.2 below) of this Agreement, Developer shall have the vested rights (the “**Vested Rights**”) to (a) develop and construct the Project in accordance with the following: (i) the Project Plans (as the same may be modified from time to time in accordance with this Agreement); (ii) any Minor Modifications approved in accordance with Section 2.4.2; (iii) any Major Modifications which are approved pursuant to Section 2.4.3; and (iv) the requirements and obligations of Developer related to the improvements which are specifically set forth in this Agreement, and (b) use and occupy the Project for the permitted uses set forth in Sections 2.5 and 2.6. Except for any required Design Review approval pursuant to Article 6 of this Agreement, the City shall have no further discretion over the elements of the Project which have been delineated in the Project Plans (as the same may be modified from time to time in accordance with this Agreement).

2.4.6 Foundation Only Building Permit. SMMC Section 8.08.070(b) allows for issuance of partial permits for portions of a structure. Developer may submit an application for a single Foundation Only Permit, which application shall be processed according to the Building and Safety Division’s Foundation Only Permit policy (PT-05-03, or any successor thereto).

2.5 Authorized Uses. The City approves the following authorized uses for the Project:

2.5.1 Permitted Uses. Permitted Uses in the Project are as specified below:

(a) In the Palisades Building, including the Subterranean Space beneath the Palisades Building, Hotel Uses as defined in SMMC Section 9.51.030(B)(15)(b).

(b) In the Ocean Building:

(1) Hotel Uses.

(2) Residential uses, including up to sixty (60) Residential Condominiums that qualify as Multiple-Unit Dwellings as defined in SMMC Section 9.51.020, Residential Amenities and Accessory Uses, and other amenities and uses

accessory to the residential uses consistent with SMMC Section 9.52.020.2490, including pools and spas.

(3) Ground floor, pedestrian-oriented retail/restaurant uses, including:

(i) General Retail Sales, Small-scale as defined in SMMC Section 9.51.030(B)(22)(b),

(ii) Convenience Market uses and/or General Market uses as defined in SMMC Section 9.51.030(B)(10)(a) and 9.51.030(B)(10)(c), respectively,

(iii) Restaurants, Full-Service and Limited Service & Take-Out as defined in SMMC Section 9.51.030(B)(8)(b) and (c), respectively, with Outdoor Dining and Seating Area as defined in SMMC Section 9.51.030(B)(8)(e),

(iv) Uses accessory any of the permitted uses on the ground floor the Property consistent with SMMC Section 9.52.020.2490, and

(v) Any other uses that are designated as permitted uses on the ground floor of the Property by the SMMC in effect at the time the use is established that are similar to, consistent with, and not more disruptive than retail uses.

(c) In the California Building, Hotel Uses.

(d) In up to 51,619 square feet of Floor Area in the Subterranean Space, Hotel Uses, Residential Amenities and Accessory Uses, and uses included in Section 2.5.1(e) below.

(e) In the Subterranean Space not designated as Floor Area, the following additional uses are Permitted Uses:

(1) Parking including tandem and valet parking, and car share parking;

(2) Bicycle storage/parking and repair facilities/rooms for Project residents and employees;

(3) Employee showers and lockers;

(4) Mechanical, plumbing and electrical equipment;

(5) Storage space for the hotel and Project residents and tenants; and

(6) Uses accessory to any of the permitted uses in the Project consistent with SMMC Section 9.52.020.2490.

(f) In the Project's open space, outdoor dining including outdoor dining associated with any of the permitted uses in this Section 2.5.

(g) Within the Hotel Use, and in order to ensure the Hotel Use remains the primary use, the spa/fitness center uses is limited to a maximum of 12,500 square feet of Floor Area, meeting/banquet space is limited to a maximum of 13,000 square feet of Floor Area, and food/beverage interior customer serving area is limited to 11,335 square feet of Floor Area.

(h) Within the Residential Amenities and Accessory uses, the Residential Association may contract with Developer, hotel operator and/or other third party(ies) to manage and/or provide any activities, food and/or beverage service and/or other offerings, which activities and/or services may be offered to Residential Condominium Owners and their permittees/guests with or without a charge.

Except as specifically provided herein, Developer will not be required to obtain any additional Discretionary Approvals for any of the Permitted Uses. Permitted Uses may commence in the Project upon issuance of a City business license and without any discretionary planning approvals for such uses.

2.5.2 Uses Permitted through Minor Use Permit. A minor use permit shall be required for uses identified as requiring a Minor Use Permit in the SMMC in effect at the time the use is sought to be established, with the exception of any uses that are defined as Permitted Uses in Section 2.5.1 above. Uses requiring a Minor Use Permit may commence operating at the Project upon issuance of a Minor Use Permit in accordance with the procedures established in the SMMC and the issuance of a business license.

2.5.3 Conditionally Permitted Uses. **“Conditionally Permitted Uses”** include (a) all uses that are identified as Conditionally Permitted Uses in the SMMC in effect at the time the use is sought to be established, with the exception of any uses that are defined as Permitted Uses in Section 2.5.1 above and (b) any uses requiring a Conditional Use Permit in Section 2.6. Conditionally Permitted Uses may commence operating at the Project upon issuance of a Conditional Use Permit (“CUP”) in accordance with the procedures established in the SMMC and the issuance of a business license.

2.5.4 Other Uses Subject to Discretionary City Planning Approvals. In addition to Permitted Uses, Minor Use Permit Uses, and Conditionally Permitted Uses, Developer may seek City discretionary planning approval for uses in the ground floor space and Subterranean Space that are allowed by any other City discretionary process as provided in the Zoning Ordinance in effect when the use is sought to be established.

Such use(s) may not commence until the requisite City discretionary planning approval and a business license are obtained.

2.5.5 Prohibited Uses. Except for the uses expressly authorized in this Agreement, prohibited uses are all uses that are identified as prohibited uses in the SMMC in effect at the time the use is sought to be established. Notwithstanding the foregoing:

(a) Office uses, including but not limited to Business and Professional, Creative, Medical and Dental, and Walk-In Clientele, as defined in SMMC 9.51.030(B)(19) are prohibited; provided, however, that ancillary offices for the Project's Hotel Uses or Residential Condominiums (e.g., management and leasing offices) are permitted uses in accordance with Section 2.5.1 above.

(b) Vacation rentals as defined in SMMC Section 6.20.010(c) and corporate housing as defined in SMMC Section 9.51.020(A)(2) are prohibited. These prohibitions shall be included in the Residential CC&Rs.

2.6 Alcoholic Beverage Permits.

2.6.1 In the event Developer or a business operator proposes a new business or use dispensing for sale or other consideration, alcoholic beverages, including beer, wine, malt beverages, and distilled spirits for on-site or off-site consumption, a Conditional Use Permit or Alcohol Exemption Zoning Conformance Permit, as applicable, shall be required pursuant to SMMC Section 9.31.040, or any successor thereto, except as provided in Sections 2.6.2-2.6.3 below. Notwithstanding the foregoing, no Conditional Use Permit or Alcohol Exemption Zoning Conformance Permit shall be required for catered events for which the necessary permits then required for such events have been obtained.

2.6.2 Hotel operator (or Developer, if Developer is the applicant) shall be exempt from the provisions of SMMC 9.31.040 with respect to the Licensed Premises as shown in Exhibit "G-1", provided that the operator of the hotel (or Developer, if Developer is the applicant) agrees in writing to comply with all of the criteria and conditions in Exhibit "G" of this Agreement and the Developer shall cause the Hotel management agreement, if any, to contain a clause that requires the Hotel operator to comply with such terms and conditions.

2.6.3 This Section 2.6 shall survive the Term of this Agreement and shall remain binding on Developer, its successors and assigns, and shall continue in effect for the Life of the Project. Notice of the terms and conditions in Exhibit "G" shall be recorded separately from and concurrently with this Agreement.

2.7 Significant Project Features.

2.7.1 Land for Affordable Housing. Developer shall donate 1127-1129 Second Street, Santa Monica, California (“**Second Street Property**”) to a non-profit housing provider, subject to the terms and conditions set forth under Section 2.8.1(a), below.

2.7.2 Economic and Fiscal Benefits. The Project will contribute to the economic health and well-being of Santa Monica by (i) significantly increasing City tax revenues generated by the Property, including transient occupancy taxes, sales taxes, property taxes, business license taxes, parking taxes, and utility user’s taxes on the renovated hotel, as well as significant new property taxes from the new Residential Condominiums, and (ii) generating new visitor and resident spending at local businesses, including dining, shopping and entertainment venues.

2.7.3 Desirable Mix of Uses in the Downtown. This Project includes a desirable mix of uses, including hotel uses, ownership housing with family-sized units and ground floor pedestrian-oriented uses and ensures the development of affordable housing with a diversity of unit types.

2.7.4 Enhanced Pedestrian Environment and Access to the Site. The Project enhances the pedestrian environment in and around the Project site by creating new pedestrian-friendly access to the site from Ocean Avenue, Second Street and Wilshire Boulevard. The Project removes the existing perimeter walls and fences that are a barrier between the sidewalk and Project site along Wilshire Boulevard and Ocean Avenue, opening up views to the landmark Moreton Bay Fig Tree from Palisades Park, Wilshire Boulevard, Ocean Avenue and Second Street and providing substantial new open space including publicly-accessible open space to anchor the northern end of the Downtown and provide an active pedestrian connection between the Third Street Promenade and Palisades Park.

2.7.5 Aesthetic Enhancement to the Downtown Core. The Project enhances the aesthetic of the Downtown by providing a unique, world-class architectural and landscape design.

2.7.6 Protections for Existing Hotel Employees. As part of the Project, Developer has agreed to provide protections for employees of the existing hotel on the Property consistent with its Closure Agreement with the union representing the existing hotel workers at the Property. These protections include providing existing employees with the option of either (a) a severance payment based on the number of years of employment or (b) preservation of healthcare benefits during the period the hotel is closed for redevelopment as well as the opportunity to return to work in the new Project with a similar position and preservation of the employee’s seniority.

2.7.7 Permanent Employment Opportunities. The Project preserves and expands employment opportunities through the redevelopment of the Property with a full-service, unionized hotel.

2.7.8 Construction Employment Opportunities. The Project provides significant new design and construction-related employment opportunities.

2.7.9 Remediating Existing Parking Shortfall. The Project provides new subterranean parking to fully meet the projected parking demand from Project residents, employees and guests. This will eliminate duplicative valet trips around the Property and eliminate the need for hotel employees to park on neighborhood streets, thereby freeing up a substantial amount of on-street parking in the neighborhood.

2.7.10 Cultural Arts. Developer shall provide for cultural arts and cultural resources in accordance with SMMC ch 9.30, which obligation may be satisfied through expenditure of money on preservation of the Property's City-designated landmarks in accordance with SMMC Section 9.30.040(B).

2.7.11 Developer Contribution for School Facilities. Developer shall provide the Santa Monica-Malibu Unified School District with fees for capital improvements as required by California Government Code § 65995.

2.7.12 Various standard public improvements and fees. Developer shall pay fees and construct public infrastructure improvements as required by the SMMC codified on the Effective Date of this Agreement.

2.7.13 Water Conservation Measures. The Project shall include the following water conservation measures which are currently requirements of the SMMC:

(a) The Project shall achieve water neutrality in accordance with SMMC Section 7.16.050; and

(b) The Project shall achieve a Water Conservation Requirement, defined as (i) fifty percent (50%) below the 2019 CALGreen (Title 24) baseline for exterior water use and landscaping in effect on the Effective Date, and (ii) thirty percent (30%) below the 2019 CALGreen (Title 24) baseline for interior building water use in effect on the Effective Date. Nothing in this Section 2.17.13(b) shall preclude the City from applying Subsequent Code Changes permitted in accordance with Section 5.2.

2.7.14 Energy Conservation Measures. The Project shall include the following energy conservation measures which are currently requirements of the SMMC. Nothing in this Section 2.7.14 shall preclude the City from applying Subsequent Code Changes permitted in accordance with Section 5.2.

(a) Consistent with EIR Section 4.9.3.4, the Project shall be designed to be five percent (5%) more efficient than the code established by the 2019 California Energy Code.

(b) Developer shall install a photovoltaic (PV) system that has a minimum total wattage of 2.0 times the square footage of the building's footprint (2.0 watts per square foot of building footprint) in accordance with SMMC 8.160.080;

(c) For new pool construction in the Project, if the pool is to be heated, an electric heat pump water heater or a solar thermal system shall be used for such heating in accordance with SMMC 8.106.080, or successor thereto; and

(d) The Project shall include the following electric vehicle charging infrastructure in the parking areas of the Subterranean Space in accordance with SMMC 4.106.4:

(i) EV chargers in forty-three (43) parking spaces,

(ii) Infrastructure to make an additional twenty six (26) parking spaces EV Ready (breaker, wiring, panel capacity, receptacle and raceways and associated conductors capable of accommodating 208/240-volt dedicated branch circuits), and

(iii) Raceways/conduits and associated conductors capable of accommodating 208/240-volt dedicated branch circuits in an additional one hundred eighty-two (182) parking spaces.

2.7.15 Transportation Demand Management Plan. Developer shall implement and maintain a Transportation Demand Management Plan ("**TDM Plan**") commencing with the issuance of a Certificate of Occupancy as set forth in Exhibit "H".

2.8 Community Benefits. Developer shall be required to provide all of the following community benefits for the Project or any portion thereof.

2.8.1 Affordable Housing.

(a) Prior to issuance of a building permit for the Project, Developer shall donate the Second Street Property to an entity owned in whole or in part by a non-profit housing provider to construct, own and operate a 100% Affordable Housing Project as defined in Section 2.8.1(b); provided, however, that nothing herein shall be interpreted to prevent Developer and the non-profit housing provider from entering into an arrangement for Developer to utilize the Second Street Property for temporary parking or construction related purposes until such time as a building permit is ready to issue for the 100% Affordable Housing Project. Title to the Second Street Property at the time of donation shall be free of all monetary liens and any exceptions to title shall be approved by the City Manager, or his or her designee, in writing, which approval shall not be unreasonably withheld, conditioned, or delayed. The non-profit housing provider shall also be approved in writing by the City Manager, or his or her designee, which approval shall not be unreasonably withheld, conditioned or delayed; provided however, that Community Corporation of Santa Monica, a nonprofit public

benefit corporation (“**CCSM**”), is hereby deemed approved and approval by the City Manager shall not be required under this paragraph.

DEVELOPER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT DEVELOPER’S DONATION OF THE SECOND STREET PROPERTY IN ACCORDANCE WITH THIS SECTION 2.8.1(a) SHALL BE UNCONDITIONAL AND NON-REVERSIONARY UPON ISSUANCE OF A BUILDING PERMIT FOR THE PROJECT.

(b) A “**100% Affordable Housing Project**” means a minimum 42-unit deed restricted multi-family housing project that qualifies as a 100% Affordable Housing Project under SMMC Section 9.52.020.0050. The deed restriction for the 100% Affordable Housing Project shall be in the form approved by the City Attorney, which approval shall not unreasonably be withheld, conditioned or delayed, shall be recorded in the Official Records of the County of Los Angeles prior to issuance of the Project’s building permit, and shall have a term of ninety-nine (99) years (“**Deed Restriction**”). The 100% Affordable Housing Project shall also:

(1) Comply with Section 9.64.110 (Eligibility Requirements) of SMMC Chapter 9.64 but shall not be subject to the other requirements of SMMC Chapter 9.64,

(2) Comply with the applicable regulations of the California Tax Credit Allocation Committee (“**TCAC**”), as set forth in California Code of Regulations, Title 4, Sections 10300, if the 100% Affordable Housing Project receives an allocation of tax credits from TCAC.

(3) Meet all of the following criteria; provided, however, if the 100% Affordable Housing Project receives an allocation of tax credits from TCAC and any of the following criteria are in conflict with the TCAC Large Family Criteria, then the TCAC Large Family Criteria shall govern:

(i) Unit Mix: eleven (11) units shall be three-bedroom units, fifteen (15) units shall be two-bedroom units, and sixteen (16) units shall be one-bedroom units;

(ii) Minimum Unit Size: 450 square feet of Floor Area for one-bedroom units, 700 square feet of Floor Area for two-bedroom units, and 900 square feet of Floor Area for three-bedroom units;

(iii) TCAC Income/Rent Levels:

Number of Bedrooms	TCAC Income/Rent Levels					Total Units
	30%	40%	50%	60%	80%	
1-bedroom	2	3	6	5	0	16
2-bedroom	2	3	3	3	4	15
3-bedroom	2	2	4	3	0	11
	6	8	13	11	4	42

(iv) Subject to approval by the Director of Community Development, which approval may not unreasonably be withheld, conditioned or delayed, unit mix, unit sizes and/or affordability levels in the preceding subparagraphs may be modified if Developer provides documentation from the non-profit housing provider that such modification will make the non-profit housing provider's application for TCAC tax credit financing for the 100% Affordable Housing Project more competitive.

(c) In addition to the donation of land Developer is providing for the 100% Affordable Housing Project pursuant to Section 2.8.1(a):

(1) Developer has paid or will pay for all required entitlement and permit fees; and Developer shall ensure that all required entitlements for the 100% Affordable Housing Project are obtained by the Developer or the non-profit housing provider prior to issuance of a building permit for the Project.

(2) Developer shall provide any gap financing needed, at terms agreed to between the Developer and non-profit housing provider, to cover the difference between (i) any commercial and/or tax credit financing available, if any, for the 100% Affordable Housing Project and (ii) the total cost to complete construction of the 100% Affordable Housing Project;

(3) For 55 years from the issuance of the Certificate of Occupancy for the 100% Affordable Housing Project, Developer shall pay for the cost of a regional transit pass/membership (e.g., Big Blue Bus 30-Day Pass, Breeze Bike Share monthly pass or other comparable bicycle share pass, Metro EZ Pass, Metro Tap Pass, or equivalent) for qualifying residents of the Second Street 100% Affordable Housing (the "**Transit Pass**"). Developer and City agree that the Metro EZ Pass (or a pass of no substantially greater geographic coverage in this same region) constitutes a regional transit pass and that Developer shall not be obligated to pay for any pass that

exceeds the cost of the Metro EZ Pass. The non-profit housing provider may distribute/administer the Transit Pass to the residents of the 100% Affordable Housing Project on Developer's behalf. In order to qualify for the Transit Pass, neither the resident nor any other members of the resident's household may take a parking space at the 100% Affordable Housing Project or own or long-term lease an automobile in association with a residential use in Santa Monica. For each qualifying household, a Transit Pass shall be available to all residents listed on a lease and their immediate family living in the same unit/household. The term "immediate family" includes partner, spouse, children (if they reside full time at the 100% Affordable Housing Project), parents, grandparents, siblings, father in law, mother in law, son in law, daughter in law, aunt, uncle, niece, nephew, sister in law, and brother in law. If any resident qualifies for a discounted transit pass (e.g., senior or child), Developer shall only be obligated to pay the discounted rate applicable to such resident. Each resident accepting a Transit Pass shall be required to execute a contract (and reaffirm such contract quarterly) confirming that no one in the resident's household owns or long-term lease an automobile in association with a residential use in Santa Monica and will not own or long-term lease an automobile in association with a residential use in Santa Monica for so long as the resident is in receipt of the Transit Pass. The contract shall also specify the resident's type of Transit Pass. For children receiving a Transit Pass, the child's parent or guardian shall sign an affidavit (and reaffirm such affidavit quarterly) stating that the child permanently resides at the 100% Affordable Housing Project on a full time basis and the child is primarily transported by a parent or guardian on the lease that is eligible for the Transit Pass. This Section 2.8.1(c)(3) shall apply instead of the requirements in SMMC Section 9.53.130(B)(2)(viii).

(4) For 55 years from the issuance of the Certificate of Occupancy for the 100% Affordable Housing Project, Developer shall make an annual contribution of Ten Thousand Dollars (\$10,000.00) to the non-profit housing provider operating the 100% Affordable Housing Project for the provision of support services to residents of the 100% Affordable Housing Project. The first annual payment shall be made prior to City issuance of a Certificate of Occupancy for the 100% Affordable Housing Project and thereafter shall be made annually on the first day of the anniversary month for the Certificate of Occupancy. The annual contribution shall increase annually by Consumer Price Index. The annual contribution shall be used for services to the residents of the 100% Affordable Housing Project with the services tailored to the needs of the residents, as they may vary over time, such as: services focusing on referral into and coordination with recreational programming, adult day care, transportation, substance abuse, mental health services and eligibility determination for government/public benefits, including assistance with application process, as well as referrals and coordination with other social services agencies within the greater Los Angeles Westside community.

(5) Developer's obligations under subparagraphs (3) – (4), above, shall remain obligations of the Developer or any successors in interest to Lot 1, and shall be included as continuing obligations of the Lot 1 owner in the Master

Declaration with the non-profit housing provider and City designated as express third party beneficiaries.

(d) The 100% Affordable Housing Project shall also comply with the following:

(1) The 100% Affordable Housing Project shall include a van-accessible parking space at-grade on the Second Street Property that will not be assigned to a residential unit and will be available to serve as a passenger loading area. The location of the van-accessible parking space shall be subject to review and approval by the City's Community Development Director, or his or her designee during the Administrative Approval process for the 100% Affordable Housing Project.

(2) Notwithstanding the parking maximums set forth in SMMC Section 9.28.040(A)(5)(b), the 100% Affordable Housing Project may provide (i) up to one vehicle parking space per residential unit or (ii) more than one vehicle parking space per residential unit if required by another governmental agency or any applicable state housing law.

(3) As authorized by SMMC Section 9.37.090(A), the expiration date for the 100% Affordable Housing Project's City planning entitlement (i.e., Administrative Approval) shall be concurrent with the Project's Outside Building Permit Issuance Date (as it may be extended) pursuant to Section 3.3 of this Agreement.

(4) Notwithstanding SMMC Section 7.16.050(d) and as provided in Section 2.8.4 below, the Project shall satisfy the 100% Affordable Housing Project's otherwise applicable Water Offset Requirements per SMMC Section 7.16.050(d) through the Project's reductions in water usage and as a result the 100% Affordable Housing Project shall not be required to pay any in-lieu water offset fee or provide any other on or off-site water offsets.

(5) In view of the complexity of coordinating building permits, construction contracts and financing for the Project and the 100% Affordable Housing Project, notwithstanding SMMC Sections 8.08.060(h)(1) and (i), the initial expiration date for the 100% Affordable Housing Project's building permit application shall be eighteen (18) months from the date the application is filed and the Building Official may authorize one six (6) month extension of the building permit application's expiration date in accordance with the criteria in SMMC Section 8.08.060(i)(1)-(4).

(e) The Project's affordable housing requirements, including, without limitation, those in SMMC Chapter 9.64 and the City's Affordable Housing Production Program shall be deemed satisfied upon issuance of a Certificate of Occupancy for the 100% Affordable Housing Project.

(f) The Project may not obtain its Temporary Certificate of Occupancy or Certificate of Occupancy (collectively, referenced in this Section 2.8.1(g)

as “Certificate of Occupancy”) and Developer may not transfer or lease any of the Residential Condominiums until (i) the 100% Affordable Housing Project has been issued a Certificate of Occupancy by the City’s Building Official in accordance with SMMC Section 8.08.130, which Certificate of Occupancy may not unreasonably be withheld, conditioned or delayed, (ii) the Deed Restriction is recorded and unsubordinated to any construction loan, permanent financing, or other monetary or non-monetary liens, and (iii) the residential units in the 100% Affordable Housing Project have been offered for rent to persons/households on the City’s waiting list. Notwithstanding the foregoing paragraph, after the building permit for the 100% Affordable Housing Project has been issued and the Second Street Property has been transferred to non-profit housing provider pursuant to Section 2.8.1(a) above, the City Council, acting in its sole and absolute discretion, may, upon Developer’s written request to the Director of Community Development for a public hearing, approve issuance of the Certificate of Occupancy of the Project, or a portion of the Project, prior to the Certificate of Occupancy for the 100% Affordable Housing Project being issued, due to extraordinary circumstances outside the Developer’s control; provided, however, that Developer’s failure to provide gap financing to ensure completion of the 100% Affordable Housing Project shall not be considered as outside the Developer’s control. The City Council shall agendaize Developer’s request for a hearing as soon as its schedule permits. The City Council shall have sole and absolute discretion to deny the Developer’s request or impose conditions on any extension granted, including, without limitation, security in the amount required to complete the 100% Affordable Housing Project within a reasonable period of time.

2.8.2 Historic Preservation.

(a) Moreton Bay Fig Tree. Consistent with the biological resource project characteristics set forth in the EIR, the historic Moreton Bay Fig Tree shall be protected and monitored during all times of the Project’s construction. Furthermore, as set forth below, the Project shall include enhancements of the Moreton Bay Fig Tree’s surrounding landscape environment to ensure its continued health and longevity.

Landmark Designation. The Moreton Bay Fig Tree, also known as the Founders Tree, was designated as a City Landmark by the Landmarks Commission on August 17, 1976 (LC-03-007), becoming only the fifth Landmark designated in Santa Monica after the Landmarks Ordinance was adopted.

Significance. The Landmarks Commission’s Findings reference that the Moreton Bay Fig Tree “is an excellent botanical specimen of its species.” The Moreton Bay Fig Tree, planted in approximately 1899, dates to the period of Senator John Percival Jones’ ownership of the Property and was reportedly planted by his second wife Georgina Frances Sullivan. Senator Jones was a co-founder of the City of Santa Monica and lived on the Property.

Enhancement. The Moreton Bay Fig Tree is being celebrated as a focal point of the Project. In addition, to improve the Moreton Bay Fig Tree's surrounding landscape environment, the existing impermeable paved circular drive installed in 1978 that encircles the Moreton Bay Fig Tree shall be removed and replaced with an elevated wood pedestrian deck that will allow up-close viewing and enjoyment of the Moreton Bay Fig Tree. This new wood deck shall be supported by micropiles to allow improved airspace flow, nutrients, and irrigation to reach the Moreton Bay Fig Tree's roots. This protective deck will be coupled with the construction of a new ring-shaped bench designed to keep the public off the buttressed tree roots, further enhancing the long-term health of the Moreton Bay Fig Tree. The new bench will permit visitors to sit beneath and enjoy the majesty of the historic Moreton Bay Fig Tree, while also serving to discourage physical interaction with the Moreton Bay Fig Tree's roots and trunk.

Supervised Care. The Moreton Bay Fig Tree shall continue to be pruned and cared for on at least an annual basis under the supervision of an ISA (International Society of Arboriculture) Certified Arborist, meeting and exceeding ISO 17024 (the "**Project Arborist**"), as has been the case since the Developer purchased the property in 2006.

Developer shall complete and submit a finalized Tree Protection Plan to the City's Community Development Director and Urban Forester for review and approval prior to issuance of a demolition, grading, excavation, shoring or comprehensive building permit for the Project. The Project Arborist shall monitor the Moreton Bay Fig Tree during the course of construction in accordance with the Tree Protection Plan.

(b) Palisades Building. The Palisades Building shall be rehabilitated and restored. The Palisades Building is a rare example of a Renaissance Revival style building constructed in Santa Monica in 1924. It was designated as a City Landmark on January 14, 2013 (12LM-002). This designation does not include the building's interior.

Character-Defining Features. The six story Palisades Building, L-shaped in plan, has many character-defining features of the Renaissance Revival style, with all elevations consisting of simple classical elements of base, shaft, and capital divided by stringcourses, with a low-pitched hipped roof. The base is clad in terra cotta and shaft and capital are clad in brick with terra cotta details. Each elevation has a regular pattern of windows of varying shapes and sizes with terra cotta sills. What was once the main entrance is located on the west elevation and features a simple arched terra cotta door enframingent embellished on the top with a decorative keystone in a volute shape.

Rehabilitation. From the 1924 date of construction until approximately 1940, the brick exterior of the Palisades Building was unpainted. A historic photograph from circa 1940 shows the brick exterior painted a white or off-white

color, which remained as the exterior treatment for many decades until at some point the paint was removed from the exterior. There is a record of sandblasting performed in 1982, which is likely when the paint was removed. Sandblasting was not an appropriate treatment for the brick, and the brick exterior remains unpainted and exposed today. Thus, the Palisades Building and its character-defining features shall be rehabilitated and restored using the selected period of significance of 1940-1958.

Treatment of Brick Exterior. The rehabilitation and restoration shall include painting the Palisades Building's brick exterior in colors similar to those during the selected period of significance of 1940-1958, as evidenced by historic photographs. Repainting the brick will reduce the visual impact of the inappropriate sandblasting. The brick will be cleaned and painted using a "stack" to be selected in consultation with the Project Conservator, who shall be a Professional Associate of the American Institute for Conservation of Historic and Artistic Works and shall meet the U.S. National Park Service criteria for Architectural Conservation (GS-100).

Treatment of Terra Cotta. All paint coatings shall be removed from the overpainted terra cotta surfaces using gentlest means possible, and treatments to the terra cotta shall include repair and replacement in kind, as necessary, and may include repainting. Where necessary, the terra cotta shall be repointed following the National Park Service publication *Preservation Brief 2: Repointing Mortar Joints in Historic Masonry Buildings*.

Historic Rooftop Sign. Historically, the Palisades Building had a rooftop designation sign that read "Hotel Miramar" at the westward slope of the roof. That sign was removed sometime in the 1950s or 1960s. A west-facing rooftop sign, evocative of the rooftop sign that was historically on the Palisades Building, will be reestablished as part of the Project. The sign's specific design will be subject to review and approval via the Certificate of Appropriateness process outlined in Article 6 of this Agreement.

At the time of rehabilitation, various structural, plumbing, mechanical and electrical aspects of the existing Palisades Building will be upgraded. In addition, to improve life safety protections, existing fire and life safety conditions will be updated per current codes while achieving a balanced application of the Secretary of the Interior's Standards and California Historical Building Code. Furthermore, ADA accessibility will be upgraded as part of rehabilitation. Rehabilitation of the Palisades Building will be subject to a Certificate of Appropriateness as required by Article 6 of this Agreement. Rehabilitation of the Palisades Building in accordance with the Certificate of Appropriateness will: (1) make the building safer in light of today's technical codes, (2) rehabilitate and restore its character-defining features, and (3) ensure that the Palisades Building endures for future generations.

(c) Landmark Parcel. As one of the few un-subdivided blocks remaining intact from the City's founding in 1875, the Property has been designated as

a Landmark Parcel. (12LM-002.) Although no individual elements of the landscape (other than the Moreton Bay Fig Tree) are historically significant, the Property's overarching character-defining feature is its verdant landscaping.

Rehabilitation. Decades of piecemeal changes to the Property's landscaping have resulted in loss of a defined landscape character. The Project includes a new comprehensive landscape plan to return the verdant garden identity to the Landmark Parcel, including the Project's Miramar Gardens and Palisades Gardens. Furthermore, the existing perimeter walls that encircle the Property shall be removed to provide a more inviting community fabric. And the Property will continue its presence as a unified block remaining from the City's original township.

Miramar Gardens. The Miramar Gardens are designed to embrace the Moreton Bay Fig Tree. While the foliage of the new Miramar Gardens shall generally consist of a low-water plant palette suitable for a Southern California coastal climate, the verdant character of the landscape shall be retained.

Palisades Gardens. The Palisades Gardens will reintroduce the historic garden entry at the west elevation of the Palisades Building and will reverse the disrupted linear relationships resulting from past construction and redesign of various swimming pools, bungalows, and other alterations over the decades. Similar to what is proposed for the Miramar Gardens, the Palisades Gardens shall consist of a low-water plant palette, along with ferns and palms, to retain the verdant landscape character.

Certificate of Appropriateness for Landscape Plan. To ensure the Landmark Parcel's character, the Project's landscape plan will be reviewed and approved through a Certificate of Appropriateness as required by Article 6 of this Agreement.

(d) Preservation Plan. As and when application(s) is/are made for one or more certificates of appropriateness for the Project in accordance with Article 6, the Preliminary Preservation Plan shall be refined and submitted to City Staff, and revised as appropriate to support final approval and ensure conformance with the Secretary of the Interior's Standards for Rehabilitation as well as the criteria specified in Santa Monica Municipal Code Section 9.56.140 (A) and (C) for issuance of such certificates of appropriateness (or equivalent permits). Upon issuance of the Project's first demolition, grading, excavation, shoring or comprehensive building permit, the Developer shall engage a qualified historic preservation architect, structural engineer, arborist and general contractor, subject to City Staff approval of their respective credentials, to execute work in compliance with the final preservation plan.

(e) Historic Preservation Interpretative Feature. In recognition of the historic significance of the Miramar Property, Developer shall, prior to Certificate of Occupancy for the Project, design and install on the Project Site one or more exhibits (such as, but not limited to, signage, artwork, and/or plaque) incorporating some or all of

historic/cultural information, imagery, photographs, plans, postcards, etc. interpreting aspects of the Miramar's history. At least one such exhibit shall be located within the Publicly-Accessible Open Space. The exhibit(s) may be incorporated within elements of the Project's landscaping/hardscape. The exhibit(s) shall be developed with guidance from an architectural historian, historic architect, or historic preservation professional who satisfies the Secretary of the Interior's Professional Qualification Standards for History, Architectural History, or Architecture, pursuant to 36 CFR 61 and in coordination with the City's Landmarks Commission Liaison or other staff as designated by the Community Developer Director's designee.

(f) Developer shall provide a performance bond for completion of the scope of work outlined in **Exhibit "L"** pertaining to the Palisades Building in the event Developer obtains a building permit for the Project, but fails to obtain a certificate of occupancy for the Project. [PLACEHOLDER]

2.8.3 Publicly-Accessible Open Space. As part of the Project, Developer shall establish the open space that is identified in **Exhibit "M"** of this Agreement as publicly-accessible open space in accordance with the requirements in this **Section 2.8.3 ("Publicly-Accessible Open Space")**.

(a) The Publicly-Accessible Open Space shall be approximately 14,000 square feet as shown on **Exhibit "M"**.

(b) The Publicly-Accessible Open Space shall be owned, operated and maintained by Developer at a maintenance standard equivalent to or greater than the standard for the Project's private ground-level open space.

(c) Each part of the Publicly-Accessible Open Space shall be accessible from other parts of the Publicly-Accessible Open Space without leaving the Publicly-Accessible Open Space.

(d) The Publicly-Accessible Open Space shall be directly accessible from the sidewalks along Ocean Avenue and Wilshire Boulevard, and while it may include terracing/planters that allow for seating and stairs, will also include pathways that will be accessible to persons with disabilities.

(e) No more than twenty percent (20%) of the Publicly-Accessible Open Space shall be occupied by open space-related above-grade structures, such as pergolas.

(f) A minimum of thirty-five percent (35%) of the Publicly-Accessible Open Space shall be planted areas with grass, ground cover, planters, bushes, or trees. Prior to submittal of the Design Review application in accordance with Article 6, Developer shall consult with the City's Urban Forester as to the selection of the trees to be located in the Publicly-Accessible Open Space, their size, and the

appropriate planter size to facilitate the trees' viability in the given urban conditions and microclimate.

(g) Developer shall make the Publicly-Accessible Open Space accessible to the public, without charge, each day of the year from 8:00 a.m. to 9:00 p.m., subject to the following conditions:

(1) The public use of the Publicly-Accessible Open Space shall be: (i) consistent with the terms and conditions of this Agreement; (ii) solely for pedestrian access to and passive use of the Publicly-Accessible Open Space by the public, including walking, strolling, and similar activity except to the extent more active pedestrian use is consistent with the programming provided in accordance with Section 2.8.3(i) below; (iii) consistent with the rules and regulations described in the following paragraph, and (iv) compatible with Developer's development, use and enjoyment of the Project as a hotel and residential project. No use other than passive use of the Publicly-Accessible Open Space by the public shall be permitted. Nothing in this Agreement shall give members of the public the right, without prior written consent of Developer, which consent may be conditioned or withheld by Developer in Developer's sole discretion, to engage in any other activity in or on the Publicly-Accessible Open Space, including without limitation any of the following: (x) cooking, dispensing or preparing food, (y) selling any item or engaging in the solicitation of money, signatures, or other goods or services; (z) sleeping or staying overnight; (aa) using sound amplifying equipment; or (bb) engaging in any illegal, dangerous, intimidating or other activity that Developer reasonably deems to be inconsistent with other uses on the Publicly-Accessible Open Space and with the continuous, orderly, and safe operation of the Project or with the use of the Publicly-Accessible Open Space by other members of the public for the permitted purposes, such as excessive noise or boisterous activity, bicycle or skateboard riding, skating or similar activity, being intoxicated, having offensive bodily hygiene, having shopping carts or other wheeled conveyances (except for wheelchairs and baby strollers/carriages). The Publicly-Accessible Open Space shall remain Developer's private property with members of the public permitted to occupy and use the Publicly-Accessible Open Space in a manner consistent with this Agreement. Nothing in this Agreement shall be deemed to mean that the Publicly-Accessible Open Space is a public park or is subject to legal requirements applicable to a public park or other public space.

(2) Pursuant to EIR Mitigation Measure DCP MM PS-2, Developer shall prepare and implement a security plan for all of the Project's common and public spaces, including the Publicly-Accessible Open Space ("Security Plan"). The Security Plan will, among other things, establish rules and regulations for public use of the Publicly-Accessible Open Space and will establish private security patrols for the Property including the Publicly-Accessible Open Space. Developer shall have sole responsibility for the conduct of private security patrols.

(3) Prior to or concurrent with the submittal of the Project's building permit application, Developer shall submit a signage proposal, subject to the approval of the Planning Director, that clearly identifies the Publicly-Accessible Open Space location(s), hours of availability, and access and use restrictions identified in this Section 2.8.3. Prior to Certificate of Occupancy, Developer shall install such approved signage in the Publicly-Accessible Open Space.

(4) Notwithstanding the requirement for Developer to generally make the Publicly-Accessible Open Space available to the public between 8:00 a.m. and 9:00 p.m., during these hours Developer may (a) utilize the Publicly-Accessible Open Space for public events and art or cultural installations that are programmed by Developer and open to the public, including those required by Section 2.8.3(i), (b) utilize the Publicly-Accessible Open Space for installation of on-site art and a historic preservation interpretive feature, consistent with Section 2.8.3(h) and Section 2.8.2(e), respectively, (c) place informational wayfinding kiosks and signage (including any directory of the Project's uses and/or commercial tenants) within the Publicly-Accessible Open Space, and (d) temporarily close the Publicly-Accessible Open Space for Property maintenance/repairs or public safety.

(5) Nothing in this Agreement is intended to limit the rights of any member of the public to use the Publicly-Accessible Open Space for any purpose which, on private land open to public use during specified hours, is protected by the United States Constitution, the California Constitution or any other applicable federal or California law that overrides the rights granted to Developer under this Agreement with respect to limitations on use of the Publicly-Accessible Open Space.

(h) Developer shall provide a prominent piece of art in the Publicly-Accessible Open Space as follows:

(1) The minimum value of the art shall be Seven Hundred Fifty Thousand Dollars (\$750,000.00), which must be expended only on costs associated with the selection, acquisition, purchase, commissioning, design, fabrication, placement, installation, or exhibition of the art;

(2) The artwork must be an original new work of art, including but not limited to a sculpture, painting, graphic arts, mosaics, photography, crafts, mixed media, electronic art or environmental work;

(3) Prior to issuance of a building permit for the Project, Developer shall:

(i) Prepare an art plan that includes the process for selecting the artist, schedule for selection of the artist, community engagement including the community charrette included in subsection (iv) below, and fabrication and

installation of the art (the “**Art Plan**”). The process for selecting the artist may at Developer’s discretion include, but is not limited to, consideration of Santa Monica-based artists, engagement with the community, and/or a competition to select the artist. Prior to presenting the Art Plan to the Arts Commission as described in the following paragraph, Developer shall consult with the City’s Cultural Affairs Manager, or his or her designee, regarding the Art Plan.

(ii) Present the proposed Art Plan to the Arts Commission for feedback and input.

(iii) The Art Plan shall be subject to review and approval of the City’s Cultural Affairs Manager, or his or her designee, which approval shall not be unreasonably withheld, conditioned or delayed.

(iv) Hold a community charrette or other meeting open to the public to receive comments from community members regarding potential concepts and/or inspiration for the art. Notice of the community charrette/meeting shall be published in the Santa Monica Daily Press not less than twice at least 14 days before the community charrette/meeting.

Following approval of the Art Plan as described above, Developer shall select the artist and work with the selected artist on the final design of the work(s) of art. Notwithstanding anything in this Section 2.8.3(h)(3), Developer may obtain a Foundation Only Permit per Section 2.4.6 prior to satisfying the requirements of this Section 2.8.3(h)(3).

(4) Developer in its discretion may from time to time replace the artwork(s), subject to compliance with the requirements of Section 2.8.3(h)(1)-(3) and the process included in Section 2.8.3(h)(3) (except that such process shall occur before installation of the replacement art rather than prior to issuance of the Project’s building permit).

(5) Prior to Certificate of Occupancy for the Project:

(i) Developer shall prepare an Art Maintenance Plan that shall be subject to review and approval of the City’s Cultural Affairs Manager, or his or her designee, which approval shall not be unreasonably withheld, conditioned or delayed. The Art Maintenance Plan shall ensure that Developer provides sufficient maintenance to ensure the preservation of the art in good condition to the reasonable satisfaction of the City and protection of the art work against destruction, distortion, mutilation, or other modification for the Life of the Project.

(ii) Developer shall install the art in the Publicly-Accessible Open Space.

(iii) Developer shall install a plaque that identifies the art.

(i) Developer shall provide programming in the Publicly-Accessible Open Space for the Life of the Project in accordance with the following:

(1) There shall be a minimum of two (2) signature annual events (e.g., holiday-related event, art show, musical performance or other programming with broad community interest) and a minimum of two (2) additional programmed activities/events/classes per month, e.g. showcase events for musicians or other artists, history/educational events/classes, art classes or fairs, fitness classes, dance events, etc. Developer may partner with other organizations to provide the programming required pursuant to this Section 2.8.3(i) so long as (i) there is no charge to the public to attend and (ii) there is no charge to the partner(s) for use of the Publicly-Accessible Open Space, including that Developer shall cover the cost of any additional insurance required for such programming.

(2) Prior to Certificate of Occupancy for the Project:

(i) Developer shall consult with Downtown Santa Monica Inc., or its successor entity, regarding the various types of programming to be held in the Publicly-Accessible Open Space; and

(ii) Developer shall prepare an initial Programming Plan for the 12 months following the opening of the hotel that includes program parameters and roles and responsibilities of Developer and any partners (e.g., Downtown Santa Monica Inc, Santa Monica Chamber of Commerce, Santa Monica Travel and Tourism, non-profit partners, etc.). Such initial Programming Plan shall be reviewed and approved by the City's Community Services Director, or his or her designee, which approval shall not be unreasonably withheld, conditioned or delayed.

(iii) After City approval of the initial Programming Plan, subsequent Programming Plans may be prepared by Developer in consultation with Downtown Santa Monica Inc., or successor entity, subject to such plans satisfying the requirements of Section 2.8.3(i)(1).

(j) Developer shall, prior to obtaining a building permit for the Project, pay to the City a Parks and Recreation Fee of Two Hundred and Fifty-Thousand Dollars (\$250,000.00) to be used by the City for off-site parks and recreation projects and programs. This fee satisfies the Project's requirement to pay a Parks and Recreation Development Impact Fee pursuant to SMMC Chapter 9.67.

2.8.4 Water Neutrality and Additional Conservation. In addition to the water conservation measures included as project features in Section 2.7.13 above:

(a) The sum of the Project's and the 100% Affordable Housing Project's combined annual Projected Water Demand shall be both (1) at least twenty percent (20%) below the sum of the Property and Second Street Property's combined Existing Average Gallons Per Year documented in EIR Table 4.20-2 and (2) less than the sum of the Property and Second Street Property's combined average annual Baseline Water Demand. Notwithstanding the options available for water neutrality compliance in SMMC Section 7.16.050, the Project shall achieve the water neutrality and conservation requirements of this Section 2.8.4(a) through Project water efficiency measures and not through payments of in-lieu fees or offsets at other properties (except that the Project is satisfying the offset requirements for the 100% Affordable Housing Project).

(b) Project landscaping shall be irrigated with greywater, rainwater, recycled water and/or other approved non-potable water supply. Prior to issuance of a building permit for the Hotel Project, Developer shall obtain City approval for the on-site system for capture and storage of rainwater and on-site greywater.

(c) Developer shall construct a connection to the existing SMURRF line at Ocean Avenue to the Project specifically for the purpose of providing a supplemental water source for Project landscaping irrigation in the event that on-site capture and storage is not sufficient to irrigate on-site landscaping. Developer shall purchase the water from the City at the prevailing rate established by the City at the time of use.

(d) Sustainable Water Infrastructure Contribution. Prior to issuance of a building permit for the Project, Developer shall pay to the City a Sustainable Water Infrastructure Contribution in the amount of One-Hundred Thousand Dollars (\$100,000.00).

2.8.5 Urban Runoff. Notwithstanding that the Development Application was deemed complete and pending prior to Ordinance No. 2546 (CCS) becoming effective, the Project will store and reuse rainwater in accordance with SMMC Section 7.10.090(d).

2.8.6 Sustainable Design Status: LEED® Platinum Requirement. Developer shall design the Project so that, at a minimum, the Project shall achieve LEED® "Platinum" certification under the LEED® v4 Rating System ("**Sustainable Design Status**"). Moreover, Developer shall retain the services of a LEED accredited professional to consult with Developer regarding implementation of sustainable design features for the Project. Developer shall confirm to the City that the design for the Project has achieved the Sustainable Design Status in accordance with the following requirements:

(a) Prior to the submission of plans for Design Review in accordance with Article 6, Developer shall submit a preliminary checklist of anticipated LEED® credits (that shall be prepared by the LEED® accredited professional) for review

by the City, along with a narrative to demonstrate that the Project is likely to achieve the Sustainable Design Status.

(b) Prior to submittal of the plan check application for the Project, Developer shall:

(1) Submit for review by the City an updated checklist of anticipated LEED® credits along with a narrative describing the Project's sustainable features to demonstrate that the Project is likely to achieve the Sustainable Design Status;

(2) Retain the services of a third party, independent individual the "**Commissioning Authority**") designated to organize, lead, review, and complete the process of verifying and documenting that the Project and all of its systems and assemblies are planned, designed, installed, and tested to meet the Sustainable Design Status; and

(3) Submit a Commissioning Plan which includes the elements specified in California Code of Regulations Title 24, Part 11, Section 5.410.2.3 or any successor thereto.

Prior to issuance of a final Certificate of Occupancy for the Project, the City shall verify (which verification shall not be unreasonably withheld, conditioned or delayed) that the Project has achieved the Sustainable Design Status.

(c) Notwithstanding the foregoing, if the City has not verified that the constructed Project has achieved the Sustainable Design Status, the City shall nonetheless issue a temporary Certificate of Occupancy for the Project (assuming that the Project is otherwise entitled to receive a temporary Certificate of Occupancy). The temporary Certificate of Occupancy shall be converted to a final Certificate of Occupancy (assuming that the Project is otherwise entitled to receive a final Certificate of Occupancy) once the constructed Project has achieved the Sustainable Design Status.

(d) If the Project is denied certification for the Sustainable Design Status by the US Green Business Certification Inc., and the Developer has exhausted all administrative remedies and appeals of that denial, then the City shall issue a Certificate of Occupancy upon the Developer paying a fine in the amount of Four Dollars (\$4.00) per square foot of net new Project Floor Area to be used for the City's Sustainability Programs. This fine may be waived if the City in its sole discretion determines that Developer made a good faith effort to achieve the Sustainable Design Status.

2.8.7 Additional Energy Conservation Measures. This requirement shall be satisfied prior to issuance of the Project's building permit. The Project, except for the energy for the EV Charging Infrastructure, shall be designed to use at least fifteen

percent (15%) less energy than the Property's existing energy usage as documented in EIR Tables 4.7-5 and 4.7-6.

2.8.8 Local Hiring Program. Developer shall implement and monitor the Local Hiring Program as set forth in Exhibits "I-1" and "I-2". At least sixty (60) days before recruitment is opened up to general circulation for initial hiring in all or part of the Project's commercial areas, Developer or the operator of the commercial space shall prepare and submit to the City's Community Development Director for review and approval a written local hiring program consistent with the obligations under this Agreement for permanent employment. The approved local hiring plan may be amended by Developer from time to time thereafter, subject to the Community Development Director's review and approval. Failure of any tenant to comply with the Local Hiring Program requirements shall not constitute a Default by Developer under this Agreement so long as such tenant's lease requires such compliance and Developer is actively pursuing reasonable enforcement actions to bring such tenant into compliance with this lease provision.

2.8.9 Enhanced Transportation Impact Fee. Prior to obtaining a building permit for the Project, Developer shall pay to the City the sum of One Million, Four-Hundred Thousand Dollars (\$1,400,000.00) to be used by the City for transportation and mobility infrastructure improvements. This enhanced fee is instead of the Transportation Impact Fee that would otherwise be required for the Project pursuant to SMMC ch. 9.66.

2.8.10 Affordable Lodging Fee. Developer shall pay to the City, prior to obtaining a Certificate of Occupancy for the Project, the sum of Seventy-Five Thousand Dollars (\$75,000.00) to be used by the City for the preservation, expansion or development of new affordable lodging.

2.8.11 Subsidized Community Events and/or Hotel Stays. For the Life of the Project, Developer shall provide a cumulative annual discount of not less than Twenty-Five Thousand Dollars (\$25,000.00) off prevailing market rates to Santa Monica-based non-profits for special events, including but not limited to room fee waivers, food and beverage discounts, hotel night stays, and/or silent auction items (e.g., gift certificates for hotel stays, food and beverage credits or spa credits). Developer, in its sole discretion, may determine the Santa Monica-based non-profits to which such discounts shall be offered.

2.8.12 Community Meeting Space. Developer shall make space of at least 1,000 square feet within the Project available for rent (at rental rates described below) for meetings by community groups and non-profit organizations ("**Community Meeting Space**") not less than twelve (12) times per year for the Life of the Project. Developer will consider requests for larger space on a "space available" basis, and if Developer is able to accommodate any such request, the event shall count toward the twelve times per year minimum. The Community Meeting Space may be located in different areas of the Project and may be located indoors or outdoors as the respective

user may request. Prior to issuance of Certificate of Occupancy, written guidelines as to public availability of the Community Meeting Space shall be prepared by the Developer and submitted to the Planning Director for review and approval. It is acknowledged and agreed that such guidelines may include “seasonal blackout periods”, during which demand for meeting space in the hotel is typically highest. Such guidelines may be amended by Developer from time to time thereafter, subject to the Planning Director’s review and approval. The rental rates for the Community Meeting Space shall not exceed the rental rates charged for community meeting rooms located in City-owned parks for “Small Rooms” as established by City Council resolution. For the avoidance of doubt, such rental rate limitation shall not apply once Developer has met its minimum annual commitment set forth in this Section 2.8.12. An on-site restroom shall be made available at all times that the Community Meeting Space is being rented. Developer shall provide written guidelines regarding community meeting space availability and reservation process. Guidelines shall be made available to the public electronically online.

2.8.13 Internship Program. During the Life of the Project, the Developer shall make available at least four (4) internships within the Hotel Uses during each school year (which for this purpose includes the following summer) to students who attend a high school in Santa Monica or Santa Monica College. The internships shall be paid at the City’s minimum wage unless a student requests an unpaid internship in order to obtain school credit(s) (or more school credits) for such internship. Developer will inform City’s Director of Community Development, Santa Monica High School, Santa Monica College, Virginia Avenue Park Advisory Board, Virginia Avenue Park Youth Employment Services, and at least one provider of affordable housing in Santa Monica (e.g. Community Corporation of Santa Monica) of the availability of, and selection criteria for, such internships prior to the start of each school year. The Developer shall also participate annually in Hospitality Training Academy, or any successor entity, internship fair/events to advertise the availability of Hotel internships. Developer shall select interns in accordance with its normal practice of hiring the most qualified candidate and shall make a good faith effort to hire residents of the 90404 zip code (Pico Neighborhood) as the first priority and other Santa Monica residents as the second priority when most qualified or equally qualified as other applicants who are not residents of the 90404 zip code or Santa Monica residents, as applicable. Subject to the requirements specified in this Section 2.8.13, Developer retains full discretion to establish selection criteria for, and to select, the students for the internships.

2.8.14 Enhanced Affordable Housing Commercial Linkage Fee. Prior to obtaining a building permit for the Project, Developer shall pay to the City an Affordable Housing Commercial Linkage Fee in the amount of Seven-Hundred and Twenty Thousand Dollars (\$720,000.00) to be used by the City to facilitate the development and availability of housing affordable to a broad range of households with varying income levels within the City. This enhanced fee is instead of the Affordable Housing Commercial Linkage fee that would otherwise be required for the Project pursuant to SMMC ch. 9.68.

2.8.15 Economic Equity/Opportunity Fund Contribution. Prior to issuance of a building permit for the Project, Developer shall make a contribution to the City in the amount of Five Hundred Thousand Dollars (\$500,000.00). The City shall utilize this contribution to support economic equity and opportunity initiatives including but not limited to seed funding for economic opportunity initiatives to support local entrepreneurs from disadvantaged communities, investments in community partnerships and non-profit organizations that support economic equity and opportunity initiatives, and other initiatives as determined by the City or as developed through current and future community processes. The City shall deposit such monies into a separate restricted account to be used exclusively for the economic equity and opportunity initiatives as described above through guidelines established by the City or through current and future community processes.

2.8.16 Developer Contribution for Early Childhood Initiatives. Prior to issuance of the Certificate of Occupancy for the Project, Developer shall pay an Early Childhood Initiatives contribution to the City in the amount of One Million, Three-Hundred Fifty Thousand Dollars (\$1,350,000.00). The City shall utilize this contribution to support early childhood initiatives including but not limited to infant, toddler and pre-school tuition subsidies; family support and parent engagement strategies; home visitation programs; facility and playground improvements and kindergarten readiness models. The City shall deposit such monies into a separate restricted account to be used exclusively for the early childhood initiatives as described above through guidelines to be established by the City. First priority for receipt of these monies shall be residents of the affordable housing project located at the Project's affordable housing development located on the 2nd Street Parcel or other location as approved and developed pursuant to this Agreement.

2.9 Parking.

2.9.1 Total Number of Spaces. The total number of parking spaces (including all standard-sized, compact, accessible and tandem spaces) provided in the Project's Subterranean Space shall be 428, unless modified in accordance with Section 2.4.2 and/or 2.4.3 of this Agreement. In addition to the marked parking spaces, the opportunity for supplementing the parking capacity of the garage exists by parking vehicles in the aisles in those portions of the parking garage staffed with attendant or valet parking. This Agreement and the Project Plans set forth the exclusive off-street parking requirements and parking design and development standards for the Project and supersede all other parking requirements and parking design and development standards under the Existing Regulation, including those in Santa Monica Municipal Code ch. 9.28. Provided and to the extent that the Developer supplies the quantity of parking required under this Agreement, Developer shall have no obligation to pay any parking in-lieu fees to City. Further, provided that Developer supplies the quantity of parking required under this section, the design, location or position of any parking layout may be revised subject to review and approval by the Community Development Director.

2.9.2 Parking and Loading Operations Plan. Prior to the issuance of building permit for the Project, the Developer shall submit a Parking and Loading Operations Plan to the Community Development Director for review and approval based upon a determination that the loading plan is not in conflict with other project operations and does not impact to the public right-of-way, which may include, but not be limited to, impacts to resource, recovery and recycling operations, noise impacts, and public safety concerns. The contents of the Plan shall include the following information and any other information as otherwise specified by the Mobility Division at the time of submittal: 1) Project location and description of parking and loading facilities; 2) parking and loading layout including accessibility and circulation; 3) hours of operation and staffing of parking and loading facilities; and 4) an operational restriction limiting the delivery/freight trucks to the WB-40 truck sizes with a 50' maximum length.

2.9.3 No Charge for Employee Parking. Hotel employees that commute to/from the Project site for work shall not be charged for parking at the Project.

2.10 Design.

(a) Setbacks. Developer shall maintain the setbacks for the Project as set forth on the Project Plans. In the event that any inconsistencies exist between the Zoning Ordinance and the setbacks established by this Agreement, then the setbacks required by this Agreement shall prevail.

(b) Building Height. The maximum Building Height shall be 130 feet for the Ocean Building and 80 feet for the California Building. In the event that any inconsistencies exist between the Zoning Ordinance and the Building Height allowed by this Agreement, then the Building Height allowed by this Agreement shall prevail.

(c) Stepbacks. Developer shall maintain the stepbacks for the Project as set forth on the Project Plans. In the event that any inconsistencies exist between the Zoning Ordinance and the stepbacks required by this Agreement, then the stepbacks established by this Agreement shall prevail.

(d) Height Projections. Projections shall be permitted as reflected on the Project Plans, including up to 15 feet from the roof deck for photovoltaic panels, 14 feet from the roof deck for solar thermal water heaters, 12 feet for rooftop features for outdoor living areas such as sunshade, open railings, trellises and landscaping. There shall be no limit on the amount of roof area that can be covered by photovoltaic panels, solar thermal water heaters and outdoor living areas provided that such height projections are setback from the roof edge as shown on the Project Plans and are approved pursuant to Section 6.1. Projections for elevators, stairwells, and mechanical equipment shall be consistent with SMMC Section 9.21.060 and Table 9.21.060. In the event that any inconsistencies exist between the Zoning Ordinance and the projections permitted by this Agreement, then the projections permitted by this Agreement shall prevail.

(e) Projections from Buildings into Minimum Setbacks. The Project shall not include any building projections into the minimum building frontage lines required in DCP Section 9.10.060.D. SMMC Section 9.21.110 shall not apply to the Project.

(f) Signage. Exterior signs on the Property that are visible from a public right-of-way shall be subject to Chapter 9.61 of the SMMC (Santa Monica Sign Code) in effect as of the Effective Date, a copy of which is contained within Exhibit "F"; provided, however, that any review of the sign required by Chapter 9.61 of the SMMC, including with respect to the sign's location, size, materials, and colors, shall be in accordance with the procedures set forth in Article 6 of this Agreement. Pursuant to SMMC 9.61.130 and Section 6.1, one or more sign adjustments may be approved. Directional signs for vehicles shall be located at approaches to driveways as required by the City's Mobility Division.

(g) Loading Spaces. Loading for the Project shall be provided in accordance with the Project Plans, which have been approved by the Community Development Director. Design/dimensions of Project loading spaces may be revised by the Developer and any revisions shall be subject to review and approval by the Community Development Director. The loading requirements in Zoning Ordinance, including those in SMMC Section 9.28.080, shall not apply to the Project.

(h) Swimming Pools and Spas. Because the Project's swimming pools and spas are located on roof decks and are setback from the edge of the roof, as shown on the Project Plans, the swimming pool and spa standards included in SMMC Section 9.21.160 shall not apply to the Project.

(i) Fences, Walls and Hedges. The location, size, materials, and color of any fences, walls and hedges, as applicable, shall be reviewed in accordance with the Design Review procedures set forth in Article 6 of this Agreement. The Landmarks Commission (or the City Council appeal) may authorize fences, walls and hedges that exceed the maximum heights included in SMMC Section 9.21.050.

(j) Reflective Materials. Notwithstanding SMMC Section 9.21.10, in reviewing and approving the Project's design pursuant to Article 6, the Landmarks Commission (or the City Council appeal) may allow any of the building's façade to have more than twenty-five percent (25%) spandrel glass.

(k) DCP Development Standards. In addition to the development standards applicable to the Property pursuant to DCP Section 9.10.080 (height limit, maximum Floor Area and open space), the Project shall achieve the DCP's minimum Building Frontage Line requirements in DCP Section 9.10.060.D. In order to achieve these Building Frontage Line requirements (20 feet minimum along Ocean Avenue and Second Street and 18 feet minimum along Wilshire Boulevard), the Project shall be set back a minimum of six feet and one inch (6'1") from the Second Street property line and a minimum of five feet and five inches (5'5") from the Wilshire Boulevard property line.

Except as provided in this Section 2.10(k) and consistent with DCP Section 9.10.080, the DCP's generally applicable standards and regulations, including those applicable to the Ocean Transition District, shall not apply to the Project.

2.11 Refuse and Recycling. Refuse and recycling management for the Project shall be provided in accordance with the Project Plans which incorporate a refuse and recycling compactor system and food waste recycling/disposal system that shall be serviced by a private refuse and recycling provider in the event the City does not provide such compactor service. For the Life of the Project, the Developer shall have the sole responsibility to pay for such service for the lodging, other commercial, and residential uses on the Hotel Parcel. Final design of the refuse and recycling storage area shall be reviewed and approved by the Director of Public Works prior to issuance of the building permit for the Project.

2.12 Contract with City. Developer hereby acknowledges that in approving this Agreement for the Project, the City is waiving certain fees and taxes and modifying certain development standards that would otherwise be applicable to the Project such as increasing unit density and other property development standards compared with the DCP's standards for base projects in the Ocean Transition District. In exchange for such forms of assistance from the City, which constitute direct financial contribution to the Developer, Developer has entered into this contract with the City and agreed to the other conditions hereof, including the requirement to transfer land to a non-profit housing provider and provide other financial assistance to ensure development of the 100% Affordable Housing Project. The parties agree and acknowledge that this is a contract providing forms of assistance to the Developer within the meaning of Civil Code Section 1954.52(b) and Chapter 4.3 of the State Planning and Zoning Laws, Government Code Section 65915 et seq.

ARTICLE 3

CONSTRUCTION

3.1 Construction Mitigation Plan. During the construction phase of the Project, Developer shall comply with the Construction Mitigation Plan attached as Exhibit "J" hereto.

3.2 Construction Hours. Developer shall be permitted to perform construction between the hours of 8:00 a.m. to 6:00 p.m. Monday through Friday, and 9:00 a.m. to 5:00 p.m. Saturday; provided that interior construction work which does not generate noise of more than thirty (30) decibels beyond the Property line may also be performed between the hours of 7:00 a.m. to 8:00 a.m. and 6:00 p.m. to 7:00 p.m. Monday through Friday, and 8:00 a.m. to 9:00 a.m. and 5:00 p.m. to 6:00 p.m. Saturday. Notwithstanding the foregoing, pursuant to SMMC Section 4.12.110(e), Developer has the right to seek a permit from the City authorizing construction activity during the times otherwise prohibited by this Section. The Parties acknowledge and agree that, among other things, after hours construction permits can be granted for concrete pours.

3.3 Outside Building Permit Issuance Date. If Developer has not been issued a building permit for the Project by the Outside Building Permit Issuance Date (defined below), then on the day after the Outside Building Permit Issuance Date, without any further action by either Party, this Agreement shall automatically terminate and be of no further force or effect. Issuance of a Foundation Only Permit pursuant to Section 2.4.6 constitutes a building permit for purposes of this Section 3.3. For purposes of clarity, if Developer has not been issued a building permit for the Project by the Outside Building Permit Issuance Date, the City shall not be required to pursue its remedies under Section 11.4 of this Agreement, and this Agreement shall, instead, automatically terminate. "**Outside Building Permit Issuance Date**" means the date that is ten (10) years after the Effective Date; provided that the Outside Building Permit Issuance Date shall automatically be extended by applicable Excusable Delays and otherwise in accordance with the remainder of this paragraph. If the approval of the Project design does not occur within six (6) months of the submittal by Developer to the Landmarks Commission of the Project design pursuant to Section 6.1, then the Outside Building Permit Issuance Date shall automatically be extended one month for each additional month or partial month greater than six (6) that the final design approval is delayed. If the approval by the California Coastal Commission of the Project does not occur within six (6) months of the submittal by Developer to the Coastal Commission, then the Outside Building Permit Issuance Date shall automatically be extended one month for each additional month or partial month greater than six (6) that the Coastal Commission approval is delayed. At any time after the Effective Date but before the Outside Building Permit Issuance Date, Developer may deliver written notice to the Community Development Director requesting an extension of the Outside Building Permit Issuance Date for an additional twelve (12) months. The Community Development Director may grant such extension if Developer can demonstrate substantial progress has been made towards obtaining a building permit and show reasonable cause why Developer will not be able to obtain the building permit for the Project by the Outside Building Permit Issuance Date and can demonstrate that: (a) the condition of the Property will not adversely affect public health or safety and (b) the continued delay will not create any unreasonable visual or physical detriment to the neighborhood.

3.4 Building Permit Issuance, Extension, and Renewal.

(a) In view of the complexity of coordinating building permits, construction contracts and financing for the Project and the 100% Affordable Housing Project, notwithstanding SMMC Sections 8.08.060(h)(1) and (i), the initial expiration date for the Project's building permit application shall be eighteen (18) months from the date the application is filed and the Building Official may authorize one six (6) month extension of the building permit application's expiration date in accordance with the criteria in SMMC Section 8.08.060(i)(1)-(4).

(b) Construction of the Project shall be subject to the provisions of SMMC Section 8.08.070. If a building permit for all or part of the Project expires (e.g., is not timely exercised) or lapses and the Outside Building Permit Issuance Date has not

expired, Developer may file for renewal of such building permit or a new/replacement building permit prior to the Outside Building Permit Issuance Date, as it may be extended pursuant to Section 3.3 above.

3.5 Damage or Destruction. If the Project, or any part thereof, is damaged or destroyed within the Term, Developer shall be entitled to reconstruct the Project in accordance with this Agreement if: (a) Developer obtains a building permit for this reconstruction prior to the expiration of this Agreement and (b) the Developer is not in Breach of this Agreement. In addition, if the Project, or any part thereof, is damaged or destroyed beyond the Term but within fifty-five (55) years of issuance of the Project's Certificate of Occupancy, Developer shall be entitled to reconstruct the Project in accordance with SMMC Section 9.27.040. This Section 3.5 shall survive the expiration of the Term of this Agreement and shall remain binding on Developer, its successors and assigns, and City and shall continue in effect for fifty-five (55) years from Certificate of Occupancy for the Project.

3.6 Final Determination That the Existing Administration Building, Existing Ocean Tower and Existing Bungalows Are Not Eligible for Designation as Landmarks or Structures of Merit. No demolition permit(s) for any existing buildings on the Property shall be issued until the Project has received its Certificate(s) of Appropriateness for the Project's design in accordance with Section 6.1 below. Due the Landmarks Commission's prior review and consideration of the Existing Administration Building, Existing Ocean Tower and Existing Bungalows as part of Landmark Application 12LM-002 and finding that "each [of these existing buildings] has undergone significant alterations that have diminished their respective historic integrity" as documented in Section II of the Landmarks Commission's Amended Findings and Determination, any demolition permit application(s) for those buildings (but not the Palisades Building, which has been designated a City landmark by the Landmarks Commission) shall not be subject to further review by the Landmarks Commission and the demolition of those existing buildings shall not be a basis for denying a certificate of appropriateness for the Project.

ARTICLE 4

PROJECT FEES, EXACTIONS, MITIGATION MEASURES AND CONDITIONS

4.1 Fees, Exactions, Mitigation Measures and Conditions. Except as expressly set forth in Section 2.8 (relating to Community Benefits), Section 4.2 (relating to modifications), and Section 5.2 (relating to Subsequent Code Changes) below, the City shall charge and impose only those fees, exactions, mitigation measures, conditions, and standards of construction set forth in this Agreement, including Exhibits "D", "E" and "M" attached hereto, and no others. If any of the mitigation measures or conditions set forth on Exhibit "E" is satisfied by others, Developer shall be deemed to have satisfied such measures or conditions. Notwithstanding the foregoing, except to the extent specifically provided otherwise, this Agreement does not require Developer to

pay any exactions nor implement any mitigation measures nor satisfy any conditions of approval if Developer does not obtain a building permit for the Project prior to expiration of the Outside Building Permit Issuance Date including any extensions thereof or any tolling thereof in accordance with Section 3.3.

4.2 Conditions on Modifications. The City may impose fees, exactions, mitigation measures and conditions in connection with its approval of Minor or Major Modifications, provided that all fees, exactions, mitigation measures and conditions shall be in accordance with any applicable law.

4.3 Implementation of Mitigation Measures and Conditions of Approval.

4.3.1 Compliance with Mitigation Measures and Conditions of Approval. Developer shall be responsible for implementing the mitigation measures set forth in Section A of Exhibit "E" attached hereto, and Developer shall be responsible to adhere to the conditions of approval set forth in Section B of Exhibit "E" in accordance with the timelines established in Exhibit "E".

4.3.2 Survival of Mitigation Measures and Conditions of Approval. If Developer proceeds with the construction of the Project or any portion thereof, except as otherwise expressly limited in this Agreement, the community benefits required by Section 2.8, and the obligations and requirements imposed by the mitigation measures and conditions of approval set forth in the attached Exhibit "E", "G", and "I-2" shall survive the expiration of the Term of this Agreement and shall remain binding on Developer, its successors and assigns, and/or the owners of Lot 2 as set forth in this Agreement including in Article 13, as applicable, and shall continue in effect for the Life of the Project, and for any reconstruction authorized by Section 3.5. Notice of the community benefits, mitigation measures and conditions of approval shall be recorded by the City separately and concurrently with this Agreement.

4.3.3 Fee Waivers and Reductions. Except as otherwise provided, herein, the Project shall be entitled to all fee waivers and fee reductions available for projects involving City-designated landmarks and/or affordable housing under the SMMC.

ARTICLE 5

EFFECT OF AGREEMENT ON CITY LAWS AND REGULATIONS

5.1 Development Standards for the Property; Existing Regulations. The following development standards and restrictions set forth in this Section 5.1 govern the use and development of the Project and shall constitute the Existing Regulations, except as otherwise expressly required by this Agreement.

5.1.1 Defined Terms. The following terms shall have the meanings set forth below:

(a) **“Existing Regulations”** collectively means all of the following which are in force and effect as of the Effective Date: (i) the General Plan (including, without limitation, the LUCE); (ii) the Downtown Community Plan (“DCP”); (iii) the Zoning Ordinance except as modified herein; (iv) any and all ordinances, rules, regulations, standards, specifications and official policies of the City governing, regulating or affecting the demolition, grading, design, development, building, construction, occupancy or use of building and improvements or any exactions therefore, except as amended by this Agreement; (v) the City’s 1992 LUP, as amended by the 1992 LUP Amendment, and (vi) the development standards and procedures in Article 2 of this Agreement.

(b) **“Subsequent Code Changes”** collectively means all of the following which are adopted or approved subsequent to the Effective Date, whether such adoption or approval is by the City Council, any department, division, office, board, commission or other agency of the City, by the people of the City through charter amendment, referendum, initiative or other ballot measure, or by any other method or procedure: (i) any amendments, revisions, additions or deletions to the Existing Regulations; or (ii) new codes, ordinances, rules, regulations, standards, specifications and official policies of the City governing or affecting the grading, design, development, construction, occupancy or use of building or improvements or any exactions therefor. “Subsequent Code Changes” includes, without limitation, any amendments, revisions or additions to the Existing Regulations imposing or requiring the payment of any fee, special assessment or tax.

5.1.2 Existing Regulations Govern the Project. Except as provided in Section 5.2, development of the Buildings and improvements that will comprise the Project, including without limitation, the development standards for the demolition, grading, design, development, construction, occupancy or use of such Buildings and improvements, and any exactions therefor, shall be governed by the Existing Regulations. The City agrees that this Agreement is consistent with the General Plan, including the LUCE, the DCP, the 1992 LUP as amended by the 1992 LUP Amendment, and the 2018 Draft LUP as more fully described in the Recitals. Any provisions of the Existing Regulations inconsistent with the provisions of this Agreement, to the extent of such inconsistencies and not further, are hereby deemed modified to that extent necessary to effectuate the provisions of this Agreement. The Project shall be exempt from: (a) all Discretionary Approvals or review by the City or any agency or body thereof, other than the matters of Design Review as specified in Article 6 and review of modifications to the Project as expressly set forth in Sections 2.4.2, 2.4.3, 2.5.3, 2.5.4, and 2.6; (b) the application of any subsequent local development or building moratoria, development or building rationing systems or other restrictions on development which would adversely affect the rate, timing, or phasing of construction of the Project, and (c) Subsequent Code Changes which are inconsistent with this Agreement.

5.2 Permitted Subsequent Code Changes.

5.2.1 Applicable Subsequent Code Changes. Notwithstanding the terms of Section 5.1, this Agreement shall not prevent the City from applying to the Project the following Subsequent Code Changes set forth below in this Section 5.2.1.

(a) Processing fees and charges imposed by the City to cover the estimated actual costs to City of processing applications for development approvals including: (i) all application, permit, and processing fees incurred for the processing of this Agreement, any administrative approval of a Minor Modification, or any amendment of this Agreement in connection with a Major Modification; (ii) all building plan check and building inspection fees for work on the Property in effect at the time an application for a grading permit or building permit is applied for; and (iii) the public works plan check fee and public works inspection fee for public improvements constructed and installed by Developer and (iv) fees for monitoring compliance with any development approvals, or any environmental impact mitigation measures; provided that such fees and charges are uniformly imposed by the City at similar stages of project development on all similar applications and for all similar monitoring.

(b) General or special taxes, including, but not limited to, property taxes, sales taxes, parcel taxes, transient occupancy taxes, business taxes, which may be applied to the Property or to businesses occupying the Property; provided that (i) the tax is of general applicability City-wide and does not burden the Property disproportionately to other similar developments within the City; and (ii) the tax is not a levy, assessment, fee or tax imposed for the purpose of funding public or private improvements on other property located within the Downtown Community Plan area as of the Effective Date.

(c) Procedural regulations relating to hearing bodies, petitions, applications, notices, documentation of findings, records, manner in which hearings are conducted, reports, recommendations, initiation of appeals, and any other matters of procedure; provided such regulations are uniformly imposed by the City on all matters, do not result in any unreasonable decision-making delays and do not affect the substantive findings by the City in approving this Agreement or as otherwise established in this Agreement.

(d) Regulations governing construction standards and specifications which are of general application that establish standards for the construction and installation of structures and associated improvements, including, without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code and Fire Code; provided that such construction standards and specifications are applied on a City-wide basis and do not otherwise limit or impair the Project approvals granted in this Agreement unless adopted to meet health and safety concerns.

(e) Any City regulations to which Developer has consented in writing, which consent may be withheld by Developer in its sole discretion.

(f) Collection of such fees or exactions as are imposed and set by governmental entities not controlled by City but which are required to be collected by City.

(g) Water and sewer capacity fees adopted by the City Council after the Effective Date of this Agreement.

(h) Regulations which do not impair the rights and approvals granted to Developer under this Agreement. For the purposes of this Section 5.2.1(h), regulations which impair Developer's rights or approvals include, but are not limited to, regulations which (i) materially increase the cost of the Project (except as provided in Section 5.2.1(a), (b), and (d) above), or (ii) which would materially delay development of the Project or that would cause a material change in the uses of the Project as provided in this Agreement.

5.2.2 New Rules and Regulations. This Agreement shall not be construed to prevent the City from applying new rules, regulations and policies in those circumstances specified in Government Code Section 65866.

5.2.3 State or Federal Laws. In the event that state or federal laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations; provided that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

5.3 Common Set of Existing Regulations. Prior to the Effective Date, the City and Developer shall use reasonable efforts to identify, assemble and copy three identical sets of the Existing Regulations, to be retained by the City and Developer, so that if it becomes necessary in the future to refer to any of the Existing Regulations, there will be a common set of the Existing Regulations available to all Parties.

5.4 Conflicting Enactments. Except as provided in Section 5.2 above, any Subsequent Code Change which would conflict in any way with or be more restrictive than the Existing Regulations shall not be applied by the City to any part of the Property. Developer may, in its sole discretion, give the City written notice of its election to have any Subsequent Code Change applied to such portion of the Property as it may have an interest in, in which case such Subsequent Code Change shall be deemed to be an Existing Regulation insofar as that portion of the Property is concerned. If there is any conflict or inconsistency between the terms and conditions of this Agreement and the Existing Regulations, the terms and conditions of this Agreement shall control.

5.5 Timing of Development. The California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that failure of the parties in that case to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over the parties' agreement. It is the intent of Developer and the City to cure that deficiency by expressly acknowledging and providing that any Subsequent Code Change that purports to limit over time the rate or timing of development or to alter the sequencing of development phases (whether adopted or imposed by the City Council or through the initiative or referendum process) shall not apply to the Property or the Project and shall not prevail over this Agreement. In particular, but without limiting any of the foregoing, no numerical restriction shall be placed by the City on the amount of total square feet or the number of buildings, structures, Residential Condominiums that can be built each year on the Property except as expressly provided in this Agreement.

5.6 Tract Map. Prior to issuance of a building permit for the Project, Developer shall have recorded a final Tract Map creating airspace lots consisting of Lot 1 and Lot 2, which Tract Map shall, among other things, authorize the establishment of Residential Condominiums within Lot 2 as described in Recital Y above. The Tract Map shall not be recorded until the Project's first building permit is ready to be issued (i.e. all City departments have approved issuance of the building permit but Developer has not yet paid the fees associated with the building permit). Notwithstanding any expiration dates for approved or conditionally approved tentative maps set forth in SMMC Section 9.54.090-A.1, the tentative Tract Map shall expire on the Outside Building Permit Issuance Date, as authorized by Government Code 66452.6, subd. (a)(1). Notwithstanding SMMC Section 9.54.070, the City Council, and not the Planning Commission, shall be the decision-making body for the tentative Tract Map.

5.7 1992 LUP Amendment Application to Coastal Commission. Within 45 days after receiving a written request from Developer and confirmation from Developer that Developer will be ready to file its application for the Project's Coastal Development Permit within 45 days, City shall file a fully completed application with the California Coastal Commission for an amendment to the 1992 LUP and such amendment application shall be consistent with the 1992 LUP Amendment approved by the City Council concurrent with its approval of the Project. Upon its filing, City shall promptly provide Developer with a conformed copy of the amendment application.

ARTICLE 6

DESIGN APPROVAL

6.1 Landmarks Commission Design Approval.

(a) Because the Property is a City-designated Landmark Parcel, the Project shall be subject to Design Review and approval or conditional approval by the Landmarks Commission of one or more Certificates of Appropriateness pursuant to Existing Regulations Section 9.56.170. Subject to subsection (b) below, the Landmarks

Commission shall have the jurisdiction outlined in Existing Regulations Section 9.56.140, which supplants the jurisdiction of the ARB per Existing Regulations 9.55.120. As indicated in Section 6.2 below, when the Developer files its application for the Project's Certificate of Appropriateness, the ARB shall have the opportunity to (i) review and comment upon the Project's initial submittal of design, colors, materials, and landscaping and (ii) make a corresponding recommendation to the Landmarks Commission. In addition, a member of the ARB as may be appointed by the ARB shall be encouraged to be present and may participate in discussion and deliberation but may not cast a vote at any Landmarks Commission hearings for approval of one or more Certificates of Appropriateness for the Project.

(b) In acting on the Certificate of Appropriateness application or applications, the Landmarks Commission (or City Council on appeal) may not require modifications to the Buildings' design which negate the fundamental development standards established by this Agreement. For example, the Landmarks Commission (or City Council on appeal) cannot require reduction in the overall height of the buildings, reduction in the number of stories in the buildings, reduction in number of hotel rooms or Residential Condominiums, reduction in the Floor Area of greater than two percent (2%) or expansion of the open space. The Landmarks Commission (or City Council on appeal) may not, directly or indirectly, take action that has the effect of requiring elimination of either or both of the physical connections between the Palisades Building and the new construction features of the Project.

(c) Notwithstanding this Agreement, the ordinary care and maintenance of the Moreton Bay Fig Tree (such as the ongoing periodic pruning of the Tree) shall continue to be governed by the regulations and procedures specified in the Landmarks Ordinance, including the Landmarks Commission's Resolutions authorizing City Staff review and approvals as authorized by Landmarks Ordinance Sections 9.56.170(L) & 9.56.210 and Landmarks Commission Resolution No. 14-002, or any successor Resolution thereto.

(d) The Landmarks Commission's Certificate(s) of Appropriateness are appealable to the City Council in accordance with the procedures set forth in SMMC 9.56.180 of Existing Regulations.

(e) Unless the Developer requests a continuance or otherwise agrees to grant an extension, (i) for Certificate of Appropriateness applications requiring an ARB recommendation hearing in accordance with Section 6.2 below, the Landmarks Commission shall hold a hearing on any Certificate of Appropriateness application (or amendment application) within 120 days of the application being filed, (ii) for Certificate of Appropriateness applications that do not require an ARB recommendation hearing in accordance with Section 6.2 below, the Landmarks Commission shall hold a hearing on any Certificate of Appropriateness application (or amendment application) within 65 days of the application being filed, and (iii) the Landmarks Commission shall render a final decision within 65 days of the first Landmarks Commission hearing on a particular Certificate of Appropriateness application (or amendment application). If the Landmarks

Commission does not render a decision on a Certificate of Appropriateness application within the earlier of six (6) months from the application first being filed or forty-five (45) days from a second Landmarks Commission hearing on a particular Certificate of Appropriateness application, Developer may request that the application proceed directly to the City Council to conduct a public hearing or hearings and render a final decision on the Certificate of Appropriateness (or amendment thereto). The City Council shall schedule such hearing within 45 days of receiving such request unless Developer consents to an extension of such 45-day time period, which consent Developer may withhold in its sole discretion.

(f) Amendments to Certificate(s) of Appropriateness for the Project and Certificate of Appropriateness applications filed subsequent to approval of the initial Certificate(s) of Appropriateness governing design, colors, materials, and landscaping shall be reviewed by the Landmarks Commission pursuant to the same process outlined above in this Article 6 for Certificates of Appropriateness; provided, however, that (i) except as indicated in Section 6.2(b) below no ARB recommendation hearing shall be required for such amendments or subsequent Certificates of Appropriateness and (ii) City Staff shall be authorized to approve minor modifications to any Certificate of Appropriateness.

6.2 ARB Design Review and Recommendation.

(a) Within 90 days of Developer filing its Certificate of Appropriateness application for the Project's design, colors, materials, and landscaping with the Landmarks Commission, the ARB shall hold a hearing to consider the Project's design, colors, materials, and landscaping and make a written recommendation thereon to the Landmarks Commission, a copy of which shall be provided to Developer. Unless the Developer grants an extension, if the ARB does not hold such hearing within the 90-day time period, the Landmarks Commission shall proceed with its hearing(s) and decision on the Certificate of Appropriateness in accordance with the time periods in Section 6.1(e) above.

(b) An ARB recommendation hearing shall not be required for amendments to Certificate(s) of Appropriateness or subsequent applications for Certificate(s) of Appropriateness (e.g., deferred submittals for lighting and/or signage or future applications) unless the Developer proposes a substantial change to the originally-approved Project. For the purposes of this section, the determination of whether the Developer's scope of work constitutes a substantial change to the approved Project shall be made at the sole discretion of the Community Development Director and the Community Development Director will consider whether the revisions result in significant changes to the overall architectural design concept approved for the new buildings to be constructed on the Landmark Parcel or to the overall landscape design concept for the publicly-accessible open space on the Landmark Parcel.

(c) Once the ARB has held a recommendation hearing on a particular Certificate of Appropriateness application, no additional ARB recommendation hearing

shall be required for such application even if the Landmarks Commission (or City Council on appeal) requires changes to the design and/or continues the Certificate of Appropriateness application for redesign (i.e., Developer files revised plans and/or materials).

(d) Notwithstanding Section 6.2(b)-(c), the ARB shall be notified of any Landmarks Commission hearings in accordance with Section 6.4 below and a member of the ARB may participate in the discussion and deliberation during such hearings as outlined in Section 6.1(a) above.

6.3 Conceptual Design Review. In addition to the recommendation hearing provided for in Section 6.2(a) above, Developer may elect from time to time, prior to filing an application for a Certificate of Appropriateness, to seek conceptual review(s) from the Landmarks Commission or the Architectural Review Board (or both, separately or jointly) at duly noticed public meetings. Upon receiving such request from Developer, City shall promptly schedule such conceptual review(s). The body not holding the conceptual review may (but is not required to) send a liaison to the conceptual review (e.g., if the Landmarks Commission is holding a conceptual review, the ARB may send a liaison).

6.4 Notification to Design Review Bodies. City Staff shall notify the Landmarks Commission of any ARB hearings regarding the Project and shall notify the ARB of any Landmarks Commission hearings regarding the Project.

6.5 Expiration of Design Approvals. Notwithstanding any provisions of the Existing Regulations, no Certificate of Appropriateness granted with respect to the Project shall expire prior to expiration of the Outside Building Permit Issuance Date, including any extensions thereof or any tolling thereof in accordance with Section 3.3.

6.6 Concurrent Processing of One Foundation Only Permit. Developer may concurrently process plan check for one foundation-only permit (SMMC § 8.08.060) during the processing of the Certificate of Appropriateness application(s) (SMMC § 9.56.170). Developer hereby agrees to accept the risk of plan check revisions if necessitated by the outcome of the Landmarks Commission's review of the Certificate of Appropriateness.

6.7 Concurrent Application to California Coastal Commission. In order to allow Developer to file its application with the California Coastal Commission for the Project's Coastal Development Permit prior to completion of the Design Review Process required by section, the Community Development Director, or his or her designee, shall provide Developer with a fully completed and executed Section 2 of the Local Agency Review Form (Appendix B of the Coastal Development Permit Application) and stamp two sets of Project Plans within 15 days after receiving such a written request and the associated processing fee from Developer.

ARTICLE 7

CITY TECHNICAL PERMITS

7.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

7.1.1 **“Technical City Permits”** means any Ministerial Approvals, consents or permits from the City or any office, board, commission, department, division or agency of the City, which are necessary for the actual construction of the Project or any portion thereof in accordance with the Project Site Plan and this Agreement. Technical City Permits include, without limitation (a) building permits, (b) related mechanical, electrical, plumbing and other technical permits, (c) demolition, excavation and grading permits, (d) encroachment permits, (e) tieback and shoring permits, (f) off-site improvement permits, and (g) temporary and final certificates of occupancy.

7.1.2 **“Technical Permit Applications”** means any applications required to be filed by Developer for any Technical City Permits.

7.2 Diligent Action by City.

7.2.1 Upon satisfaction of the conditions set forth in Section 7.3, the City shall accept the Technical Permit Applications filed by Developer with the City and shall diligently proceed to process such Technical Permit Applications to completion.

7.2.2 Upon satisfaction of the conditions set forth in Section 7.3, the City shall diligently issue the Technical City Permits which are the subject of the Technical Permit Applications.

7.2.3 In accordance with SMMC Chapter 9.64, the Project shall receive priority building department plan check processing by which housing developments shall have plan check review in advance of other pending developments to the extent authorized by law.

7.3 Conditions for Diligent Action by the City.

7.3.1 Acceptance and Processing of Technical Permit Applications. The obligation of the City to accept and diligently process the Technical Permit Applications which are filed by Developer, and then issue the Technical City Permits, is subject to the satisfaction of the following conditions:

(a) Developer shall have completed and filed all Technical Permit Applications which are required under the administrative procedures and policies of the City which are in effect on the date when the Technical Permit Application is filed; provided that such procedures and policies are uniformly in force and effect throughout the City;

(b) Developer shall have paid all processing and permit fees established by the City in connection with the filing and processing of any Technical Permit Application which are in effect on the date when the Technical Permit Application is filed; provided that such fees are uniformly in force and effect throughout the City; and

(c) If required for the particular Technical Permit Application, Developer shall have obtained the approval of the Landmarks Commission referred to in Section 6.1 above.

7.3.2 Issuance of a Technical City Permit. The obligation of the City to issue a Technical City Permit which is the subject of a Technical Permit Application filed by Developer is subject to the satisfaction of the following conditions (and only such conditions and no others):

(a) Developer shall have complied with all of its obligations under this Agreement which are required to be performed prior to or concurrent with the issuance of the Technical City Permits for the proposed Building;

(b) Developer shall have received any permits or approvals from other governmental agencies which are required by law to be issued prior to or concurrent with the issuance of the Technical City Permits for the proposed Building;

(c) The proposed Building conform to the development standards for such Building established in this Agreement. In the event that a proposed Building is not in conformance with the development standards, Developer shall have the right to seek any relief from such standards under the procedures then available in the City; and

(d) The proposed Building conform to the Administrative and Technical Construction Codes of the City (Article VIII of the SMMC) (the “**Technical Codes**”) in effect on the date that the Technical Permit Application is filed.

7.3.3 New Technical Requirements. From time to time, the City’s Technical Codes are amended to meet new technical requirements related to techniques of building and construction. If the sole means of achieving compliance for the Project with such revisions to the Technical Codes made after the Effective Date (“**New Technical Requirements**”) would require an increase from the allowable Building Height established in this Agreement for the Project, then the Community Development Director is hereby authorized to grant Developer limited relief from the allowable Building Height without amending this Agreement if the requested relief is in compliance with the City’s General Plan. Any such approval shall be granted only after the Community Development Director’s receipt of a written request for such relief from Developer. Developer is required to supply the Community Development Director with written documentation of the fact that compliance with the New Technical Requirements cannot be achieved by some other method. Any such relief shall only be granted to the

extent necessary in the Community Development Director's determination for Developer to comply with the New Technical Requirements.

7.4 Duration of Technical City Permits. The duration of Technical City Permits issued by the City, and any extensions of the time period during which such Technical City Permits remain valid, shall be established in accordance with the Technical Codes in effect at the time that the Technical City Permits are issued. Subject to Section 3.4, the lapse or expiration of a Technical City Permit shall not preclude or impair Developer from subsequently filing another Technical Permit Application for the same matter during the Term of this Agreement, which shall be processed by the City in accordance with the provisions of this ARTICLE 7. Notwithstanding anything to the contrary in this Agreement, if Developer obtains building permits for the Project and, at any time after the Outside Building Permit Issuance Date, such building permits expire or are revoked pursuant to the applicable terms of the SMMC (as the same may be amended from time to time), then Developer may not subsequently apply for new building permits for the Project without first obtaining the prior written consent of the Community Development Director, which may be granted or withheld in the Community Development Director's sole discretion.

ARTICLE 8

AMENDMENT AND MODIFICATION

8.1 Amendment and Modification of Development Agreement. Subject to the notice and hearing requirements of the applicable Development Agreement Statutes, this Agreement may be modified or amended from time to time only with the written consent of Developer and the City or their successors and assigns in accordance with the provisions of the SMMC and Section 65868 of the California Government Code. In accordance with Section 13.1.3, the City acknowledges that the Residential CC&Rs may authorize the Residential Association, after the Residential Association has executed an Assignment and Assumption Agreement pursuant to Section 13.2, to approve and execute amendments to this Agreement on behalf of the owners of the Residential Condominium Owners subject to the terms of the Residential CC&Rs. In connection with providing such approval, the Residential Association shall be required to obtain any required approvals from the owners of the Residential Condominiums under the Residential CC&Rs.

ARTICLE 9

TERM

9.1 Effective Date. This Agreement shall be dated, and the obligations of the Parties hereunder shall be effective as of the date upon which the ordinance approving this Agreement becomes effective (the "**Effective Date**"). The Parties shall execute this Agreement within ten (10) working days of the Effective Date.

9.2 Term.

9.2.1 Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall continue for fifteen (15) years thereafter (the “**Term**”), unless the Term is otherwise terminated pursuant to Section 11.4, after the satisfaction of all applicable public hearing and related procedural requirements or pursuant to Section 3.3. Notwithstanding the foregoing, if either (a) the approval of the Project design does not occur within six (6) months of the submittal by Developer to the Landmarks Commission of the Project design pursuant to Section 6.1 and/or (b) the approval by the California Coastal Commission of the Project does not occur within six (6) months of the submittal by Developer to the Coastal Commission, then the Term shall automatically be extended one month for each additional month or partial month greater than six (6) that the Landmarks Commission approval and/or Coastal Commission approval, as applicable, is delayed.

9.2.2 Termination Certificate. Upon termination of this Agreement, the Parties hereto shall execute an appropriate certificate of termination in recordable form (a “**Termination Certificate**”), which shall be recorded in the official records of Los Angeles County.

9.2.3 Effect of Termination. Except as expressly provided herein (e.g., Section 4.3.2), none of the parties' respective rights and obligations under this Agreement shall survive the Term.

ARTICLE 10

PERIODIC REVIEW OF COMPLIANCE

10.1 City Review. The City shall review compliance with this Agreement once each year, on or before March 31st (each, a “**Periodic Review**”), in accordance with this Article 10 in order to determine whether or not Developer is out-of-compliance with any specific term or provision of this Agreement.

10.2 Evidence of Good Faith Compliance. On or before October 1st of each year, Developer shall deliver to the City a written report demonstrating that Developer has been in good faith compliance with this Agreement during the twelve (12) month period prior to the anniversary of the Effective Date. The written report shall be provided in the form established by the City at the time of the first annual report, if any, which form shall not change materially thereafter without Developer's consent. For purposes of this Agreement, the phrase “good faith compliance” shall mean the following: (a) compliance by Developer with the requirements of the Existing Regulations, except as otherwise modified by this Agreement; and (b) compliance by Developer with the terms and conditions of this Agreement, subject to the existence of any specified Excusable Delays (as defined in Section 15.8 below) which prevented or delayed the timely performance by Developer of any of its obligations under this Agreement.

10.3 Information to be Provided to Developer. Prior to any public hearing concerning the Periodic Review of this Agreement, the City shall deliver to Developer a copy of all staff reports prepared in connection with a Periodic Review, written comments from the public and, to the extent practical, all related exhibits concerning such Periodic Review. If the City delivers to Developer a Notice of Breach pursuant to Section 11.1 below, the City shall concurrently deliver to Developer a copy of all staff reports prepared in connection with such Notice of Breach, all written comments from the public, and all related exhibits concerning such Notice of Breach.

10.4 Notice of Breach; Cure Rights. If during any Periodic Review, the City reasonably concludes on the basis of substantial evidence that Developer has not demonstrated that it is in good faith compliance with this Agreement, then the City may issue and deliver to Developer a written Notice of Breach pursuant to Section 11.1 below, and Developer shall have the opportunity to cure the default identified in the Notice of Breach during the cure periods and in the manner provided by Section 11.2 and Section 11.3, as applicable.

10.5 Failure of Periodic Review. The City's failure to review at least annually compliance by Developer with the terms and conditions of this Agreement shall not constitute or be asserted by any Party as a breach by any other Party of this Agreement.

10.6 Termination of Development Agreement. If Developer fails to timely cure any material item(s) of non-compliance set forth in a Notice of Breach, then the City shall have the right but not the obligation to initiate proceedings for the purpose of terminating this Agreement pursuant to Section 11.4 below.

10.7 City Cost Recovery. Following completion of each Periodic Review, Developer shall reimburse the City for its actual and reasonable costs incurred in connection with such review after provision of an invoice by the City.

ARTICLE 11

DEFAULT

11.1 Notice and Cure.

11.1.1 Breach. If either Party fails to substantially perform any term, covenant or condition of this Agreement which is required on its part to be performed (a "**Breach**" or "**Default**"), the non-defaulting Party shall have those rights and remedies provided in this Agreement; provided that such non-defaulting Party has first sent a written notice of Breach (a "**Notice of Breach**"), in the manner required by Section 15.1, specifying the precise nature of the alleged Breach (including references to pertinent Sections of this Agreement and the Existing Regulations or Subsequent Code Changes alleged to have been breached), and the manner in which the alleged Breach may satisfactorily be cured. If the City alleges a Breach by Developer, the City shall also

deliver a copy of the Notice of Breach to any Secured Lender of Developer which has delivered a Request for Notice to the City in accordance with Article 12.

11.1.2 Monetary Breach. In the case of a monetary Breach by Developer, Developer shall promptly commence to cure the identified Breach and shall complete the cure of such Breach within sixty (60) days after receipt by Developer of the Notice of Breach; provided that if such monetary Breach is the result of an Excusable Delay or the cure of the same is delayed as a result of an Excusable Delay, Developer shall deliver to the City reasonable evidence of the Excusable Delay.

11.1.3 Non-Monetary Breach. In the case of a non-monetary Breach by either Party, the alleged defaulting Party shall promptly commence to cure the identified Breach and shall diligently prosecute such cure to completion; provided that the defaulting Party shall complete such cure within thirty (30) days after receipt of the Notice of Breach or provide evidence of Excusable Delay that prevents or delays the completion of such cure. The thirty (30) day cure period for a non-monetary Breach shall be extended as is reasonably necessary to remedy such Breach; provided that the alleged defaulting Party commences such cure promptly after receiving the Notice of Breach and continuously and diligently pursues such remedy at all times until such Breach is cured.

11.1.4 Excusable Delay. Notwithstanding anything to the contrary contained in this Agreement, the City's exercise of any of its rights or remedies under this Article 11 shall be subject to the provisions regarding Excusable Delay in Section 15.8 below.

11.2 Remedies for Monetary Default. If there is a Breach by Developer in the performance of any of its monetary obligations under this Agreement which remains uncured (a) sixty (60) days after receipt by Developer of a Notice of Breach from the City and (b) after expiration of Secured Lender's Cure Period under Section 12.1 (if a Secured Lender of Developer has delivered a Request for Notice to the City in accordance with Section 12.1), then an "**Event of Monetary Default**" shall have occurred by Developer and the City shall have available any right or remedy provided in this Agreement, at law or in equity. All of said remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of said remedies shall not constitute a waiver or election in respect to any other available remedy.

11.3 Remedies for Non-Monetary Default.

11.3.1 Remedies of Parties. If any Party receives a Notice of Breach from the other Party regarding a non-monetary Breach, and the non-monetary Breach remains uncured: (a) after expiration of all applicable notice and cure periods, and (b) in the case of a Breach by Developer, after the expiration of Secured Lender's Cure Period under Section 12.1 (if a Secured Lender of Developer has delivered a Request for Notice to the City in accordance with Section 12.1), then an "**Event of Non-Monetary Default**" shall have occurred and the non-defaulting Party shall have

available any right or remedy provided in this Agreement, or provided at law or in equity except as prohibited by this Agreement. All of said remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of said remedies shall not constitute a waiver or election in respect to any other available remedy.

11.3.2 Specific Performance. The City and Developer acknowledge that monetary damages and remedies at law generally are inadequate and that specific performance is an appropriate remedy for the enforcement of this Agreement. Therefore, unless otherwise expressly provided herein, the remedy of specific performance shall be available to the non-defaulting party if the other Party causes an Event of Non-Monetary Default to occur.

11.3.3 Writ of Mandate. The City and Developer hereby stipulate that Developer shall be entitled to obtain relief in the form of a writ of mandate in accordance with Code of Civil Procedure Section 1085 or Section 1094.5, as appropriate, to remedy any Event of Non-Monetary Default by the City of its obligations and duties under this Agreement. Nothing in this Section 11.3.3, however, is intended to alter the evidentiary standard or the standard of review applicable to any action of, or approval by, the City pursuant to this Agreement or with respect to the Project.

11.3.4 No Damages Relief Against City. It is acknowledged by Developer that the City would not have entered into this Agreement if the City were to be liable in damages under or with respect to this Agreement or the application thereof. Consequently, and except for the payment of attorneys' fees and court costs, the City shall not be liable in damages to Developer, and Developer covenants on behalf of itself and its successors in interest not to sue for or claim any damages:

- (a) for any default under this Agreement;
- (b) for the regulatory taking, impairment or restriction of any right or interest conveyed or provided hereunder or pursuant hereto; or
- (c) arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

The City and Developer agree that the provisions of this Section 11.3.4 do not apply for damages which:

- (a) do not arise under this Agreement;
- (b) are not with respect to any right or interest conveyed or provided under this Agreement or pursuant to this Agreement; or
- (c) do not arise out of or which are not connected to any dispute, controversy, or issue regarding the application, interpretation, or effect of the

provisions of this Agreement or the application of any City rules, regulations, or official policies.

11.3.5 Enforcement by the City. The City, at its discretion, shall be entitled to apply the remedies set forth in Chapters 1.09 and 1.10 of the SMMC as the same may be amended from time to time and shall follow the notice procedures of Chapter 1.09 and 1.10 respectively in lieu of Section 11.1 of this Agreement if these remedies are applied.

11.3.6 No Damages Against Developer. It is acknowledged by the City that Developer would not have entered into this Agreement if Developer were to be liable in damages in connection with any non-monetary default hereunder. Consequently, and except for the payment of attorneys' fees and court costs, Developer shall not be liable in damages to the City for any nonmonetary default, and the City covenants on behalf of itself not to sue for or claim any damages:

- (a) for any non-monetary default hereunder or;
- (b) arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

The City and Developer agree that the provisions of this Section 11.3.6 do not apply for damages which:

- (a) are for a monetary default; or
- (b) do not arise out of or which are not connected with any dispute, controversy or issue regarding the application, interpretation, or effect of the provisions of this Agreement to or the application of, any City rules, regulations, or official policies.
- (c) constitute Damages which arise under Section 14.1.

11.3.7 No Other Limitations. Except as expressly set forth in this Section 11.3, the provisions of this Section 11.3 shall not otherwise limit any other rights, remedies, or causes of action that either the City or Developer may have at law or equity after the occurrence of any Event of Non-Monetary Default.

11.4 Modification or Termination of Agreement by City.

11.4.1 Default by Developer. If Developer causes either an Event of Monetary Default or an Event of Non-Monetary Default, then the City may commence proceedings to modify or terminate this Agreement pursuant to this Section 11.4.

11.4.2 Procedure for Modification or Termination. The procedures for modification or termination of this Agreement by the City for the grounds set forth in Section 11.4.1 are as follows:

(a) The City shall provide a written notice to Developer (and to any Secured Lender of Developer which has delivered a Request for Notice to the City in accordance of Section 12.1) of its intention to modify or terminate this Agreement unless Developer (or the Secured Lender) cures or corrects the acts or omissions that constitute the basis of such determinations by the City (a "**Hearing Notice**"). The Hearing Notice shall be delivered by the City to Developer in accordance with Section 15.1 and shall contain the time and place of a public hearing to be held by the City Council on the determination of the City to proceed with modification or termination of this Agreement. The public hearing shall not be held earlier than: (i) thirty-one (31) days after delivery of the Hearing Notice to Developer or (ii) if a Secured Lender has delivered a Request for Notice in accordance with Section 12.1, the day following the expiration of the "Secured Lender Cure Period" (as defined in Section 12.1).

(b) If, following the conclusion of the public hearing, the City Council: (i) determines that an Event of Non-Monetary Default has occurred or the Developer has not been in good faith compliance with this Agreement pursuant to Section 10.1, and (ii) further determines that Developer (or the Secured Lender, if applicable) has not cured (within the applicable cure periods) the acts or omissions that constitute the basis of the determination under clause (i) above or if those acts or omissions could not be reasonably remedied prior to the public hearing that Developer (or the Secured Lender) has not in good faith commenced to cure or correct such acts or omissions prior to the public hearing or is not diligently and continuously proceeding therewith to completion, then upon making such conclusions, the City Council may modify or terminate this Agreement. The City cannot unilaterally modify the provisions of this Agreement pursuant to this Section 11.4. Any such modification requires the written consent of Developer. If the City Council does not terminate this Agreement, but proposes a modification to this Agreement as a result of the public hearing and Developer does not (within five (5) days of receipt) execute and deliver to the City the form of modification of this Agreement submitted to Developer by the City, then the City Council may elect to terminate this Agreement at any time after the sixth day after Developer's receipt of such proposed modification.

11.5 Cessation of Rights and Obligations. If this Agreement is terminated by the City pursuant to and in accordance with Section 11.4, the rights, duties and obligations of the Parties under this Agreement shall cease as of the date of such termination, except only for those rights and obligations that expressly survive the termination of this Agreement. In such event, any and all benefits, including money received by the City prior to the date of termination, shall be retained by the City.

11.6 Completion of Improvements. Notwithstanding the provisions of Sections 11.2, 11.3, 11.4, and 11.5, if prior to termination of this Agreement, Developer has satisfied the community benefits owed to the City under this Agreement as a

condition to issuance of a building permit and performed substantial work and incurred substantial liabilities in good faith reliance upon a building permit issued by the City, then Developer shall have acquired a vested right to (a) complete construction of the Building in accordance with the terms of the building permit and this Agreement, subject to its continuing obligations to construct the Project with all significant project features (Section 2.7) and satisfy all outstanding community benefits (Section 2.8), and (b) occupy or use each such Building upon completion for the uses permitted for that Building as provided in this Agreement. Any Building completed or occupied pursuant to this Section 11.6 shall be considered legal non-conforming subject to all City ordinances standards and policies as they then exist governing legal non-conforming building and uses unless the Building otherwise complies with the property development standards for the district in which it is located and the use is otherwise permitted or conditionally permitted in the district.

ARTICLE 12

MORTGAGEES

12.1 Encumbrances on the Property. This Agreement shall not prevent or limit Developer (in its sole discretion), from encumbering the Property (in any manner) or any portion thereof or any improvement thereon by any mortgage, deed of trust, assignment of rents or other security device securing financing with respect to the Property (a **"Mortgage"**). Each mortgagee of a mortgage or a beneficiary of a deed of trust (each, a **"Secured Lender"**) on the Property shall be entitled to the rights and privileges set forth in this Article 12. Any Secured Lender may require from the City certain interpretations of this Agreement. The City shall from time to time, upon request made by Developer, meet with Developer and representatives of each of its Secured Lenders to negotiate in good faith any Secured Lender's request for interpretation of any part of this Agreement. The City will not unreasonably withhold, condition or delay the delivery to a Secured Lender of the City's written response to any such requested interpretation.

12.1.1 Mortgage Not Rendered Invalid. Except as provided in Section 12.1.2, neither entering into this Agreement nor a Breach of this Agreement, nor any Event of Monetary Default nor any Event of Non-Monetary Default shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value.

12.1.2 Priority of Agreement. This Agreement shall be superior and senior to the lien of any Mortgage. Any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a Secured Lender or its successor in interest (whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or otherwise) shall be subject to all of the terms and conditions of this Agreement.

12.1.3 Right of Secured Lender to Cure Default.

(a) A Secured Lender may give notice to the City, specifying the name and address of such Secured Lender and attaching thereto a true and complete copy of the Mortgage held by such Secured Lender, specifying the portion of the Property that is encumbered by the Secured Lender's lien (a "**Request for Notice**"). If the Request for Notice has been given, at the same time the City sends to Developer any Notice of Breach or Hearing Notice under this Agreement, then if such Notice of Breach or Hearing Notice affects the portion of the Property encumbered by the Secured Lender's lien, the City shall send to such Secured Lender a copy of each such Notice of Breach and each such Hearing Notice from the City to Developer. The copy of the Notice of Breach or the Hearing Notice sent to the Secured Lender pursuant to this Section 12.1.3(a) shall be addressed to such Secured Lender at its address last furnished to the City. The period within which a Secured Lender may cure a particular Event of Monetary Default or Event of Non-Monetary Default shall not commence until three days after the City has sent to the Secured Lender such copy of the applicable Notice of Breach or Hearing Notice.

(b) After a Secured Lender has received a copy of such Notice of Breach or Hearing Notice, such Secured Lender shall thereafter have a period of time (in addition to any notice and/or cure period afforded to Developer under this Agreement) equal to: (a) twenty (20) days in the case of any Event of Monetary Default and (b) thirty (30) days in the case of any Event of Non-Monetary Default, during which period the Secured Lender may provide a remedy or cure of the applicable Event of Monetary Default or may provide a remedy or cure of the applicable Event of Non-Monetary Default; provided that if the cure of the Event of Non-Monetary Default cannot reasonably be completed within thirty days, Secured Lender may, within such 30-day period, commence to cure the same and thereafter diligently prosecute such cure to completion (a "**Secured Lender's Cure Period**"). If Developer has caused an Event of Monetary Default or an Event of Non-Monetary Default, then each Secured Lender shall have the right to remedy such Event of Monetary Default or an Event of Non-Monetary Default, as applicable, or to cause the same to be remedied prior to the conclusion of the Secured Lender's Cure Period and otherwise as herein provided. The City shall accept performance by any Secured Lender of any covenant, condition, or agreement on Developer's part to be performed hereunder with the same force and effect as though performed by Developer.

(c) The period of time given to the Secured Lender to cure any Event of Monetary Default or an Event of Non-Monetary Default by Developer which reasonably requires that said Secured Lender be in possession of the Property to do so, shall be deemed extended to include the period of time reasonably required by said Secured Lender to obtain such possession (by foreclosure, the appointment of a receiver or otherwise) promptly and with due diligence; provided that during such period all other obligations of Developer under this Agreement, including, without limitation, payment of all amounts due, are being duly and promptly performed.

12.1.4 Secured Lender Not Obligated Under this Agreement.

(a) No Secured Lender shall have any obligation or duty under this Agreement to perform the obligations of Developer's or the affirmative covenants of Developer's hereunder or to guarantee such performance unless and until such time as a Secured Lender takes possession or becomes the owner of the estate covered by its Mortgage. If the Secured Lender takes possession or becomes the owner of any portion of the Property, then from and after that date, the Secured Lender shall be obligated to comply with all provisions of this Agreement; provided that the Secured Lender shall not be responsible to the City for any unpaid monetary obligations of Developer that accrued prior to the date the Secured Lender became the fee owner of the Property.

(b) Nothing in Section 12.1.4(a) is intended, nor should be construed or applied, to limit or restrict in any way the City's authority to terminate this Agreement, as against any Secured Lender as well as against Developer if any curable Event of Monetary Default or an Event of Non-Monetary Default is not completely cured within the Secured Lender's Cure Period.

ARTICLE 13

TRANSFERS, ASSIGNMENTS AND SEPARATE OWNERS

13.1 Transfers, Assignments, and Separate Owners.

13.1.1 Not Severable from Ownership Interest in Property. Except as otherwise provided in this Article 13, this Agreement shall not be severable from Developer's interest in the Property and any transfer of the Property, or any portion thereof, shall automatically operate to transfer the benefits and burdens of this Agreement with respect to the transferred Property or transferred portions.

13.1.2 Transfer Rights. Subject to the conditions set forth in Section 13.1.6, Developer may freely sell, transfer, exchange, hypothecate, encumber or otherwise dispose of all or any part of its interest in the Property or any portion thereof, including without limitation Lot 1 or Lot 2, without the consent of the City. Developer shall, however, give written notice to the City, in accordance with Sections 13.2 and 15.1, of a direct transfer of the Property or any portion thereof, disclosing in such notice (a) the identity of the transferee of the Property (the "**Transferee**") and (b) the address of the Transferee as applicable. Notwithstanding the foregoing, Developer shall not transfer or lease any Residential Condominiums until the 100% Affordable Housing Project has received its Certificate of Occupancy consistent with Section 2.8.1(g) of this Agreement.

13.1.3 Separate Owners. Developer and the City acknowledge that upon issuance of a Certificate of Occupancy for the Project, it is Developer's intention to transfer the Residential Condominiums in Lot 2 to Residential Condominium Owners

under final subdivision public reports issued by the California Department of Real Estate (DRE). Each Residential Condominium Owner will own fee title to its unit and an undivided interest in the common area located within Lot 2, which shall consist of all of Lot 2 except the units. The rights and obligations of the Developer under this Agreement with respect to the Residential Condominiums shall remain with Developer only to the extent that Developer retains any ownership interest(s) in the Residential Condominiums.

13.1.4 Residential CC&Rs and Master Declaration. Except as provided in Section 13.1.6 below, the rights and obligations of the Residential Condominium Owners under this Agreement, including the Developer if the Developer retains any interests in the Residential Condominiums, may be implemented by the Residential Association in accordance with the Residential CC&Rs and the Master Declaration. The form of the Residential CC&Rs and Master Declaration, and any amendments thereto, shall be consented to, in writing, by the City, prior to recordation, which consent may not unreasonably be withheld, conditioned or delayed.

13.1.5 Definitions of Property and Developer. With respect to each Lot, the term "Property" as used in this Agreement shall, after division of the property into Lot 1 and Lot 2, mean and refer only to that Lot. Except as provided in Section 13.1.6 below, the term "Developer" as used in this Agreement shall, after issuance of the Certificate of Occupancy for the Project, mean and refer only to the owner(s) of Lot 1 and references to the owner(s) of Lot 2 shall thereafter mean and refer only to the Residential Condominium Owners or Residential Association, as specified in this Agreement.

13.1.6 Responsibility for Compliance with This Agreement.
Notwithstanding anything to the contrary in this Agreement:

(a) Prior to issuance of the Certificate of Occupancy for the Project, recordation of the Master Declaration and Residential CC&Rs, and Residential Association's execution of an Assignment and Assumption Agreement in accordance with Section 13.2, below, if Developer means more than one entity (e.g., Ocean Avenue LLC sells Lot 2 to Successor I, LLC), then all owners of the Property shall be jointly and severally liable for compliance with the requirements in this Agreement. For avoidance of doubt, if Developer sells its entire interest in the Property and all requirements in Section 13.2 below are satisfied, including that the Transferee(s) executes an Assumption Agreement, then the City agrees to look solely to the Transferee(s) for compliance with the provisions of this Agreement.

(b) After issuance of the Certificate of Occupancy for the Project, recordation of the Master Declaration and Residential CC&Rs, and Residential Association's execution of an Assignment and Assumption Agreement in accordance with Section 13.2 below:

(i) Lot 1 Owner Obligations. The owner(s) of Lot 1 shall be responsible for ongoing compliance with this Agreement, except as to those provisions which are the express obligation of the Residential Condominium Owners and/or the Residential Association under subparagraphs (ii) and (iii), below. If Lot 1 is owned by more than one entity (e.g., Lot 1 is owned jointly by Ocean Avenue LLC and Successor II, LLC) then all owners of Lot 1 shall be jointly and severally liable for Lot 1 owner obligations.

(ii) Lot 2 Obligations – Residential Association. The Residential Association shall be responsible for ongoing compliance with the following provisions of this Agreement:

1. Exhibit H, Section (e)(2)(iii) (TMO Participation);
2. Section 2.7.14(c) with respect to any residential pool(s) in Lot 2 common areas;
3. Section 2.8.4(b) with respect to Lot 2 landscaping;
4. Sections 2.5.1(b)(2), 2.5.2, 2.5.3, 2.5.4, 2.5.5, and Section 2.6.1 with respect to Lot 2 common areas; and
5. Section 13.4(b) with respect to modifications of the Residential CC&Rs.
6. Section 14.1 with respect to any Damages, including but not limited to claims for damage for personal injury (including death) and claims for property damage arising directly or indirectly from any act or omission of the Residential Association or any of its officers, board members, agents, employees, contractors, subcontractors or other persons acting on its behalf (collectively referred to as the “**Residential Association Parties**”) except to the extent any Damages are caused by the active negligence or willful misconduct of any of the City Indemnified Parties, which (x) occurs after issuance of the Certificate of Occupancy for the Project, recordation of the Master Declaration and Residential CC&Rs, and Residential Association’s execution of an Assignment and Assumption Agreement in

accordance with Section 13.2 below and before the expiration of the Term and (y) constitutes a violation of Residential Association's obligations under Sections 13.1.6(b)(ii)(1)-(5).

(iii) Lot 2 Obligations – Residential Condominium Owners. The Residential Condominium Owners shall be individually, but not jointly, responsible for ongoing compliance with the following provisions of this Agreement:

1. Section 2.5.1(b)(2), 2.5.2, 2.5.3, 2.5.4 and 2.5.5 with respect to the individual residential condominium units
2. Section 2.7.14(c) with respect to any residential pool associated with a residential condominium unit.
3. Section 14.1 with respect to any Damages, including but not limited to claims for damage for personal injury (including death) and claims for property damage arising directly or indirectly from any act or omission of a Residential Owner or any of its tenants, except to the extent any Damages are caused by the active negligence or willful misconduct of any of the City Indemnified Parties, which (x) occurs during the time such Residential Owner is the owner of the particular condominium unit ("**Applicable Unit**") and (y) constitutes a violation of such Residential Owner(s) obligations pertaining to the Applicable Unit under Sections 13.1.6(b)(iii)(1)-(2). For the avoidance of doubt, only the Residential Owner of the Applicable Unit shall be obligated to indemnify the City as outlined in this Section 13.1.6(b)(iii)(3) and not owners of other residential condominium units.

(c) In addition to the provisions required by Section 13.3, the Residential CC&Rs shall include the following provision, or substantially similar provision, to ensure the Residential Association's ability to implement its obligations and the Residential Condominium Owner(s) compliance with the Residential Association obligations included in Section 13.1.6(b)(ii): "With respect to enforcement of the Residential Association's obligations under Section 13.1.6(b)(ii) of the Development Agreement, the Residential Association shall have the right to levy fines, suspend

privileges, levy an assessment for damage to the residential common areas and enforce the Residential Association's obligations described in Development Agreement Section 13.1.6(b)(ii) through legal action or seek injunctive relief in accordance with and subject to the procedures set forth in all applicable State laws, including the Davis Stirling Act, as they may be amended from time to time."

13.2 Release Upon Transfer. Subject to the provisions in Section 13.1.6, upon the transfer of the rights and interests of Developer in the Property, Developer shall be released from its obligations under this Agreement to the extent of such transfer with respect to the Property if: (a) Developer has provided written notice of such transfer to City; and (b) the Transferee executes and delivers to City a written agreement in which the Transferee expressly and unconditionally assumes all of the obligations of Developer under this Agreement with respect to the Property in the form of Exhibit "K" attached hereto (the "**Assumption Agreement**"). Upon transfer by Developer and the express assumption of Developer's obligations under this Agreement by the Transferee, the City agrees to look solely to the Transferee for compliance with the provisions of this Agreement applicable to such Transferee. Any such Transferee shall be entitled to the benefits of this Agreement as "Developer" and/or Residential Condominium Owner, as applicable, hereunder and shall be subject to the obligations under this Agreement. Failure to deliver a written Assumption Agreement hereunder shall not affect the transfer of the benefits and burdens as provided in Section 13.1, provided that the transferor shall not be released from its obligations hereunder unless and until the executed Assumption Agreement is delivered to the City. For the avoidance of doubt, once Developer transfers a Residential Condominium and the Transferee has executed an Assumption Agreement, Developer has no obligation to notify the City of future transfers of such Residential Condominium.

13.3 Residential Condominiums Requirements. Except as otherwise provided by applicable law or by other provisions of this Agreement, and in lieu of SMMC Section 9.24.030, the following minimum requirements shall apply to the Residential Condominiums:

(a) The Residential CC&Rs shall include adequate provisions for maintenance, repair, and upkeep of residential common areas; and

(b) The Residential CC&Rs shall be reviewed and approved by the City Attorney. Prior to recordation of the Residential CC&Rs, Developer shall not change the Residential CC&Rs without the consent of the City Attorney. The Residential CC&Rs shall designate the City as an express third party beneficiary for the sole purpose of enforcing the ongoing obligations of this Agreement included in Section 13.1.6(b)(ii) and (iii) as to the Residential Condominiums. After recordation of the initial Residential CC&Rs, subsequent owners of the Residential Condominium units may modify the Residential CC&Rs without the written consent of City except as to those rights of the City specified in the Residential CC&Rs. In addition, such owners may not make changes imposing restrictions on the age, race, national origin, handicap, sex or gender

status, sexual orientation, marital status, or other protected classes of occupants, residents, or owners.

ARTICLE 14

INDEMNITY TO CITY

14.1 Indemnity. Developer agrees to and shall defend, indemnify and hold harmless the City, its City Council, boards and commissions, officers, agents, employees, volunteers and other representatives (collectively referred to as “**City Indemnified Parties**”) from and against any and all loss, liability, damages, cost, expense, claims, demands, suits, attorney’s fees and judgments (collectively referred to as “**Damages**”), including but not limited to claims for damage for personal injury (including death) and claims for property damage arising directly or indirectly from the following: (1) for any act or omission of Developer or those of its officers, board members, agents, employees, volunteers, contractors, subcontractors or other persons acting on its behalf (collectively referred to as the “**Developer Parties**”) which occurs during the Term and relates to this Agreement; and (2) for any act or omission related to the operations of Developer Parties, including but not limited to the maintenance and operation of areas on the Property accessible to the public. Developer’s obligation to defend, indemnify and hold harmless applies to all actions and omissions of Developer Parties as described above caused or alleged to have been caused in connection with the Project or Agreement, except to the extent any Damages are caused by the active negligence or willful misconduct of any City Indemnified Parties. This Section 14.1 applies to all Damages suffered or alleged to have been suffered by the City Indemnified Parties regardless of whether or not the City prepared, supplied or approved plans or specifications or both for the Project.

14.2 City’s Right to Defense. The City shall have the right to approve legal counsel retained by Developer to defend any claim, action or proceeding which Developer is obligated to defend pursuant to Section 14.1, which approval shall not be unreasonably withheld, conditioned or delayed. If any conflict of interest results during the mutual representation of the City and Developer in defense of any such action, or if the City is reasonably dissatisfied with legal counsel retained by Developer, the City shall have the right (a) at Developer’s cost and expense, to have the City Attorney undertake and continue the City’s defense, or (b) with Developer’s approval, which shall not be reasonably withheld or delayed, to select separate outside legal counsel to undertake and continue the City’s defense.

ARTICLE 15

GENERAL PROVISIONS

15.1 Notices. Formal notices, demands and communications between the Parties shall be deemed sufficiently given if delivered to the principal offices of the City or Developer, as applicable, by (i) personal service, or (ii) express mail, Federal

Express, or other similar overnight mail or courier service, regularly providing proof of delivery, or (iii) registered or certified mail, postage prepaid, return receipt requested. Such notice shall be addressed as follows:

To City:

City of Santa Monica
1685 Main Street, Room 204
Santa Monica, CA 90401
Attention: City Manager

With a copy to:

City of Santa Monica
1685 Main Street, Mail Stop 28
Santa Monica, CA 90401
Attn: Community Development Department Director

To Developer:

Ocean Avenue LLC
100 Wilshire Boulevard, Suite 1700
Santa Monica, California 90401
Attn: Alan Epstein

With copies to:

MSD Partners, L.P.
645 Fifth Ave, 21st Floor
New York, NY 10022 5910
Attn: Marcello Liguori

Athens Hotel Development, LLC
101 Wilshire Boulevard, Suite 101
Santa Monica, California 90401
Attn: Dustin Peterson

Harding Larmore Kutcher & Kozal, LLP
1250 Sixth Street, Suite 200
Santa Monica, California 90401
Attn: Paula J. Larmore

Notice given in any other manner shall be effective when received by the addressee. Any Party may change the addresses for delivery of notices to such Party by delivering notice to the other Party in accordance with this provision.

15.2 Entire Agreement; Conflicts. This Agreement represents the entire

agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof. Should any or all of the provisions of this Agreement be found to be in conflict with any other provision or provisions found in the Existing Regulations, then the provisions of this Agreement shall prevail. Should any of the Conditions of Approval set forth in Section B of Exhibit "E" attached hereto conflict with any of the Mitigation Measures set forth in Section A of Exhibit "E" attached hereto, the more stringent or exacting requirement shall control.

15.3 Binding Effect. The Parties intend that the provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property during the Term for the benefit thereof and that the burdens and benefits thereof shall bind and inure to the benefit of all successors-in-interest to the Parties hereto in accordance with Article 13. Every Party who now or hereafter owns or acquires any right, title, or interest in or to any portion of the Project during the Term is and shall be conclusively deemed to have consented and agreed to every provision contained herein, to the extent relevant to said right, title or interest, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project.

15.4 Agreement Not for Benefit of Third Parties. This Agreement is made and entered into for the sole protection and benefit of Developer and the City and their respective successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

15.5 No Partnership or Joint Venture. Nothing in this Agreement shall be deemed to create a partnership or joint venture between the City and Developer or to render either Party liable in any manner for the debts or obligations of the other.

15.6 Estoppel Certificates. Either Party and Secured Lender may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing (each, an "**Estoppel Certificate**"): (a) that this Agreement is in full force and effect, (b) that this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments, (c) whether or not, to the knowledge of the responding Party, the requesting Party is in Breach or claimed Breach in the performance of its obligations under this Agreement, and, if so, describing the nature and amount of any such Breach or claimed Breach, and (d) whether or not, to the knowledge of the responding Party, any event has occurred or failed to occur which, with the passage of time or the giving of notice, or both, would constitute an Event of Monetary Default or an Event of Non-Monetary Default and, if so, specifying each such event. A Party receiving a request for an Estoppel Certificate shall execute and return such Certificate within thirty (30) days following the receipt of the request therefor. If the party receiving the request hereunder does not execute and return the certificate in such 30-day period and if circumstances are such that the Party requesting the notice requires such notice as a matter of reasonable business necessity, the Party requesting the notice may seek a second request which conspicuously states "FAILURE TO

EXECUTE THE REQUESTED ESTOPPEL CERTIFICATE WITHIN FIFTEEN (15) DAYS SHALL BE DEEMED WAIVER PURSUANT TO SECTIONS 15.6 AND 15.13 OF THE DEVELOPMENT AGREEMENT” and which sets forth the business necessity for a timely response to the estoppel request. If the Party receiving the second request fails to execute the Estoppel Certificate within such 15-day period, it shall be conclusively deemed that the Agreement is in full force and effect and has not been amended or modified orally or in writing, and that there are no uncured defaults under this Agreement or any events which, with passage of time of giving of notice, of both, would constitute a default under the Agreement. The City Manager shall have the right to execute any Estoppel Certificate requested by Developer under this Agreement. The City acknowledges that an Estoppel Certificate may be relied upon by any Transferee, Secured Lender or other party. The Estoppel Certificate shall be provided in lieu of zoning compliance letters authorized pursuant to SMMC Section 9.38.020E, or any successor thereto. The Residential Association may request Estoppel Certificates on behalf of any Residential Condominiums Owner and, in such case, the same provisions set forth above in this Section 15.6 shall apply.

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

15.8 Excusable Delays.

15.8.1 In addition to any specific provisions of this Agreement, non-performance by Developer of its obligations under this Agreement shall be excused when it has been prevented or delayed in such performance by reason of any act, event or condition beyond the reasonable control of Developer (collectively, “**Excusable Delays**”) for any of the following reasons:

(a) War, insurrection, walk-outs, riots, acts of terrorism, floods, earthquakes, fires, casualties, acts of God, or similar grounds for excused performances;

(b) Governmental restrictions or moratoria imposed by the City or by other governmental entities or the enactment of conflicting State or Federal laws or regulations;

(c) The imposition of injunctive relief, restraining orders, restrictions or moratoria by judicial decisions or by litigation, contesting the validity, or seeking the enforcement or clarification of, this Agreement or the EIR, whether instituted by Developer, the City or any other person or entity, or the filing of a lawsuit by any Party arising out of this Agreement, the EIR, the corresponding Mitigation Monitoring Program, the Project’s Statement of Overriding Considerations, or any permit or approval Developer deems necessary or desirable for the implementation of the Project;

(d) The institution of a referendum pursuant to Government Code Section 65867.5 or a similar public action seeking to in any way invalidate, alter,

modify or amend the ordinance adopted by the City Council approving and implementing this Agreement;

(e) Inability to secure necessary labor, materials or tools, due to strikes, lockouts, or similar labor disputes, or due to a global pandemic;

(f) The occurrence of two or more quarters of Revenue per Average Room (RevPAR) declines of seven and one-half percent (7.5%) or more in the aggregate (versus the corresponding periods in the previous calendar year) in the STAR Report published by STR, Inc. for the competitive set (which, in addition to the Miramar, includes Viceroy, Shutters, Casa Del Mar, Loews, Le Merigot and Ritz-Carlton Marina del Rey) ("**Severe Economic Shock**"); and

(g) Failure of the City to timely perform its obligations hereunder, including its obligations under Section 7.2, above.

15.8.2 Under no circumstances shall the inability of Developer to secure financing be an Excusable Delay to the obligations of Developer except to the extent the inability to secure financing is directly associated with war, insurrection, walk-outs, riots, acts of terrorism, floods, earthquakes, fires, casualties, acts of God, Severe Economic Shock or similar grounds beyond the control of Developer.

15.8.3 In order for an extension of time to be granted for any Excusable Delay, Developer must deliver to the City written notice of the commencement of the Excusable Delay within sixty (60) days after the date on which Developer becomes aware of the existence of the Excusable Delay. The extension of time for an Excusable Delay shall be for the actual period of the delay.

15.8.4 Nothing contained in this Section 15.8 is intended to modify the terms of either Section 5.1.2 or Section 5.5 of this Agreement.

15.9 Governing Law. This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of California.

15.10 Cooperation in Event of Legal Challenge to Agreement. If there is any court action or other proceeding commenced that includes any challenge to the validity, enforceability or any term or provision of this Agreement, the Environmental Impact Report for the Project, and/or any other City approvals contemplated by this Agreement, then Developer shall indemnify, hold harmless, pay all costs actually incurred, and provide defense in said action or proceeding, with counsel reasonably satisfactory to both the City and Developer. The City shall cooperate with Developer in any such defense as Developer may reasonably request.

15.11 Attorneys' Fees. If any Party commences any action for the interpretation, enforcement, termination, cancellation or rescission of this Agreement or for specific performance for the Breach of this Agreement, the prevailing Party shall be entitled to

its reasonable attorneys' fees, litigation expenses and costs. Attorneys' fees shall include attorneys' fees on any appeal as well as any attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. Such attorneys' fees shall be paid whether or not such action is prosecuted to judgment. In any case where this Agreement provides that the City or Developer is entitled to recover attorneys' fees from the other, the Party so entitled to recover shall be entitled to an amount equal to the fair market value of services provided by attorneys employed by it as well as any attorneys' fees actually paid by it to third Parties. The fair market value of the legal services for public attorneys shall be determined by utilizing the prevailing billing rates of comparable private attorneys.

15.12 Recordation. The Parties shall cause this Agreement to be recorded against title to the Property in the Official Records of the County of Los Angeles. The cost, if any, of recording this Agreement shall be borne by Developer.

15.13 No 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 referring expressly to this Section 15.13. No delay or omission by either Party in exercising any right or power accruing upon non-compliance or failure to perform by the other Party under any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof, except as expressly provided herein. No waiver by either Party of any of the covenants or conditions to be performed by the other Party shall be construed or deemed a waiver of any succeeding breach or nonperformance of the same or other covenants and conditions hereof of this Agreement.

15.14 Construction of this Agreement. The Parties agree that each Party and its legal counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits thereto.

15.15 Other Governmental Approvals. Developer may apply for such other permits and approvals as may be required for development of the Project in accordance with this Agreement from other governmental or quasi-governmental agencies having jurisdiction over the Property. The City shall reasonably cooperate with Developer in its endeavors to obtain such permits and approvals.

15.15.1 Further Assurances; Covenant to Sign Documents. Each Party shall take all actions and do all things, and execute, with acknowledgment or affidavit, if required, any and all documents and writings, which may be necessary or proper to achieve the purposes and objectives of this Agreement.

15.15.2 Processing. Upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate processing fees, if any, the City shall, subject to all legal requirements, promptly initiate, diligently process, and

complete at the earliest possible time all required steps, and expeditiously act upon any approvals and permits necessary for the development by Developer of the Project in accordance with this Agreement, including, but not limited to, the following:

- (a) the processing of applications for and issuing of all Discretionary Approvals requiring the exercise of judgment and deliberation by City;
- (b) the holding of any required public hearings; and
- (c) the processing of applications for and issuing of all City Technical Permits requiring the determination of conformance with the Existing Regulations.

15.15.3 No Revocation. The City shall not revoke or subsequently disapprove any approval or future approval for the development of the Project or the Property once issued by the City provided that the development of the Project or the Property is in accordance with such approval. Any revocation or subsequent disapproval by the City shall state in writing the reasons why the development of the Project or the Property is not deemed to be in accordance with such approval and the suggested actions to be taken in order for approval to be granted.

15.15.4 Processing During Third Party Litigation. If any third party lawsuit is filed against the City or Developer relating to this Agreement or to other development issues affecting the Property, the City shall not delay or stop the development, processing or construction of the Property, or issuance of the City Technical Permits, unless the third party obtains a court order preventing the activity. The City shall not stipulate to or fail to oppose the issuance of any such order. Notwithstanding the foregoing and without prejudice to the provisions of Section 15.8.1(c), after service on the City or Developer of the initial petition or complaint challenging this Agreement or the Project, the Developer may apply to the Community Development Director for a tolling of the applicable deadlines for Developer to otherwise comply with this Agreement. The Community Development Director may approve such tolling, consistent with the standard in Section 15.27, for up to five years during the pendency of the litigation and shall provide Developer with notice of his or her decision on the tolling request within forty (40) days of receiving Developer's request.

15.15.5 State, Federal or Case Law. Where any state, federal or case law allows the City to exercise any discretion or take any act with respect to that law, the City shall, in an expeditious and timely manner, at the earliest possible time, (i) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement and (ii) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

15.16 Venue. Any legal action or proceeding among the Parties arising out of this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California, in any other appropriate court in that County, or in the Federal

District Court in the Central District of California.

15.17 Exhibits. The following exhibits which are part of this Agreement are attached hereto and each of which is incorporated herein by this reference as though set forth in full:

Exhibit "A"	Legal Description of the Property
Exhibit "B"	Legal Description of Second Street Property
Exhibit "C"	Project Plans
Exhibit "D"	Permitted Fees and Exactions
Exhibit "E"	Mitigation Measures and Conditions
Exhibit "F"	SMMC Article 9 (Planning and Zoning)
Exhibit "G"	Conditions of Approval to Dispense Alcohol
Exhibit "G-1"	Licensed Premises
Exhibit "H"	Transportation Demand Management Plan
Exhibit "I-1"	Local Hiring Program for Construction
Exhibit "I-2"	Local Hiring for Permanent Employees
Exhibit "J"	Construction Mitigation Plan
Exhibit "K"	Form of Assignment and Assumption Agreement
Exhibit "L"	Palisades Building Performance Bond
Exhibit "M"	Publicly-Accessible Open Space

Except as to the Project Plans, which shall be treated in accordance with Section 2.1 above, the text of this Agreement shall prevail in the event that any inconsistencies exist between the Exhibits and the text of this Agreement.

15.18 Counterpart Signatures. The Parties may execute this Agreement on separate signature pages which, when attached hereto, shall constitute one complete Agreement.

15.19 Certificate of Performance. Upon the completion of the Project, or any phase thereof, or upon performance of this Agreement or its earlier revocation and termination, the City shall provide Developer, upon Developer's request, with a statement ("**Certificate of Performance**") evidencing said completion, termination or revocation and the release of Developer from further obligations hereunder, except for any further obligations which survive such completion, termination or revocation. The Certificate of Performance shall be signed by the appropriate agents of Developer and the City and shall be recorded against title to the Property 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 3093.

15.20 Interests of Developer. Developer represents to the City that, as of the Effective Date, it is the owner of the entire Property, subject to encumbrances, easements, covenants, conditions, restrictions, and other matters of record.

15.21 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between the City and Developer. During the Term of this Agreement, clarifications to this Agreement and the Existing Regulations may be appropriate with respect to the details of performance of the City and Developer. If and when, from time to time, during the term of this Agreement, the City and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarification through operating memoranda approved in writing by the 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 the City and Developer. Operating memoranda are not intended to and cannot constitute an amendment to this Agreement but mere ministerial clarifications, therefore public notices and hearings shall not be required for any operating memorandum. The City Attorney shall be authorized, upon consultation with, and approval of, Developer, to determine whether a requested clarification may be effectuated pursuant to the execution and delivery of an operating memorandum or whether the requested clarification is of such character to constitute an amendment of this Agreement which requires compliance with the provisions of Section 8.1 above. The authority to enter into such operating memoranda is hereby delegated to the City Manager and the City Manager is hereby authorized to execute any operating memoranda hereunder without further action by the City Council.

15.22 Acknowledgments, Agreements and Assurance on the Part of Developer.

15.22.1 Developer's Faithful Performance. The Parties acknowledge and agree that Developer's faithful performance in developing the Project on the Property and in constructing and installing certain public improvements pursuant to this Agreement and complying with the Existing Regulations will fulfill substantial public needs. The City acknowledges and agrees that there is good and valuable consideration to the City resulting from Developer's assurances and faithful performance thereof and that same is in balance with the benefits conferred by the City on the Project. The Parties further acknowledge and agree that the exchanged consideration hereunder is fair, just and reasonable. Developer acknowledges that the consideration is reasonably related to the type and extent of the impacts of the Project on the community and the Property, and further acknowledges that the consideration is necessary to mitigate the direct and indirect impacts caused by Developer on the Property.

15.22.2 Obligations to be Non-Recourse. As a material element of this Agreement, and in partial consideration for Developer's execution of this Agreement, the Parties each understand and agree that the City's remedies for breach of the obligations of Developer under this Agreement shall be limited as described in Sections 11.2 through 11.4 above.

15.23 Waiver of Protest. Developer acknowledges and agrees that by executing this Agreement, Developer waives any and all claims and rights, if any, under Government Code Section 66020 to protest fees, dedications, reservations, or exactions required by this Agreement (hereinafter “exactions”), including the City’s right to request and receive the exaction pursuant to this Agreement, the total exaction amount if specified by the Agreement, and the formula for subsequently calculating exactions if the formula is established by the Existing Regulations. Notwithstanding the above, if the amount of any exaction is not expressly set forth in this Agreement, Developer reserves the right to protest the subsequent calculation of this amount.

15.24 Not a Public Dedication. Nothing in this Agreement shall be deemed to be a gift or dedication of the Property, or of the Project, or any portion thereof, to the general public, for the general public, or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to and for the purposes herein expressed for the development of the Project as private property. Developer shall have the right to prevent or prohibit the use of the Property, or the Project, or any portion thereof, including common areas and building and improvements located thereon, by any person for any purpose inimical to the development of the Project, including without limitation to prevent any person or entity from obtaining or accruing any prescriptive or other right to use the Property or the Project. Any portion of the Property to be conveyed to the City by Developer as provided in this Agreement, shall be held and used by the City only for the purposes contemplated herein or otherwise provided in such conveyance, and the City shall not take or permit to be taken (if within the power or authority of the City) any action or activity with respect to such portion of the Property that would deprive Developer of the material benefits of this Agreement or would materially and unreasonably interfere with the development of the Project as contemplated by this Agreement.

15.25 Other Agreements. The City acknowledges that certain additional agreements may be necessary to effectuate the intent of this Agreement and facilitate development of the Project. The City Manager or his/her designee is hereby authorized to prepare, execute, and record those additional agreements.

15.26 Severability and Termination. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is superseded or rendered unenforceable according to any law which becomes effective after the Effective Date, the remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.

15.27 Community Development Director Approval. Whenever this Agreement requires Community Development Director review and approval, such review and approval shall be undertaken in good faith and with due diligence and shall not be unreasonably withheld, conditioned or delayed.

This Agreement is executed by the Parties on the date first set forth above and is made effective on and as of the Effective Date.

DEVELOPER:

OCEAN AVENUE LLC,
a Delaware limited liability company

By: _____ *DRAFT* _____
Name: _____
Title: _____

CITY:

CITY OF SANTA MONICA,
a municipal corporation

By: _____ *DRAFT* _____
Name: _____
Title: _____

ATTEST:

By: _____ *DRAFT* _____
Name: _____
City Clerk

APPROVED AS TO FORM:

By: _____ *DRAFT* _____
Name: _____
City Attorney

Exhibit "A"

Legal Description of the Property

BLOCK 98 OF THE TOWN OF SANTA MONICA, IN THE CITY OF SANTA MONICA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3 PAGES 80 AND 81 AND IN BOOK 39 PAGE 45 ET SEQ. OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 4292-028-001

Exhibit "B"

Legal Description of Second Street Property

LOTS "S" AND "T" IN BLOCK 97 OF THE TOWN OF SANTA MONICA, IN THE CITY OF SANTA MONICA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3 PAGES 80 AND 81 AND IN BOOK 39 PAGE 45 ET SEQ. OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 4292-021-009, 4292-021-010

Exhibit "C"
Project Plans

[See separate PDF attachment.]

Exhibit “D”
Permitted Fees and Exactions

1. Developer shall pay the following fees and charges that are within the City’s jurisdiction and at the rate in effect at the time payments are made:
 - (a) Upon submittal for Design Review, Developer shall pay City fees for processing of the Certificate of Appropriateness application(s);
 - (b) Upon submittal for plan check, Developer shall pay City plan check fees;
 - (c) Prior to issuance of construction permits, Developer shall pay the following City fees and all other standard fees imposed on similar development projects:
 - Building, Plumbing, Mechanical, Electrical, Grading, Seismic Mapping, Excavation and Shoring Permit fees (collected by Building & Safety)
 - Offsite Improvement Permits fees:
 - Runoff and drainage in-lieu fees in the event site run-off is cannot be captured (refer to SMMC 7.10.090).
 - Shoring Tieback fee (collected by the Public Works Department)
 - Construction and Demolition (C&D) Waste Management performance security (SMMC Chapter 8.108) (collected by the Public Works Department)
 - Wastewater Capital Facilities Fee (SMMC Section 7.04.460) (collected by the Public Works Department)
 - Water Capital Facilities Fee & Water Meter Installation fee (Water Meter Permit fee) (SMMC Section 7.12.090) (collected by the Public Works Department)
 - Fireline Meter fee (SMMC Section 7.12.090) (collected by the Public Works Department)
 - (d) Upon inspection of the Project during the course of construction, City inspection fees.

These fees shall be reimbursed to Developer in accordance with the City's standard practice should Developer not proceed with development of the Project.

2. Prior to issuance of permits for any construction work in the public right-of-way, or use of public property, Developer shall pay the following City fees:
 - Use of Public Property Permit fees (SMMC 7.04.670) (Public Works Department)
 - Utility Excavation Permit fee (SMMC 7..06.070) (Public Works Department)
 - Street Permit fee (SMMC 7.04.790) (the Public Works Department)
 - Temporary Traffic Control Plan review fees
3. The Developer shall reimburse the City for its actual costs to monitor environmental mitigation measures. The City shall bill the developer for staff time and any material used pursuant to the hourly fees in effect at the time monitoring is performed. Developer shall submit payment to the City within 30 days.
4. Developer shall reimburse the City for its ongoing actual costs to monitor the project's compliance with this Development Agreement. The City shall bill Developer for staff time and any material used pursuant to the hourly fees in effect at the time monitoring is performed. Developer shall submit payment to the City within 30 days after receipt of an invoice for same from the City.

Exhibit “E”

MITIGATION MEASURES AND CONDITIONS

SECTION A – MITIGATION MEASURES AND PROJECT DESIGN FEATURES

PDF AQ-1: Demolition, Grading and Construction Activities:

1. Compliance with provisions of the SCAQMD District Rule 403. The Project shall comply with all applicable standards of the SCAQMD, including the following provisions of District Rule 403:
 - a. All unpaved demolition and construction areas shall be wetted at least three times daily during excavation and construction, and temporary dust covers shall be used to reduce dust emissions and meet SCAQMD District Rule 403.
 - b. The construction area shall be kept sufficiently dampened to control dust caused by grading and hauling, and at all times provide reasonable control of dust caused by wind.
 - c. All clearing, earth moving, or excavation activities shall be discontinued during periods of high winds (i.e., instantaneous winds speeds greater than 25 mph), so as to prevent excessive amounts of dust. As an alternative to discontinuing work, compliance with Rule 403, Table 3 control measures may be implemented in accordance with Rule 403 Section (g)(2).
 - d. All dirt/soil loads shall be secured by trimming, watering or other appropriate means to prevent spillage and dust.
 - e. All dirt/soil materials transported off-site shall be either sufficiently watered or securely covered to prevent excessive amount of dust.
 - f. General contractors shall maintain and operate construction equipment so as to minimize exhaust emissions.
 - g. Trucks having no current hauling activity shall not idle and be turned off.
 - h. Ground cover in disturbed areas shall be replaced as quickly as possible.
2. **Anti-Idling Regulation:** In accordance with Section 2485 in Title 13 of the California Code of Regulations, the idling of all diesel-fueled commercial

vehicles (weighing over 10,000 pounds) during construction shall be limited to five minutes at any location.

3. **Fuel Requirements:** All heavy-duty diesel-powered equipment operating and refueling use low-NOx diesel fuel to the extent that it is readily available and cost effective (up to 125 percent of the cost of CARB diesel) in the South Coast Air Basin (this does not apply to diesel-powered trucks traveling to and from the project site). Contract specifications shall be included in project construction documents, which shall be reviewed by the City prior to issuance of a grading permit.
4. **Architectural Coatings:**
 - a. New building materials that do not require painting shall be used to the extent feasible. Contract specifications shall be included in the proposed project construction documents, which shall be approved by the City. Pre-painted construction materials should be used to the extent feasible.
 - b. Architectural coating (paint and primer) products used have a VOC rating of 125 grams per liter (g/L) or less. Contract specifications shall be included in the proposed project construction documents, which shall be approved by the City.
5. **Construction Equipment:**
 - a. Diesel fueled construction equipment shall meet or exceed the EPA Tier 4 final emission standards.
 - b. The following equipment shall be propane or CNG fueled: Forklifts (except for all-terrain forklifts used only to off-load heavy material) and sweepers/scrubbers.
 - c. The following equipment shall be electric: air compressors, tower cranes (Hotel Parcel), aerial lifts, plate compactor, and pumps
 - d. The following equipment shall be gasoline fueled: water trucks
 - e. Contract specifications shall be included in project construction documents, which shall be reviewed by the City prior to issuance of a grading permit.

PDF-AQ-2: Green Building Features: The Project will be designed and operated to meet the applicable requirements of the California Green Building Standards Code (CALGreen) and the City of Santa Monica Green Building Code. In addition, the applicant would attain a minimum of LEED-certified V3 Gold designation (or equivalent) for all new buildings on the Hotel

Parcel and would use commercially reasonable efforts to attain LEED-certified V3 Platinum designation. Green building features that will be included in the Project are as follows:

1. Waste

- a. The Project will implement a construction waste management plan (WMP) to divert a minimum of 70 percent of all mixed construction and demolition (C&D) debris to City certified construction and demolition waste processors, consistent with SMMC Article 8, Chapter 8.108.
- b. The Project will include easily accessible recycling areas dedicated to the collection and storage of non-hazardous materials such as paper, corrugated cardboard, glass, plastics, metals, and landscaping debris (trimmings), consistent with the City of Santa Monica Zero Waste Strategic Plan, with the goal of achieving a per capita disposal rate of less than 3.6 pounds/person/day by 2020 and less than 1.1 pounds/person/day by 2030, equivalent to a 95 percent diversion rate.

2. Energy

- a. The Project will comply at a minimum with the City of Santa Monica Energy Code and the City of Santa Monica Green Building Standards Code or the most recent standards at the time of building permit issuance by incorporating features such as solar pool heating, green roofs, high-performance building envelopes, energy-efficient HVAC and lighting systems, among other initiatives thereby reducing energy use, air pollutant emissions, and GHG emissions.
- b. The Project will install solar electric photovoltaic (PV) systems, as required by the City of Santa Monica Green Building Code Solar Ordinance. The required installation of the PV systems will be implemented by installing a minimum total wattage of 2.0 times the square footage of the building footprint (2.0 watts per square foot).
- c. The Project design will incorporate surface materials with a high solar-reflectance-index average, coupled with roof assemblies having insulation factors that meet or exceed the 2019 California Title 24 Building Energy Efficiency Standards, to reduce unwanted heat absorption and minimize energy consumption.

3. Transportation

- a. To encourage carpooling and the use of electric vehicles by Project employees, residents, and visitors, designated parking for carpools and vanpools will be provided in accordance with SMMC Section 9.28.150.
- b. EV Charging Stations, low emission vehicle spaces, and carpool spaces for hotel employees will be provided in the Hotel parking structure. At least two charging stations plus one for each additional 50 parking spaces consistent with SMMC Section 9.28160(B)(2) will be provided.
- c. Both long-term and short-term bicycle parking will be provided at the Hotel parking structure. The number of parking spaces shall at a minimum be provided in accordance with SMMC Table 9.28.140, which requires one short-term bicycle parking space for every 4,000 square feet of floor area (depending on the use). The number of spaces will be determined through the Development Agreement and is expected to exceed the City's code requirement of 304 bicycle spaces, including 263 long-term and 41 short-term spaces.

Showers and clothes lockers for employees will also be provided at the Hotel. In accordance with SMMC Section 9.28.170(B)(1), a minimum of four showers would be provided. Consistent with SMMC Section 9.28.170(B)(2), lockers for clothing and other personal effects will be provided at a ratio of 75% of the long-term employee bicycle parking spaces required. A total of up to 197 new clothes lockers will be provided on the Hotel Parcel for employee use. The final number will be determined through the Development Agreement.

4. Water

- a. The Project shall achieve the City's water neutrality requirements and in accordance with the DCP, the Applicant shall strive to achieve a minimum of 30 percent below California 2019 Title 24 baseline for interior building water use and a minimum of 50 percent below California 2019 baseline for exterior water use. The Project will also implement 100% non-potable irrigation for landscaping.

PDF-AQ-3: Control of VOCs: The Project will utilize low-emitting materials pursuant to the requirements of the California Green Building Standards (CALGreen) Code and SCAQMD Rule 1113.

PDF-AQ-4: Emergency Generators: The new standby generator on the Hotel Parcel shall meet the EPA Tier 4 standard for diesel emissions. For after-treatment of engine exhaust air, a diesel particulate filter shall be provided to meet the emission level requirements of the SCAQMD.

PDF BIO-1: Moreton Bay Fig Tree Protection Plan. To support a commitment by the Applicant to feature the Moreton Bay Fig Tree as a key centerpiece of the Miramar Hotel property, to avoid impacts to the tree during redevelopment of the Project Site, and to continue to ensure the health and on-going maintenance of the tree and its status as a City-designated landmark into the future, a Tree Protection Plan shall be incorporated into the Project. As further detailed in Chapter 7 and Chapter 8 of the *Moreton Bay Fig Tree Protection, Preservation and Maintenance Program*, prepared by BrightView Tree Company, dated February 26, 2018, the Tree Protection Plan shall at a minimum incorporate performance standards and requirements for:

- Tree Protection Training Program for Construction Personnel
- Preservation and Protection Measures during Construction
- Construction Monitoring Program

Prior to approval of final Project design plans, the draft Tree Protection Plan shall be refined and submitted to City Staff for review and approval. Upon issuance of the Project's building permit, the Applicant shall identify or otherwise engage an Arborist, Landscape Architect, and general contractor, subject to City Staff approval of their respective credentials, to execute work in compliance with the final Tree Protection Plan. As appropriate, finalization and implementation of the Tree Protection Plan shall be coordinated with the Project's Preservation Plan. Furthermore, following Project construction, monitoring and maintenance of the tree shall continue pursuant to the *Moreton Bay Fig Tree Protection, Preservation and Maintenance Program*.

PDF CE-1: Construction Impact Mitigation Plan (CIMP). Prior to issuance of a grading or building permit the Applicant shall prepare a CIMP for review and approval by the following City departments: Public Works, Fire, Community Development, and Police to ensure that the CIMP shall:

- Prevent material traffic impacts on the surrounding roadway network.
- Minimize parking impacts both to public parking and access to private parking to the greatest extent practicable.

- Ensure safety for both those constructing the project and the surrounding community.
- Prevent substantial truck traffic through residential neighborhoods.

In addition, the plan shall be prepared and implemented in coordination with any affected agencies such as Big Blue Bus, Metro, and Caltrans.

The CIMP shall comply with SMC Chapter 8.98, Construction Management Plans and shall at a minimum include the following:

- A detailed plan for work zones shall be maintained. At a minimum, the plan shall include parking and travel lane configurations; warning, regulatory, guide, and directional signage; and area sidewalks, bicycle lanes, and parking lanes. The plan shall include specific information regarding the Project's construction activities that may disrupt normal pedestrian and traffic flow and the measures to address these disruptions.
- Work within the public right-of-way shall be performed between 9:00 A.M. and 4:00 P.M. This work includes dirt and demolition material hauling and construction material delivery. Work within the public right-of-way outside of these hours shall only be allowed after the issuance of an After Hours Permit administered by the Public Works Department.
- Streets and equipment shall be cleaned in accordance with established Public Works requirements.
- The Applicant shall obtain Transportation Engineering Division approval of any haul routes for earth, concrete, or construction materials and equipment hauling. Trucks shall only travel on a City-approved construction truck route. Truck queuing/staging shall not be allowed on City streets. Queuing may occur on the construction site itself to the extent there is space available on the construction site.
- Overall anticipated construction schedule including any anticipated request for construction beyond normally permitted hours. The construction schedule shall also include the nature and extent of construction and associated truck, crane, and/or helicopter activity.
- Proposed construction-period noise measures and security measures.
- Materials and equipment shall be minimally visible to the public; the preferred location for materials is to be onsite, with a minimum amount

of materials within a work area in the public right-of-way, subject to a current Use of Public Property Permit.

- Provision of off-street parking for construction workers, which may include the use of a remote location with shuttle transport to the site, if determined necessary by the City of Santa Monica.
- Sidewalk closure shall be prohibited to the extent feasible; if sidewalk closure is determined to be necessary, a detour pedestrian pathway shall be provided. In the existing conditions, there is a portion of the public sidewalk located on the Project Site adjacent to Ocean Avenue. This portion of the sidewalk will be closed/removed permanently as part of the Project. In addition to the off-site improvements Developer will provide as part of the Project, Developer acknowledges that as part of approving the detour pedestrian pathway provided in the public right-of-way during construction the City may require Developer to provide temporary improvements to the existing conditions (the sidewalk curb/driveway) to ensure ADA access is provided over the detour pedestrian pathway.
- The traveling public shall be advised of impending construction activities (e.g., information signs, portable message signs, media listing/notification, and implementation of an approved CIMP).
- The Applicant shall obtain a Use of Public Property Permit, Excavation Permit, Sewer Permit, or Oversize Load Permit, as well as any Caltrans permits required, for any construction work requiring encroachment into public rights- of-way, detours, or any other work within the public right-of-way.
- The Applicant shall provide timely notification of construction schedules to all affected agencies (e.g., Metro, Big Blue Bus, Police Department, Fire Department, Public Works Department, and Community Development Department) and to all owners and residential and commercial tenants of property within a radius of 500 feet.
- The Applicant shall coordinate construction work with affected agencies in advance of start of work. Approvals may take up to two weeks per each submittal. Coordination with Metro regarding construction activities that may impact Metro bus lines or result in closures lasting over six months shall be initiated at least 30 days in advance of construction activities.
- Contact information for the Project developer, architect, contractor(s) and subcontractor(s). In addition, contact information for a single

individual appointed to community with residents, businesses, and commuters impacted by construction activity.

PDF HIST-1: Preservation Plan. A Preservation Plan shall be prepared as part of the Project to help support conformance with the Rehabilitation Standards, as the Santa Monica Municipal Code § 9.56.140 (G) requires use of the Rehabilitation Standards for analysis related to issuance of Certificate(s) of Appropriateness or equivalent permit(s). The Preservation Plan will establish professional standards by which the preservation aspects of the Project will be executed and enforced. At a minimum, the Preservation Plan shall address the following:

Rehabilitation of Palisades Building

- Brick. Establishment of brick treatments, including processes and materials for cleaning, testing, repair, painting or coating in conformance with Rehabilitation Standards.
- Terra Cotta. Establishment of treatments for testing, cleaning, paint removal, repair, repointing, and painting or coating in conformance with Rehabilitation Standards.
- Windows and Doors. Treatments related to removal, alterations and or replacement of windows and doors in conformance with Rehabilitation Standards.
- Rooftop Sign. Design details for a new rooftop sign at the western slope of the Palisades Building to take inspiration from the non-extant historic sign. Specifications shall be established for the size, materials, colors, typeface, placement and other characteristics to support compatibility with the building and conformance with Rehabilitation Standards, particularly Standards 3 and 6. The final design shall be in compliance with the Rehabilitation Standards such that the sign correlates well with the historic sign's character-defining features as to size, shape, and design and while avoiding creating a false sense of history.
- Grade Changes. Design details for raising the grade at the Palisades Garden between the California Building, Palisades Building, and Ocean Building. The proposed change is to improve accessibility to the Palisades Building and across the Project Site, by creating a level transition between the buildings and the Palisades Garden and Miramar Gardens, while helping reestablish the entry to the Palisades Building on the west elevation as the primary access point and to further integrate the Palisades Building into the new Palisades Garden. The final grade change and

associated connections to the Palisades Building shall be in conformance with the Rehabilitation Standards.

- Hyphens. Construction of largely transparent architectural hyphens are proposed to connect new construction with the Landmark Building in a manner respectful of the Palisades Building. The final design of the hyphens shall expose much of the elevations of the Palisades Building and be at or shorter in height than the eaves of the Palisades Building, to minimize their size and scale in order to not detract from the Palisades Building. Final design of the hyphens shall be in conformance with the Rehabilitation Standards.

The Moreton Bay Fig Tree

- The Moreton Bay Fig Tree (the Ficus) shall be preserved and integrated into the new Miramar Gardens as a primary feature of the Project Site. Below grade, the existing basement wall to the east of the Moreton Bay Fig shall be retained. Shoring walls with internal bracing (in lieu of tiebacks) shall be constructed (where excavation is needed for the subterranean garage) to avoid damage to the roots or undermining of the soil. At grade, the existing circular driveway around the tree would be removed, and an elliptical-shaped walkway, pedestrian deck and bench would be constructed around the tree. The pedestrian deck shall be supported by micropiles that allow beneficial airspace flow, nutrients, and water to reach the tree roots. The ring-shaped bench shall protect the buttressed tree roots to ensure the long-term health of the tree. The tree canopy shall be maintained through a pruning and routine maintenance plan as set forth in the 2018 Brightview Report. Final design, monitoring and implementation of improvements in proximity to the Moreton Bay Fig tree shall be subject to review by a qualified arborist and where warranted by a qualified historic preservation architect for conformance with Rehabilitation Standards.

Prior to approval of final Project design plans, the Preservation Plan shall be refined and submitted to City Staff, and revised as required to support final approval and ensure conformance with the Rehabilitation Standards and the criterion specified in Santa Monica Municipal Code § 9.56.140 (A) and (C) for issuance of Certificate(s) of Appropriateness or equivalent permit(s). Upon issuance of the Project's building permit, the Applicant shall engage a qualified historic preservation architect, structural engineer, arborist and general contractor, subject to City Staff approval of their respective credentials, to execute work in compliance with the final Preservation Plan.

PDF HAZ-1: Soil Management Plan. Although there is no known soil contamination on the Project Site, the Applicant shall prepare a Soil Management Plan for each parcel that would establish procedures for recognizing hazardous materials [e.g., training of construction workers regarding tell-tale signs of contaminated soils (e.g., staining, leakage or odors) and location and removal logistics regarding the UST on the Hotel Parcel]. The SMP shall also include procedures for encounters with previously unknown or unidentified soil contamination that could present a threat to human health or the environment. Procedures shall be generally consistent with the provisions set forth in DCP MM HAZ-2d. As such, the SMP would address soil and material segregation, stockpile management, decontamination methods and procedures, truck loading, stormwater management, and transportation of affected soils. The SMP shall be submitted to the SMFD for review and approval prior to issuance of a grading permit.

PDF NOISE-1: Construction BMPs. The Applicant's construction contractor shall require implementation of the following construction best management practices (BMPs) by all construction contractors and subcontractors working in and around the Project Site to reduce construction noise levels:

- Project contractor(s) shall equip all construction equipment, fixed and mobile, mobile, with properly operating and maintained noise mufflers, consistent with manufacturers' standards;
- On-site construction equipment staging areas shall be located as far as feasible from noise and vibration sensitive uses.

**PDF TR-1
(TDM Plan):**

The Applicant shall prepare an enhanced TDM Program that expands the current TDM Program that is based on the City's TDM ordinance and Downtown Community Plan to ensure that trip generation estimates in Table 4.17-7 of this EIR are not exceeded. The specific TDM strategies to be implemented shall be finalized as part of the Development Agreement process. The TDM Program shall include at a minimum the following TDM strategies: a TDM Coordinator; participation in the establishment of a Transportation Management Association, employer-subsidized transit passes; preferential parking and rideshare matching service for carpools and vanpools; parking pricing (i.e., do not provide free onsite parking to hotel guests); unbundled parking; Guaranteed Ride Home; bicycle parking for all users and employee lockers and shower facilities; onsite access to Carshare services; onsite access to a bicycle sharing service; a Transportation Information Center and TDM website information

(centralized commuter/program information for employees); wayfinding signage; and a Commuter Club (provides various incentives to employees who commit to using non-single occupancy vehicle modes). Detailed description of these TDM Plan elements are provided in Appendix L.

To ensure that the trip generation estimates in Table 4.17-7 of this EIR are not exceeded, a period of annual monitoring and reporting shall be undertaken for the Project. The Project Applicant shall summarize the results of the trip monitoring program, determine whether trip reduction goals and/or AVR targets are being achieved, and describe the TDM efforts in place to reduce vehicular trip making, in an annual report delivered to the City. The City, at its discretion, shall determine the type of enforcement and may require implementation of additional TDM strategies and possible monetary (or other) penalties if annual monitoring determines that the trip generation estimates are being exceeded and/or that AVR targets are not being met.

**DCP MM
AQ-5b:**

Interior Air Quality Protection: Applicants of new projects in the Downtown that propose siting sensitive land uses within 100 feet of an intersection operating or projected to operate at Level of Service (LOS) E or F to include heating, ventilation, and air conditioning (HVAC) infrastructure within the building to circulate and purify outdoor air sources sufficiently to reduce diesel particulate matter and vehicle emissions. HVAC control systems shall include particulate filters that have a minimum efficiency reporting value (MERV) of 15 as indicated by the American Society of Heating Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 52.2. The proposed HVAC system shall be reviewed and approved by the City prior to occupancy of sensitive land uses or populations within the proposed project.

**DCP MM
BIO-1:**

Nesting and Roosting Sites. To prevent impacts to nesting or roosting birds through loss or damage of mature trees, the City shall require that applicants of new development projects within Downtown comply with the following:

1. Where suitable vegetation and structures for nesting birds and bats occur within 500 feet of project construction activities, all phases of project construction shall avoid the general nesting season (February 15 through August 31).
2. If construction cannot avoid the general nesting season, a qualified biologist shall be retained to conduct a pre-construction survey for nesting birds and/or bats. The survey shall be

conducted within 72 hours prior to commencement of vegetation removal.

3. If any nesting birds are present within or immediately adjacent to the construction area, the following shall be required: A qualified biologist shall be retained by the Applicant to flag and demarcate the location of all nesting birds and monitor construction activities. Temporary avoidance of active nests, including the enforcement of an avoidance buffer of 25 to 500 feet, depending on the sensitivity of the species identified, as determined by the qualified biological monitor, shall be required until the qualified biological monitor has verified that the young have fledged or the nest has otherwise become inactive.

4. If federal or state protected species are observed during the site survey, consultation shall be completed with the USFWS and CDFW to determine if work shall commence or proceed during the breeding season; and, if work may proceed, what specific measures shall be taken to ensure protected bird species are not affected.

**DCP MM
CR-3a:**

Archaeological Data Recovery: For projects that inadvertently discovered buried prehistoric or historic-period archaeological resources the City shall apply a program that combines resource identification, significance evaluation, and mitigation efforts into a single combined effort. This approach would combine the discovery of deposits (Phase 1), determination of significance and assessment of the project's impacts on those resources (Phase 2), and implementation of any necessary mitigation (Phase 3) into a single consolidated investigation. This approach must be driven by a Treatment Plan that sets forth explicit criteria for evaluating the significance of resources discovered during construction and identifies appropriate data recovery methods and procedures to mitigate project effects on significant resources. The Treatment Plan shall be prepared prior to issuance of building permits by a Registered Professional Archaeologist (RPA) who is familiar with urban historical resources, and at a minimum shall include:

- A review of historic maps, photographs, and other pertinent documents to predict the locations of former buildings, structures, and other historical features and sensitive locations within and adjacent to the specific development area;
- A context for evaluating resources that may be encountered during construction;

- A research design outlining important prehistoric and historic-period themes and research questions relevant to the known or anticipated sites in the study area;
- Specific and well-defined criteria for evaluating the significance of discovered remains; and
- Data requirements and the appropriate field and laboratory methods and procedures to be used to treat the effects of the project on significant resources.

The Treatment Plan shall also provide for a final technical report on all cultural resource studies and for curation of artifacts and other recovered remains at a qualified curation facility, to be funded by the developer. To ensure compliance with City and state preservation laws, this plan shall be reviewed and approved by the Historic Landmarks Commission and the City of Santa Monica Planning Division prior to issuance of building permits.

**DCP MM
CR-3b:**

Inadvertent Discoveries: In the event of any inadvertently discovered prehistoric or historic-period archaeological resources during construction, the developer shall immediately cease all work within 50 feet of the discovery. The proponent shall immediately notify the City of Santa Monica Planning and Community Development Department and shall retain a Registered Professional Archaeologist (RPA) to evaluate the significance of the discovery prior to resuming any activities that could impact the site. If the archaeologist determines that the find may qualify for listing in the California Register of Historic Resources (CRHR), the site shall be avoided or a data recovery plan shall be developed pursuant to MM CR-2a. Any required testing or data recovery shall be directed by a RPA prior to construction being resumed in the affected area. Work shall not resume until authorization is received from the City.

**MM
ARCHAEO-1:**

Prior to issuance of demolition permit, the Applicant shall retain an archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards for Archaeology (Qualified Archaeologist) to oversee an archaeological monitor who shall be present during construction excavations such as demolition, clearing/grubbing, grading, trenching, or any other construction excavation activity associated with the Project. Full-time monitoring shall be conducted in Areas 1, 2 and 3 as denoted in Figure 9 - Archaeologically Sensitive Areas of the Archaeological Resources Assessment Report. Full-time monitoring in those areas can be reduced to part-time inspections or ceased entirely if determined appropriate by the Qualified

Archaeologist, based on field observations. If the Qualified Archaeologist, based on field observations, determines that other areas beyond Area 1, 2, and 3 warrant monitoring, then monitoring in those areas shall be required.

Prior to commencement of excavation activities, an Archaeological and Cultural Resources Sensitivity Training shall be given for construction personnel. The training session shall be carried out by the Qualified Archaeologist and shall focus on how to identify archaeological resources that may be encountered during earthmoving activities and the procedures to be followed in such an event.

MM

ARCHAEO-2: Prior to issuance of demolition permit, the Applicant shall retain a Native American tribal monitor from the Gabrieleno Tribe. The appropriate Native American monitor shall be selected based on ongoing consultation under AB 52 and shall be identified on the most recent contact list provided by the Native American Heritage Commission. The Native American Monitor shall be present during construction excavations such as demolition, clearing/grubbing, grading, trenching, or any other construction excavation activity associated with the Project. The frequency of monitoring shall take into account the rate of excavation and grading activities, proximity to known archaeological resources, the materials being excavated (younger alluvium vs. older alluvium), and the depth of excavation, and if found, the abundance and type of prehistoric archaeological resources encountered. Full-time field observation can be reduced to part-time inspections or ceased entirely if determined appropriate by the Gabrielino Tribe.

MM

ARCHAEO-3: If human remains are encountered unexpectedly during implementation of the Project, State Health and Safety Code Section 7050.5 requires that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and disposition pursuant to PRC Section 5097.98. If the remains are determined to be of Native American descent, the coroner has 24 hours to notify the Native American Heritage Commission (NAHC). The NAHC shall then identify the person(s) thought to be the Most Likely Descendent (MLD). The MLD may, with the permission of the land owner, or his or her authorized representative, inspect the site of the discovery of the Native American remains and may recommend to the owner or the person responsible for the excavation work means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The MLD shall complete their inspection and

make their recommendation within 48 hours of being granted access by the land owner to inspect the discovery. The recommendation may include the scientific removal and nondestructive analysis of human remains and items associated with Native American burials. Upon the discovery of the Native American remains, the landowner shall ensure that the immediate vicinity, according to generally accepted cultural or archaeological standards or practices, where the Native American human remains are located, is not damaged or disturbed by further development activity until the landowner has discussed and conferred, as prescribed in this mitigation measure, with the MLD regarding their recommendations, if applicable, taking into account the possibility of multiple human remains. The landowner shall discuss and confer with the descendants all reasonable options regarding the descendants' preferences for treatment.

If the NAHC is unable to identify an MLD, or the MLD identified fails to make a recommendation, or the landowner rejects the recommendation of the MLD and the mediation provided for in Subdivision (k) of Section 5097.94, if invoked, fails to provide measures acceptable to the landowner, the landowner or his or her authorized representative shall inter the human remains and items associated with Native American human remains with appropriate dignity on the facility property in a location not subject to further and future subsurface disturbance.

**DCP MM
CR-4a:**

Paleontological Monitoring. Construction activities involving excavation or other soil disturbance to a depth greater than 6 feet within Downtown shall be required to retain a qualified Paleontological Monitor as defined by the Society for Vertebrate Paleontology (SVP) (2010) equipped with necessary tools and supplies to monitor all excavation, trenching, or other ground disturbance in excess of 6 feet deep. Monitoring will entail the visual inspection of excavated or graded areas and trench sidewalls. In the event that a paleontological resource is discovered, the monitor will have the authority to temporarily divert the construction equipment around the find until it is assessed for scientific significance and collected if necessary.

The Paleontological Monitor will periodically assess monitoring results in consultation with the Principal Paleontologist. If no (or few) significant fossils have been exposed, the Principal Paleontologist may determine that full-time monitoring is no longer necessary, and periodic spot checks or no further monitoring may be recommended. The City shall review and approve all such recommendations prior to their adoption and implementation.

DCP MM
CR-4b:

Inadvertent Discovery of Fossils. If fossils are discovered during excavation, the Paleontological Monitor will make a preliminary taxonomic identification using comparative manuals. The Principal Paleontologist or his/her designated representative then will inspect the discovery, determine whether further action is required, and recommend measures for further evaluation, fossil collection, or protection of the resource in place, as appropriate. Any subsequent work will be completed as quickly as possible to avoid damage to the fossils and delays in construction schedules. If the fossils are determined to be significant under the California Environmental Quality Act (CEQA), but can be avoided and no further impacts will occur, the fossils and locality will be documented in the appropriate paleontological resource records and no further effort will be required. At a minimum, the paleontological staff will assign a unique field number to each specimen identified; photograph the specimen and its geographic and stratigraphic context along with a scale near the specimen and its field number clearly visible in close ups; record the location using a global positioning system (GPS) with accuracy greater than 1 foot horizontally and vertically (if such equipment is not available at the site, use horizontal measurements and bearing(s) to nearby permanent features or accurately surveyed benchmarks, and vertical measurements by sighting level to point(s) of known elevation); record the field number and associated specimen data (identification by taxon and element, etc.) and corresponding geologic and geographic site data (location, elevation, etc.) in the field notes and in a daily monitoring report; stabilize and prepare all fossils for identification, and identify to lowest taxonomic level possible by paleontologists, qualified and experienced in the identification of that group of fossils; record on the outside of the container or bag the specimen number and taxonomic identification, if known. Breathable fabric bags will be used in packaging to avoid black mold.

Upon completion of fieldwork, all significant fossils collected will be prepared in a properly equipped paleontology laboratory to a point ready for curation. Preparation will include the careful removal of excess matrix from fossil materials and stabilizing and repairing specimens, as necessary. Following laboratory work, all fossils specimens will be identified to the lowest taxonomic level, cataloged, analyzed, and delivered to an accredited museum repository for permanent curation and storage. The cost of curation is assessed by the repository and is the responsibility of the Project proponent.

At the conclusion of laboratory work and museum curation, a final report shall be prepared describing the results of the paleontological mitigation monitoring efforts associated with the Project. The report will include a summary of the field and laboratory methods, an overview of the Project area geology and paleontology, a list of taxa recovered (if any), an analysis of fossils recovered (if any) and their scientific significance, and recommendations. If the monitoring efforts produced fossils, then a copy of the report will also be submitted to the designated museum repository.

**DCP MM
HAZ-2a:**

Phase I Environmental Site Assessment. Prior to demolition, project applicants in the Downtown shall prepare a Phase I ESA. Consistent with local, state and federal regulations, the Phase I ESA shall be subject to City review and address the following:

- a) **Asbestos-Containing Materials (ACM), Lead-Based Paints (LBP) polychlorinated biphenyls (PCBs), and Molds.** Prior to any the issuance of a demolition permit, the Applicant shall conduct a comprehensive survey of ACM, LBP, PCBs, and molds. If such hazardous materials are found to be present, the applicant shall follow all applicable local, state and federal codes and regulations, as well as applicable best management practices, related to the treatment, handling, and disposal of ACM, LBP, PCBs, and molds to ensure public safety.

**DCP MM
HAZ-2c:**

Discovery of Contamination. In the event that previously unknown or unidentified soil and/or groundwater contamination that could present a threat to human health or the environment is encountered during construction at a development site, construction activities in the immediate vicinity of the contamination shall cease immediately. A qualified environmental specialist (e.g., a licensed Professional Geologist [PG], a licensed Professional Engineer [PE] or similarly qualified individual) shall conduct an investigation to identify and determine the level of soil and/or groundwater contamination. If contamination is encountered, a Human Health Risk Management Plan shall be prepared and implemented that: (1) identifies the contaminants of concern and the potential risk each contaminant would pose to human health and the environment during construction and post-development, and (2) describes measures to be taken to protect workers, and the public from exposure to potential site hazards. Such measures could include a range of options, including, but not limited to, physical site controls during construction, remediation, long-term monitoring, post-development maintenance or access limitations, or some combination thereof. Depending on the nature of contamination, if any, appropriate agencies shall be notified (e.g., SMFD). If needed, a

Site Health and Safety Plan that meets Occupational Safety and Health Administration requirements shall be prepared and in place prior to commencement of work in any contaminated area.

MM NOISE-1: To avoid exceedance of the City's allowable noise increases between the hours of 8:00 A.M. to 10:00 A.M. and 3:00 P.M. to 6:00 P.M. on weekdays and on Saturday from 9:00 A.M. to 5:00 P.M. (and/or during extended hours if approved by the City through an After Hours Permit in accordance with SMMC Section 4.12.110(e)), the following specified construction activities occurring during the above referenced time periods and within the following setback distances from the specified sensitive receptors shall implement construction noise reduction strategies as described below:

Distances for Noise-Sensitive Receptor Locations R1 and R2:

- Demolition or Overlapping Construction Activities: within 300 feet.
- Grading/excavation: within 200 feet.
- Building construction or paving: within 150 feet.

Distances for Noise-Sensitive Receptor Location R3:

- Overlapping Construction Activities: within 80 feet.
- Grading/excavation or paving: within 65 feet.
- Demolition, foundation/concrete pour, or building construction: within 50 feet.

In order to stay below the noise thresholds established in SMMC Section 4.12.110, the construction contractor shall utilize one or a combination of the construction noise reduction strategies listed below if construction activities occur during the referenced time periods and within the specified setback distances:

Noise Reduction Strategies:

- a) Use construction equipment, fixed or mobile, that individually generates less noise than presumed in the Federal Highway Administration (FHWA) Roadway Construction Noise Model (RCNM). Examples of such equipment are medium, compact, small, or mini model versions of backhoes, cranes, excavators, loaders, or tractors; newer model equipment; or other applicable equipment that are equipped with reduced noise-generating engines. Construction equipment noise levels shall be documented based on manufacturer's specifications. The construction contractor shall keep construction equipment noise level documentation on-site for the duration of Project construction.

- b) Noise-generating equipment operated at the Project Site shall be equipped with California industry standard noise control devices or other noise control devices to effectively reduce noise levels, i.e., mufflers, lagging, and/or motor enclosures or enclosures around stationary equipment. All equipment shall be properly maintained to assure that no additional noise, due to worn or improperly maintained parts, would be generated. The reduction in noise level from noise shielding and muffling devices shall be documented based on manufacturer's specifications. The construction contractor shall keep noise shielding and muffling device documentation on-site and documentation demonstrating that the equipment has been maintained in accordance with the manufacturers' specifications on-site for the duration of Project construction.
- c) Construction activities shall be scheduled so as to minimize or avoid operating multiple noise-generating heavy-duty pieces of equipment, simultaneously at the perimeters of the Project Site along the northwestern and northern boundaries of the Hotel Parcel and along the northeastern boundary of the Second Street Parcel.
- d) The Project shall stage noise-generating construction equipment away from the noise-sensitive receptors to the north and east (R1 and R2) of the Hotel Parcel and to the east (R3) of the Second Street Parcel at a distance equal to or greater than specified above.

During the course of construction other noise reduction strategies may be implemented as alternatives or additions to Noise Reduction Strategies a) through d) so long as their effectiveness is documents consistent with the noise monitoring requirements described immediately below. For Noise Reduction Strategies a) through d) or other noise reduction strategies, the effectiveness of these noise reduction strategies to achieve the City's noise-level performance standards shall be documented by on-site noise monitoring conducted by a qualified acoustical analyst using a Type 1 instrument in accordance with the American National Standards Institute (ANSI) S1.4. Noise monitoring shall be conducted during early Project construction activities when the use of heavy equipment is prevalent so long as it can be demonstrated to the City's satisfaction that later construction activities would achieve the requisite noise reductions.

MM NOISE-2: To reduce the potential for construction-related vibration effects to structures, prior to the issuance of a building permit for the Project Site, the Applicant shall perform an inventory of the structural condition of The Huntley Hotel building at 1111 2nd Street, the Regency Moderne Medical Office building at 1137 2nd Street, and the on-site historic

Palisades Building. Based on a survey of the building's structural condition, a vibration specialist will determine the appropriate Caltrans vibration structural damage potential criteria, and for each piece of equipment, assess a standoff distance from the building. The construction contractor(s) shall restrict the use of vibration-generating equipment, as listed in Table 4.14-16, within the minimum applicable standoff distances to not exceed the building's applicable structural damage criteria. If the vibration-generating construction equipment is required to be used within these minimum applicable distances, the construction contractor(s) shall implement one of the following measures for The Huntley Hotel building, the Regency Moderne Medical Office building, and the on-site historic Palisades Building:

- a) Restrict the use of large bulldozers and other similarly large vibration-generating equipment, so that the vibration-generating portion of the equipment (i.e., the motor, engine, power plant, or similar) remains at the minimum standoff distances unless it can be demonstrated to the satisfaction of the City based on in-situ measurements (prior to initiation of full-scale construction activities) that vibration levels can be kept below the applicable structural damage potential criteria, as determined by the vibration specialist, through any combination of revised setbacks, alternative equipment and methods, alternative sequencing of activities, or other vibration-reducing techniques.

Install and maintain at least one continuously operational automated vibrational monitor on the side of the building facing the construction activity and capable of being programmed with two predetermined vibratory velocities levels: a first-level alarm equivalent to 0.05 in/sec PPV less than the appropriate Caltrans vibration structural damage potential criteria and a regulatory alarm level equivalent to the Caltrans vibration structural damage potential criteria. For off-site buildings, the contractor may also locate the vibration monitors on or near the Project Site if access to the off-site buildings is restricted, in which case the first-level and regulatory alarm shall be adjusted to an equivalent level accounting for the vibration attenuation rate based on the distance to the off-site building. The monitoring system must produce real-time specific alarms (via text message and/or email to on-site personnel) when velocities exceed either of the predetermined levels. In the event of a first-level alarm, feasible steps to reduce vibratory levels shall be undertaken, including but not limited to halting/staggering concurrent activities and utilizing lower-vibratory techniques. In the event of an exceedance of the regulatory level, work in the vicinity of the affected building shall be halted and the building visually inspected for damage. Results of the inspection must be logged. In the event damage occurs,

such damage shall be repaired. For the off-site historic Regency Moderne Medical Office building and the on-site historic Palisades Building, such repairs shall be conducted in consultation with a qualified preservation consultant for the on-site historic Palisades Building and, if warranted, in a manner that meets the Secretary of the Interior's Standards.

DCP MM PS-1: The City shall require applicants of development projects with buildings that are seven stories and higher in the Downtown to prepare a high-rise pre-fire plan. At a minimum, the pre-fire plan shall address the types and capabilities of fire protection systems, the layout of the building, locations of stairwells and elevators, and how evacuation will be handled. A copy of the plan shall be kept in the fire control room and a copy shall be filed with the SMFD fire marshal. The plan shall be revised every 5 years.

DCP MM PS-2: The City shall require applicants of development projects over a specified square footage in the Downtown to prepare and implement a security plan for common or public spaces, including parking structures/lots, courtyards, other open areas, public or common area walkways stairways and elevators as a condition of their development agreement. The security plan will identify the locations of 911-capable phones in parking garages and other public area, will establish rules and regulations for public use of the courtyard areas, and establish private security patrols for the property. Private security patrols shall work in coordination with the Santa Monica Police Department. The plan shall be subject to review and approval by the SMPD.

MM TR-1: The Project Applicant shall reconfigure the southbound approach at Intersection No. 14 (2nd Street & Wilshire Boulevard) to include one left-turn lane, one shared right/through lane, and bicycle lane that includes a shared lane conflict marking.

SECTION B – CONDITIONS OF APPROVAL

Project Specific Conditions

1. The project shall provide the Significant Project Features and Community Benefits as established in Sections 2.7 and 2.8 of this Agreement.
2. The ARB and Landmarks Commission shall pay particular attention to the following design elements of the project during Design Review:

[TBD]

CITY PLANNING

Administrative Conditions

3. In the event Developer violates or fails to comply with any conditions of approval of this Agreement, no further permits, licenses, approvals or certificates of occupancy shall be issued until such violation has been fully remedied.

Conformance with Approved Plans

4. This approval is for those plans dated [REDACTED], 2020, a copy of which shall be maintained in the files of the City Planning Division. Project development shall be consistent with such plans, except as otherwise specified in the Development Agreement, including these conditions of approval.
5. Minor amendments to the plans shall be subject to approval by the Director of Planning. A significant change in the approved concept shall be subject to review as provided in the Development Agreement. Construction shall be in conformance with the plans submitted or as modified in accordance with the Development Agreement.
6. Except as otherwise provided by the Development Agreement, project plans shall be subject to complete Code Compliance review when the building plans are submitted for plan check and shall comply with all applicable provisions of Article IX of the Municipal Code and all other pertinent ordinances and General Plan policies of the City of Santa Monica prior to building permit issuance.

Fees

7. No building permit shall be issued for the project until the developer complies with the requirements of Chapter 9.30 of the Santa Monica Municipal Code, Private Developer Cultural Arts Requirement. The developer will comply with these requirements pursuant to Article 2, Section 2.7.10 of the Development Agreement.

Project Operations

8. The operation of the project shall at all times be conducted in a manner not detrimental to surrounding properties or residents by reason of lights, noise, activities, parking or other actions.
9. The project shall at all times comply with the provisions of the Noise Ordinance (SMMC Chapter 4.12 or any successor thereto).

Final Design

10. Plans for final design, landscaping, screening, trash enclosures, and signage shall be subject to Design Review in Article 6 of the Development Agreement.

11. Landscaping plans shall comply with Chapter 9.26 (Landscaping Standards) of the Zoning Ordinance including use of water-conserving landscaping materials, landscape maintenance and other standards contained in the Chapter.
12. Refuse areas, storage areas and mechanical equipment shall be screened in accordance with SMMC Sections 9.21.100, 130, and 140. Refuse areas shall be of a size adequate to meet on-site need, including recycling. During Design Review, the Landmarks Commission and ARB shall pay particular attention to the screening of such areas and equipment. Any rooftop mechanical equipment shall be minimized in height and area, and shall be located in such a way as to minimize noise and visual impacts to surrounding properties. Unless otherwise approved by the Landmarks Commission, rooftop mechanical equipment shall be located at least five feet from the edge of the roof. Except for solar hot water heaters, no residential water heaters shall be located on the roof.
13. No gas or electric meters shall be located within the required Building Frontage Line setback areas. During Design Review pursuant to Article 6 of the Development Agreement, the Landmarks Commission and ARB shall pay particular attention to the location and screening of such meters.
14. Prior to Design Review pursuant to Article 6 of the Development Agreement, the applicant shall review disabled access requirements with the Building and Safety Division and make any necessary changes in the project design to achieve compliance with such requirements. During Design Review, the Landmarks Commission and ARB shall pay particular attention to the aesthetic, landscaping, and setback impacts of any ramps or other features necessitated by accessibility requirements.
15. As appropriate, the Landmarks Commission shall require the use of anti-graffiti materials on surfaces likely to attract graffiti.

Construction Plan Requirements

16. Final building plans submitted for approval of a building permit shall include on the plans a list of all permanent mechanical equipment to be placed indoors which may be heard outdoors.

Demolition Requirements

17. Until such time as the demolition is undertaken, and unless the structure is currently in use, the existing structure shall be maintained and secured by boarding up all openings, erecting a security fence, and removing all debris, bushes and planting that inhibit the easy surveillance of the property to the satisfaction of the Building and Safety Officer and the Fire Department. Any landscaping material remaining shall be watered and maintained until demolition occurs.

18. Prior to issuance of a demolition permit, applicant shall prepare for Building Division approval a rodent and pest control plan to ensure that demolition and construction activities at the site do not create pest control impacts on the project neighborhood.

Construction Period

19. There shall be no construction activities that require opening, closing, or blocking of streets, sidewalks, alleys, or street parking in retail areas of the City over the holiday season that runs from the day before Thanksgiving through January 2nd. Exemptions are allowed for emergencies and special conditions authorized in advance by the Director of Public Works. The following areas are affected by this condition: Downtown (Wilshire to the 10 Freeway and Lincoln to Ocean Avenue); Main Street (Pico to the Southerly city limit); Montana Avenue (6th Court to 17th Street); Pico Boulevard (from the Ocean to the Easterly city limit at Centinela).

Standard Conditions

20. Mechanical equipment shall not be located on the side of any building which is adjacent to a residential building on the adjoining lot, unless otherwise permitted by applicable regulations. Roof locations may be used when the mechanical equipment is installed within a sound-rated parapet enclosure.
21. Final approval of any mechanical equipment installation will require a noise test in compliance with SMMC Section 4.12.040. Equipment for the test shall be provided by the owner or contractor and the test shall be conducted by the owner or contractor. A copy of the noise test results on mechanical equipment shall be submitted to the Community Noise Officer for review to ensure that noise levels do not exceed maximum allowable levels for the applicable noise zone.
22. The property owner shall insure any graffiti on the site is promptly removed through compliance with the City's graffiti removal program.

Condition Monitoring

23. The applicant authorizes reasonable City inspections of the property to ensure compliance with the conditions of approval imposed by the City in approving this project and will bear the reasonable cost of these inspections.

STRATEGIC AND TRANSPORTATION PLANNING

24. Final auto parking, bicycle parking and loading layouts specifications shall be subject to the review and approval of the Strategic and Transportation Planning Division:
http://www.smgov.net/uploadedFiles/Departments/Transportation/Transportation_Management/ParkingStandards.pdf

25. Where a driveway, garage, parking space or loading zone intersects with the public right-of-way at the alley or sidewalk, hazardous visual obstruction triangles shall be provided in accordance with SMMC Section 9.21.180. Please reference the following standards:
http://www.smgov.net/uploadedFiles/Departments/Transportation/Transportation_Management/HVO.pdf
26. Slopes of all driveways and ramps used for ingress or egress of parking facilities shall be designed in accordance with the standards established by the Strategic and Transportation Planning Manager but shall not exceed a twenty percent slope. Please reference the following standards:
http://www.smgov.net/uploadedFiles/Departments/Transportation/Transportation_Management/RampSlope.pdf
27. Bicycle parking provided in the Project shall meet the requirements of SMMC Section 9.28.140.

BIG BLUE BUS

28. Developer shall notify all tenants (residential and/or commercial) in writing as part of their lease or rental agreement that the City envisions a network of transit services in the Downtown area that may result in public transit services operating on any street in the Downtown area, both on streets currently used by transit or through expansion of service to streets not currently utilized by transit. In addition, new bus stops or bus layover zones may be established on these streets for regular use by either the Big Blue Bus or other fixed route or specialized transit operators. On-street parking may be removed at any time to create a bus zone in an appropriate location for safe vehicular movement and passenger safety regardless of business or residential adjacency.
29. Developer shall notify all residential and/or commercial tenants in writing as part of their lease or rental agreement that they are located within 1000 feet of a facility used 24 hours per day, 365/6 days per year for the operation and maintenance of the City's transit and other vehicle fleets and such adjacency may subject them to the continuous sounds associated with operating and maintaining a large fleet of vehicles on a daily basis. The sounds of engines, radios, machinery, equipment, alarms, voices, compression tanks/tools, fueling and washing activities are some but not all of the sounds that might be heard on a 24 hour daily basis.

PUBLIC LANDSCAPE

30. Street trees shall be maintained, relocated or provided as required in a manner consistent with the City's Urban Forest Master Plan, per the specifications of the Public Landscape Division of the Community & Cultural Services Department and the City's Tree Code (SMMC Chapter 7.40). No street trees shall be removed

without the approval of the Public Landscape Division. The Parties acknowledge that EIR Appendix C-1 (Gustafson, Gunthrie, and Nicol, Ltd., August 16, 2019) documents the Parties' agreement with respect to removal and replacement of street trees in the rights-of-way adjacent to the Project Site. [TBD AS TO EXACT TEXT]

31. Prior to the issuance of a demolition permit all street trees that are adjacent to the Project Site and will be remain adjacent to the Project Site (not removed or relocated as part of the Project) in accordance with EIR Appendix C-1 (Gustafson, Gunthrie, and Nicol, Ltd., August 16, 2019) [SUBJECT TBD AS TO EXACT TEXT] shall have tree protection zones established in accordance with the Urban Forest Master Plan. All tree protection zones shall remain in place until demolition and/or construction has been completed.
32. Replace or plant new street trees in accordance with Urban Forest Master Plan and in consultation with City Arborist. The Parties acknowledge that EIR Appendix C-1 (Gustafson, Gunthrie, and Nicol, Ltd., August 16, 2019) documents the Parties' agreement with respect to planting of street trees in the rights-of-way adjacent to the Project Site. [TBD AS TO EXACT TEXT]

OFFICE OF SUSTAINABILITY AND THE ENVIRONMENT

33. Developer shall enroll the property in the Savings By Design incentive program where available through Southern California Edison prior to submittal of plans for Design Review. Developer shall execute an incentive agreement with Southern California Edison prior to the issuance of a building permit.
34. The project shall comply with requirements in Chapter 8.106 of the Santa Monica Municipal code, which adopts by reference the California Green Building Standards Code and which adds local amendments to that Code. In addition, the project shall meet the landscape water conservation and construction and demolition waste diversion requirements specified in Chapter 8.108 of the Santa Monica Municipal Code.

PUBLIC WORKS

General Conditions

38. Developer shall be responsible for the payment of the following Public Works Department (PWD) permit fees prior to issuance of a building permit:
 - a. Water Services
 - b. Wastewater Capital Facility
 - c. Water Demand Mitigation
 - d. Fire Service Connection

- e. Tieback Encroachment
- f. Encroachment of on-site improvements into public right-of-way
- g. Construction and Demolition Waste Management – If the valuation of a project is at least \$50,000 or if the total square feet of the project is equal to or greater than 1000 square feet, then the owner or contractor is required to complete and submit a Waste Management Plan. All demolition projects are required to submit a Waste Management Plan. A performance deposit is collected for all Waste Management Plans equal to 3% of the project value, not to exceed \$30,000. All demolition only permits require a \$1,000 deposit or \$1.00 per square foot, whichever is the greater of the two.

Some of these fees shall be reimbursed to developer in accordance with the City's standard practice should Developer not proceed with development of the Project. In order to receive a refund of the Construction and Demolition performance deposit, the owner or contractor must provide receipts of recycling 70% of all materials listed on the Waste Management Plan.

- 39. Developer shall comply with the Construction Mitigation Obligations set forth in **Exhibit "J"** attached hereto.
- 40. Any construction related work or use of the public right-of-way will be required to obtain the approval of the City of Santa Monica, including but not limited to: Use of Public Property Permits, Sewer Permits, Excavation Permits, Alley Closure Permits, Street Closure Permits, and Temporary Traffic Control Plans.
- 41. Plans and specifications for all offsite improvements shall be prepared by a Registered Civil Engineer licensed in the State of California for approval by the City Engineer prior to issuance of a building permit.
- 42. Immediately after demolition and during construction, a security fence, the height of which shall be the maximum permitted by the Zoning Ordinance, shall be maintained around the perimeter of the lot. The lot shall be kept clear of all trash, weeds, etc.
- 43. Until completion of construction, a sign shall be posted on the property in a manner consistent with the public hearing sign requirements, which shall identify the address and phone number of the owner, developer and contractor for the purposes of responding to questions and complaints during the construction period. Said sign shall also indicate the hours of permissible construction work.
- 44. Prior to the demolition of any existing structure, the applicant shall submit a report from an industrial hygienist to be reviewed and approved as to content and form by the Building & Safety Division. The report shall consist of a hazardous materials survey for the structure proposed for demolition. The report shall include a section on asbestos and in accordance with the South Coast AQMD Rule 1403, the

asbestos survey shall be performed by a state Certified Asbestos Consultant (CAC). The report shall include a section on lead, which shall be performed by a state Certified Lead Inspector/Assessor. Additional hazardous materials to be considered by the industrial hygienist shall include: mercury (in thermostats, switches, fluorescent light), polychlorinated biphenyls (PCBs) (including light Ballast), and fuels, pesticides, and batteries.

Water Resources

45. Connections to the sewer or storm drains require a sewer permit from the PWD - Civil Engineering Division. Connections to storm drains owned by Los Angeles County require a permit from the L.A. County Department of Public Works.
46. Parking areas and structures and other facilities generating wastewater with potential oil and grease content are required to pretreat the wastewater before discharging to the City storm drain or sewer system. Pretreatment will require that a clarifier or oil/water separator be installed and maintained on site.
47. If the project involves dewatering, developer/contractor shall contact the LA Regional Water Quality Control Board (RWQCB) to obtain an NPDES Permit for discharge of groundwater from construction dewatering to surface water. For more information refer to: <http://www.waterboards.ca.gov/losangeles/> and search for Order # R4-2003-0111.
48. Prior to the issuance of the first building permit, the applicant shall submit a sewer study that shows that the City's sewer system can accommodate the entire development. If the study does not show to the satisfaction of the City that the City's sewer system can accommodate the entire development, prior to issuance of the first building permit, the Developer shall be responsible to upgrade any downstream deficiencies, to the satisfaction of the Water Resources Manager, if calculations show that the project will cause such mains to receive greater demand than can be accommodated. Improvement plans shall be submitted to the Engineering Division. All reports and plans shall also be approved by the Water Resources Engineer.
49. Prior to the issuance of the first building permit, the applicant shall submit a water study that shows that the City's water system can accommodate the entire development for fire flows and all potable needs. Developer shall be responsible to upgrade any water flow/pressure deficiencies, to the satisfaction of the Water Resources Manager, if calculations show that the project will cause such mains to receive greater demand than can be accommodated. Improvement plans shall be submitted to the Engineering Division. All reports and plans shall also be approved by the Water Resources Engineer.
50. Prior to the issuance of the first building permit, the applicant shall submit a hydrology study of all drainage to and from the site to demonstrate adequacy of

the existing storm drain system for the entire development. Developer shall be responsible to upgrade any system deficiencies, to the satisfaction of City Engineer, if calculations show that the project will cause such facilities to receive greater demand than can be accommodated. All reports and improvement plans shall be submitted to Engineering Division for review and approval. The study shall be performed by a Registered Civil Engineer licensed in the State of California.

51. Developer shall not directly connect to a public storm drain pipe or direct site drainage to the public alley. Commercial or residential units are required to either have an individual water meter or a master meter with sub-meters.
52. All existing sanitary sewer “house connections” to be abandoned, shall be removed and capped at the “Y” connections.
53. The fire services and domestic services 3-inches or greater must be above ground, on the applicant’s site, readily accessible for testing.
54. Developer is required to meet state cross-connection and potable water sanitation guidelines. Refer to requirements and comply with the cross-connections guidelines available at: <http://www.lapublichealth.org/eh/progs/envirp/ehcross.htm>. Prior to issuance of a Certificate of Occupancy, a cross-connection inspection shall be completed.
55. All new restaurants and cooking facilities at the site are required to install Gravity Grease Interceptors to pretreat wastewater containing grease. The minimum capacity of the interceptor shall be determined by using table 10-3 of the 2007 Uniform Plumbing Code, Section 1014.3. All units shall be fitted with a standard final-stage sample box. The 2007 Uniform Plumbing Code guideline in sizing Gravity Grease Interceptors is intended as a minimum requirement and may be increased at the discretion of PWD, Water Resources Protection Program.
56. Unless otherwise required by Section 2.7.13 of this Agreement, plumbing fixtures that meet the standards for 20% water use reduction specified in the 2019 California Green Building Standards Code are required on all new development and remodeling where plumbing is to be added.

Urban Water Runoff Mitigation

57. To mitigate storm water and surface runoff from the project site, an Urban Runoff Mitigation Plan shall be required by the PWD pursuant to Municipal Code Chapter 7.10. Prior to submittal of landscape plans for Design Review, the applicant shall contact PWD to determine applicable requirements, such as:
 - a. The site must comply with SMMC Chapter 7.10 Urban Runoff Pollution Ordinance for the construction phase and post construction activities;

- b. Non-storm water runoff, sediment and construction waste from the construction site and parking areas is prohibited from leaving the site;
 - c. Any sediments or materials which are tracked off-site must be removed the same day they are tracked off-site;
 - d. Excavated soil must be located on the site and soil piles should be covered and otherwise protected so that sediments are not tracked into the street or adjoining properties;
 - e. No runoff from the construction site shall be allowed to leave the site; and
 - f. Drainage control measures shall be required depending on the extent of grading and topography of the site.
 - g. Development sites that result in land disturbance of one acre or more are required by the State Water Resources Control Board (SWRCB) to submit a Storm Water Pollution Prevention Plan (SWPPP). Effective September 2, 2011, only individuals who have been certified by the Board as a "Qualified SWPPP Developer" are qualified to develop and/or revise SWPPPs. A copy of the SWPPP shall also be submitted to the PWD.
58. Prior to implementing any temporary construction dewatering or permanent groundwater seepage pumping, a permit is required from the City Water Resources Protection Program (WRPP). Please contact the WRPP for permit requirements at least two weeks in advance of planned dewatering or seepage pumping. They can be reached at (310) 458-8235.

Public Streets & Right-of-Way

59. Prior to the issuance of a Certificate of Occupancy for the Project, all required offsite improvements, such as AC pavement rehabilitation, replacement of sidewalk, curbs and gutters, installation of street trees, lighting, etc. shall be designed and installed to the satisfaction of the Public Works Department and Public Landscape Division.
60. Unless otherwise approved by the PWD, all sidewalks shall be kept clear and passable during the grading and construction phase of the project.
61. Sidewalks, curbs, gutters, paving and driveways which need replacing or removal as a result of the project or needed improvement prior to the project, as determined by the PWD shall be reconstructed to the satisfaction of the PWD. Design, materials and workmanship shall match the adjacent elements including architectural concrete, pavers, tree wells, art elements, special landscaping, etc.
62. Street and alley sections adjacent to the development shall be replaced as determined by the PWD.

Utilities

63. No Excavation Permit shall be issued without a Telecommunications Investigation by the City of Santa Monica Information Systems Department. The telecommunications investigation shall provide a list of recommendations to be incorporated into the project design including, but not limited to measures associated with joint trench opportunities, location of tie-back and other underground installations, telecommunications conduit size and specifications, fiber optic cable specifications, telecommunications vault size and placement and specifications, interior riser conduit and fiber optic cable, and adjacent public right of way enhancements.
64. Prior to the issuance of a Certificate of Occupancy for the Project, provide new street-pedestrian lighting with a multiple circuit system along the new street right-of-way and within the development site in compliance with the PWD Standards and requirements. New street-pedestrian light poles, fixtures and appurtenances to meet City standards and requirements.
65. Prior to submittal of plan check application, make arrangements with all affected utility companies and indicate points of connection for all services on the site plan drawing. Pay for undergrounding of all overhead utilities within and along the development frontages. Existing and proposed overhead utilities need to be relocated underground.
66. Location of Southern California Edison electrical transformer and switch equipment/structures must be clearly shown on the development site plan and other appropriate plans within the project limits. The SCE structures serving the proposed development shall not be located in the public right-of-way.

Resource Recovery and Recycling

67. Development plans must show the refuse and recycling (RR) area dimensions to demonstrate adequate and easily accessible area. If the RR area is completely enclosed, then lighting, ventilation and floor drain connected to sewer will be required. Refuse and recycling storage and staging areas shall be provided in accordance with Development Agreement Section 2.11.
68. Prior to issuance of a building permit, submit a Waste Management Plan, a map of the enclosure and staging area with dimensions and a recycling plan to the RRR Division for its approval. The State of California AB 341 requires any multi-family building housing 5 units or more to have a recycling program in place for its tenants. All commercial businesses generating 4 cubic yards of trash per week must also have a recycling program in place for its employees and clients/customers. Show compliance with these requirements on the building plans. Visit the Resource Recovery and Recycling (RRR) website or contact the RRR Division for requirements of the Waste Management Plan and to obtain the

minimum dimensions of the refuse recycling enclosure. The recycling plan shall include:

- a. List of materials such as white paper, computer paper, metal cans, and glass to be recycled;
- b. Location of recycling bins;
- c. Designated recycling coordinator;
- d. Nature and extent of internal and external pick-up service;
- e. Pick-up schedule; and
- f. Plan to inform tenants/ occupants of service.

Miscellaneous

69. For temporary excavation and shoring that includes tiebacks into the public right-of-way, a Tieback Agreement, prepared by the City Attorney, will be required.
70. Nothing contained in the Development Agreement for this Project or these Conditions of Approval shall prevent Developer from seeking relief pursuant to any Application for Alternative Materials and Methods of Design and Construction or any other relief as otherwise may be permitted and available under the Building Code, Fire Code, or any other provision of the SMMC.

FIRE

General Requirements

The following comments are to be included on plans if applicable. Notwithstanding the below standard conditions of approval, this Project does not require a fire apparatus road.

Requirements are based on the California Fire Code (CFC), the Santa Monica Municipal Code (SMMC) and the California Building Code (CBC).

California Fire Code/ Santa Monica Fire Department Requirements

71. A fire apparatus access road shall be provided to within 150 feet of all exterior walls of the first floor of the building. The route of the fire apparatus access road shall be approved by the fire department. The 150 feet is measured by means of an unobstructed route around the exterior of the building.
72. Apparatus access roads shall have a minimum unobstructed width of 20 feet. A minimum vertical clearance of 13 feet 6 inches shall be provided for the apparatus access roads.
73. Dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved means for turning around the apparatus.

74. A “Knox” key storage box shall be provided for ALL new construction. For buildings, other than high-rise, a minimum of 3 complete sets of keys shall be provided. Keys shall be provided for all exterior entry doors, fire protection equipment control equipment rooms, mechanical and electrical rooms, elevator controls and equipment spaces, etc. For high-rise buildings, 6 complete sets are required.
75. Santa Monica Municipal Code Chapter 8 section 8.44.050 requires an approved automatic fire sprinkler system in ALL new construction and certain remodels or additions. Any building that does not have a designated occupant and use at the time fire sprinkler plans are submitted for approval, the system shall be designed and installed to deliver a minimum density of not less than that required for ordinary hazard, Group 2, with a minimum design area of not less than three thousand square feet. Plans and specifications for fire sprinkler systems shall be submitted and approved prior to system installation.
76. Buildings four or more stories in height shall be provided with not less than one standpipe during construction.
77. The standpipe(s) shall be installed before the progress of construction is more than 35- feet above grade. Two-and-one-half-inch valve hose connections shall be provided at approved, accessible locations adjacent to useable stairs. Temporary standpipes shall be capable of delivering a minimum demand of 500 gpm at 100-psi residual pressure. Pumping equipment shall be capable of providing the required pressure and volume.
78. Provide Multipurpose Dry Chemical type fire extinguishers with a minimum rating of 2A-10B:C. Extinguishers shall be located on every floor or level. Maximum travel distance from any point in space or building shall not exceed 75 feet. Extinguishers shall be mounted on wall or installed in cabinet no higher than 4 ft. above finished floor and plainly visible and readily accessible or signage shall be provided.
79. An automatic fire extinguishing system complying with UL 300 shall be provided to protect commercial-type cooking or heating equipment that produces grease-laden vapors. A separate plan submittal is required for the installation of the system and shall be in accordance with UFC Article 10, NFPA 17A and NFPA 96. Provide a Class “K” type portable fire extinguisher within 30 feet the kitchen appliances emitting grease-laden vapors.
80. Every building and/or business suite is required to post address numbers that are visible from the street and alley. Address numbers shall be a minimum of six (6) inches in height and contrast with their background. Suite or room numbers shall be a minimum of four (4) inches in height and contrast with their background. Santa Monica Municipal Code Chapter 8 Section 8.48.130 (l) (1)

81. When more than one exit is required they shall be arranged so that it is possible to go in either direction to a separate exit, except dead ends not exceeding 20 feet, and 50 feet in fully sprinklered buildings.
82. Exit and directional signs shall be installed at every required exit doorway, intersection of corridors, exit stairways and at other such locations and intervals as necessary to clearly indicate the direction of egress. This occupancy/use requires the installation of approved floor level exit pathway marking. Exit doors shall be openable from the inside without the use of a key, special effort or knowledge.
83. Show ALL door hardware intended for installation on Exit doors.
84. In buildings two stories or more in height an approved floor plan providing emergency procedure information shall be posted at the entrance to each stairway, in every elevator lobby, and immediately inside all entrances to the building. The information shall be posted so that it describes the represented floor and can be easily seen upon entering the floor level or the building. Required information shall meet the minimum standards established in the Santa Monica Fire Department, Fire Prevention Division, information sheet entitled "Evacuation Floor Plan Signs." (California Code of Regulations Title 19 Section 3.09)
85. Stairway Identification shall be in compliance with CBC 1022.8
86. Floor-level exit signs are required in Group A, E, I, R-1, R-2 and R-4 occupancies.
87. In buildings two stories in height at least one elevator shall conform to the California Building Code Chapter 30 section 3003.5a for General Stretcher Requirements for medical emergency use.
 - a. The elevator entrance shall not be less than 42 inches wide by 72 inches high.
 - b. The elevator car shall have a minimum clear distance between walls excluding return panels of not less than 80 inches by 54 inches.
 - c. Medical emergency elevators shall be identified by the international symbol (star of life) for emergency elevator use. The symbol shall be not less than 3-inches in size.
88. Storage, dispensing or use of any flammable or combustible liquids, flammable compressed gases or other hazardous materials shall comply with the Uniform Fire Code. The Santa Monica Fire Department prior to any materials being stored or used on site shall approve the storage and use of any hazardous materials. Complete and submit a "Consolidated Permit Application Package." Copies may be obtained by calling (310) 458-8915.
89. Alarm-initiating devices, alarm-notification devices and other fire alarm system components shall be designed and installed in accordance with the appropriate

standards of Chapter 35 of the Building Code, and the National Fire Alarm Code NFPA 72. The fire alarm system shall include visual notification appliances for warning the hearing impaired. Approved visual appliances shall be installed in ALL rooms except private (individual) offices, closets, etc.

90. An approved fire alarm system shall be installed as follows:
91. Group A Occupancies with an occupant load of 1,000 or more shall be provided with a manual fire alarm system and an approved prerecorded message announcement using an approved voice communication system. Emergency power shall be provided for the voice communication system.
92. Group E Occupancies having occupant loads of 50 or more shall be provided with an approved manual fire alarm system.
93. Group R-1, R-2 Apartment houses containing 16 or more dwelling units, in building three or more stories in height R-2.1 and R-4 Occupancies shall be provided with a manual alarm system. Smoke detectors shall be provided in all common areas and interior corridors of required exits. Recreational, laundry, furnace rooms and similar areas shall be provided with heat detectors.
94. Plans and specifications for fire alarm systems shall be submitted and approved prior to system installation

Santa Monica Fire Department - Fire Prevention Policy Number 5-1

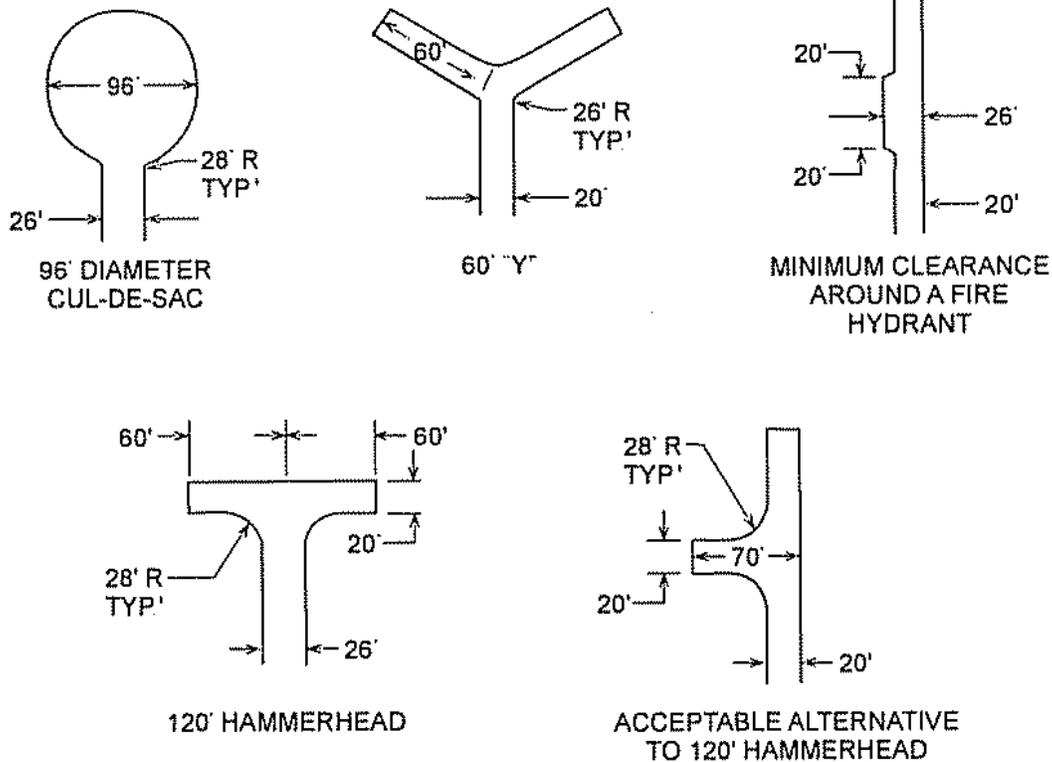
Subject: Fire Apparatus Access Road Requirements

Scope: This policy identifies the minimum standards for apparatus access roads required by California Fire Code, Section 503.

Application

95. Fire apparatus access roads shall comply with the following minimum standards:
 - a. The minimum clear width shall be not less than 20 feet. No parking, stopping or standing of vehicles is permitted in this clear width.
 - b. When fire hydrants or fire department connections to fire sprinkler systems are located on fire apparatus access roads the minimum width shall be 26 feet. This additional width shall extend for 20 feet on each side of the centerline of the fire hydrant or fire department connection.
 - c. The minimum vertical clearance shall be 13 feet, 6 inches.
 - d. The minimum turn radius for all access road turns shall be not less than 39 feet for the inside radius and 45 feet for the outside radius.

- e. Dead-end access roads in excess of 150 feet in length shall be provided with either a 96 feet diameter “cul-de-sac,” 60 foot “Y” or 120-foot “hammerhead” to allow the apparatus to turn.
 - f. The surface shall be designed and maintained to support the imposed loads of at least 75,000-pound and shall be “all-weather.” An “all-weather” surface is asphalt, concrete or other approved driving surface capable of supporting the load.
96. Gates installed on fire apparatus access roads shall comply with the following:
- a. The width of any gate installed on a fire apparatus access road shall be a minimum of 20 feet.
 - b. Gates may be of the swinging or sliding type.
 - c. Gates shall be constructed of materials that will allow for manual operation by one person.
 - d. All gate components shall be maintained in an operative condition at all times and shall be repaired or replaced when defective.
 - e. Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access. The Fire Prevention Division shall approve emergency opening devices.
 - f. Manual opening gates may be locked with a padlock, as long it is accessible to be opened by means of forcible entry tools.
 - g. The Fire Prevention Division shall approve locking device specification.



97. Fire apparatus access roads shall be marked with permanent NO PARKING – FIRE LANE CVC SECTION 22500.1. Signs shall have a minimum dimension of 12 inches wide and 18 inches high having red letters on a white reflective background.
 - a. Fire apparatus access roads signs and placement shall comply with the following:
 - i. Fire Apparatus access roads 20 to 26 feet wide must be posted on both sides as a fire lane.
 - ii. Fire Apparatus access roads 26 to 32 feet wide must be posted on one side as a fire lane.

98. Buildings or facilities exceeding 30 feet in height or more than 3 stories in height shall have at least 2 fire apparatus access roads for each structure.

99. Fire apparatus access roads for commercial and industrial development shall comply with the following:

- i. Buildings or facilities exceeding 30 feet in height or more than 3 stories in height shall have at least 2 means of fire apparatus access for each structure.
 - ii. Buildings or facilities having a gross floor area of more than 62,000 square feet shall be provided with 2 fire apparatus access roads.
 - iii. When two access roads are required, they shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the property or area to be accessed measured in a straight line between access.
100. Aerial apparatus access roads shall comply with the following:
- i. Buildings or portions of buildings or facilities exceeding 30 feet in height from the lowest point of Fire Department access shall be provided shall be provided with approved apparatus access roads capable of accommodating aerial apparatus.
 - ii. Apparatus access roads shall have a minimum width of 26 feet in the immediate vicinity of any building or portion of a building more than 30 feet in height.
 - iii. At least one of the required access roads meeting this condition shall be located within a minimum of 15 feet and maximum of 30 feet from the building and shall be a positioned parallel to one entire side of the building.
101. California Building Code / Santa Monica Fire Department Requirements

Occupancy Classification and Division

- If a change in occupancy or use, identify the existing and all proposed new occupancy classifications and uses
- Assembly (A-1, A-2, A-3), Business (B), Mercantile (M), Residential (R), etc.
- Include all accessory uses

Building Height

- Height in feet (SMMC defines a High-Rise as any structure greater than 55 feet.)
- Number of stories
- Detail increase in allowable height

- Type I (II-FR.) buildings housing Group B office or Group R, Division 1 Occupancies each having floors used for human occupancy located more than 55 feet above the lowest level of fire department vehicle access shall comply with CBC Section 403.
 - a. Automatic sprinkler system.
 - b. Smoke-detection systems.
 - c. Smoke control system conforming to Chapter 9 section 909.
 - d. Fire alarm and communication systems.
 - 1. Emergency voice alarm signaling system.
 - 2. Fire department communication system.
 - e. Central control station. (96 square feet minimum with a minimum dimension of 8' ft)
 - f. {omitted}
 - g. Elevators.
 - h. Standby power and light and emergency systems.
 - i. Exits
 - j. Seismic consideration.

Total Floor Area of Building or Project

- Basic Allowable Floor Area
- Floor Area for each room or area
- Detail allowable area increase calculations

Corridor Construction

- Type of Construction
- Detail any and all code exceptions being used

Occupant Load Calculations

- Occupancy Classification for each room or area.
- Occupant Load Calculation for each room or area based on use or occupancy
- Total Proposed Occupant Load

Means of Egress

- Exit width calculations
- Exit path of travel
- Exit Signage and Pathway Illumination (low level exit signage)

Atria - Atria shall comply with CBC Section 404 as follows:

- Atria shall not be permitted in buildings containing Group H Occupancies.
- The entire building shall be sprinklered.
- A mechanically operated smoke-control system meeting the requirements of Section 909 and 909.9 shall be installed.
- Smoke detectors shall be installed in accordance with the Fire Code.
- Except for open exit balconies within the atrium, the atrium shall be separated from adjacent spaces by one-hour fire-resistive construction. See exceptions to Section 404.6.
- When a required exit enters the atrium space, the travel distance from the doorway of the tenant space to an enclosed stairway, horizontal exit, exterior door or exit passageway shall not exceed 200 feet.
- In other than jails, prisons and reformatories, sleeping rooms of Group I Occupancies shall not have required exits through the atrium.
- Standby power shall be provided for the atrium and tenant space smoke-control system. Sections 404.7 and 909.11.

- The interior finish for walls and ceilings of the atrium and all unseparated tenant spaces shall be Class I. Section 404.8.

Atriums of a height greater than 20 feet, measured from the ceiling sprinklers, shall only contain furnishings and decorative materials with potential heat of combustion less than 9,000 Btu's per pound. All furnishings to comply with California Bureau of Home Furnishings, Technical Bulletin 133, "Flammability Test for Seating Furniture in Public Occupancies."

All furnishings in public areas shall comply with California Bureau of Home Furnishings, Technical Bulletin 133, "Flammability Test for Seating Furniture in Public Occupancies."

Los Angeles County Fire

102. Fire Flow Requirements

I. INTRODUCTION

- A. **Purpose:** To provide Department standards for fire flow, hydrant spacing and specifications.
- B. **Scope:** Informational to the general public and instructional to all individuals, companies, or corporations involved in the subdivision of land, construction of buildings, or alterations and/or installation of fire protection water systems and hydrants.
- C. **Author:** The Deputy Chief of the Prevention Services Bureau through the Assistant Fire Chief (Fire Marshal) of the Fire Prevention Division is responsible for the origin and maintenance of this regulation.
- D. **Definitions:**
 - 1. GPM – gallons per minute
 - 2. psi – pounds per square inch
 - 3. Detached condominiums – single detached dwelling units on land owned in common
 - 4. Multiple family dwellings – three or more dwelling units attached

II. RESPONSIBILITY

- A. Land Development Unit
 - 1. The Department's Land Development Unit shall review all subdivisions of land and apply fire flow and hydrant spacing requirements in accordance with this regulation and the present zoning of the subdivision or allowed land use as approved by the County's Regional Planning Commission or city planning department.
- B. Fire Prevention Engineering Section
 - 1. The Department's Fire Prevention Engineering Section shall review building plans and apply fire flow and hydrant spacing requirements in accordance with this regulation.

III. POLICY

- A. The procedures, standards, and policies contained herein are provided to ensure the adequacy of, and access to, fire protection water and shall be enforced by all Department personnel.

IV. PROCEDURES

- A. Land development: fire flow, duration of flow, and hydrant spacing
The following requirements apply to land development issues such as: tract and parcel maps, conditional use permits, zone changes, lot line adjustments, planned unit developments, etc.

1. Residential
Fire Zones 3
Very High Fire Hazard Severity Zone (VHFHSZ)

	<u>Fire Flow</u>	<u>Duration of Flow</u>	<u>Public Hydrant Spacing</u>
a. Single family dwelling and detached condominiums (1 – 4 Units) (Under 5,000 square feet)	1,250 GPM	2 hrs.	600 ft.
b. Detached condominium (5 or more units) (Under 5,000 square feet)	1,500 GPM	2 hrs.	300 ft.
c. Two family dwellings (Duplexes)	1,500 GPM	2 hrs.	600 ft.

NOTE: FOR SINGLE FAMILY DWELLINGS OVER 5,000 SQUARE FEET. SEE, TABLE 1 FOR FIRE FLOW REQUIREMENTS PER BUILDING SIZE.

2. Multiple family dwellings, hotels, high rise, commercial, industrial, etc.
- a. Due to the undetermined building designs for new land development projects (**undeveloped land**), the required fire flow shall be: 5,000 GPM 5 hrs. 300 ft.

NOTE: REDUCTION IN FIRE FLOW IN ACCORDANCE WITH TABLE 1.

- b. Land development projects consisting of lots having existing structures shall be in compliance with Table 1 (fire flow per building size). This standard applies to multiple family dwellings, hotels, high

rise, commercial, industrial, etc.

NOTE: FIRE FLOWS PRECEDING ARE MEASURED AT
20 POUNDS PER SQUARE INCH RESIDUAL
PRESSURE.

B. Building plans

The Department's Fire Prevention Engineering Section shall review building plans and apply fire flow requirements and hydrant spacing in accordance with the following:

1. Residential

Building	Occupancy
Classification	

a. Single family dwellings - Fire Zone 3 (Less than 5,000 square feet)

	<u>Fire Flow</u>	<u>Duration of Flow</u>	<u>Public Hydrant Spacing</u>
On a lot of one acre or more	750 GPM	2 hrs.	600 ft.
On a lot less than one acre	1,250 GPM	2 hrs	600 ft.

- b. Single family dwellings – VHFHSZ (Less than 5,000 square feet)

On a lot of one acre or more	1,000 GPM	2 hrs.	600 ft.
On a lot less than one acre	1,250 GPM	2 hrs	600 ft.

NOTE: FOR SINGLE FAMILY DWELLINGS GREATER THAN 5,000
SQUARE FEET IN AREA SEE TABLE

	<u>Fire Flow</u>	<u>Duration of Flow</u>	<u>Public Hydrant Spacing</u>
c. <u>Two family dwellings – VHFHSZ (Less than 5,000 square feet)</u>			
Duplexes	1,500 GPM	2 hrs	600 ft.

2. Mobile Home Park

a. Recreation Buildings	Refer to Table 1 for fire flow according to building size.		
b. Mobile Home Park	1,250 GPM	2 hrs	600 ft.

3. Multiple residential, apartments, single family residences (greater than 5,000 square feet), private schools, hotels, high rise, commercial, industrial, etc. (R-1, E, B, A, I, H, F, M, S) (see Table 1).

C. Public fire hydrant requirements

1. Fire hydrants shall be required at intersections and along access ways as spacing requirements dictate
2. Spacing
 - a. Cul-de-sac

When cul-de-sac depth exceeds 450' (residential) or 200' (commercial), hydrants shall be required at mid-block. Additional hydrants will be required if hydrant spacing exceeds specified distances.
 - b. Single family dwellings

Fire hydrant spacing of 600 feet

NOTE: The following guidelines shall be used in meeting single family dwellings hydrant spacing requirements:

 - (1) Urban properties (more than one unit per acre):
No portion of lot frontage should be more than 450' via vehicular access from a public hydrant.
 - (2) Non-Urban Properties (less than one unit per acre):
No portion of a structure should be placed on a lot where it exceeds 750' via vehicular access from a properly spaced public hydrant that meets the required fire flow.

c. All occupancies

Other than single family dwellings, such as commercial, industrial, multi-family dwellings, private schools, institutions, detached condominiums (five or more units), etc.

Fire hydrant spacing shall be 300 feet.

NOTE: The following guidelines shall be used in meeting the hydrant spacing requirements.

(1) No portion of lot frontage shall be more than 200 feet via vehicular access from a public hydrant.

(2) No portion of a building should exceed 400 feet via vehicular access from a properly spaced public hydrant.

d. Supplemental fire protection

When a structure cannot meet the required public hydrant spacing distances, supplemental fire protection shall be required.

NOTE: Supplemental fire protection is not limited to the installation of on-site fire hydrants; it may include automatic extinguishing systems.

3. Hydrant location requirements - both sides of a street

Hydrants shall be required on both sides of the street whenever:

a. Streets having raised median center dividers that make access to hydrants difficult, causes time delay, and/or creates undue hazard.

b. For situations other than those listed in "a" above, the Department's inspector's judgment shall be used. The following items shall be considered when determining hydrant locations:

(1) Excessive traffic loads, major arterial route, in which traffic would be difficult to detour.

(2) Lack of adjacent parallel public streets in which traffic could be redirected (e.g., Pacific Coast Highway).

(3) Past practices in the area.

(4) Possibility of future development in the area.

(5) Type of development (i.e., flag-lot units, large apartment or condo complex, etc.).

(6) Accessibility to existing hydrants

(7) Possibility of the existing street having a raised median center divider in the near future.

D. On-Site Hydrant Requirements

1. When any portion of a proposed structure exceeds (via vehicular access) the allowable distances from a public hydrant and on-site hydrants are required, the following spacing requirements shall be met:

- a. Spacing distance between on-site hydrants shall be 300 to 600 feet.
 - (1) Design features shall assist in allowing distance modifications.
 - b. Factors considered when allowing distance modifications.
 - (1) Only sprinklered buildings qualify for the maximum spacing of 600 feet.
 - (2) For non-sprinklered buildings, consideration should be given to fire protection, access doors, outside storage, etc. Distance between hydrants should not exceed 400 feet.
2. Fire flow
- a. All on-site fire hydrants shall flow a minimum of 1,250 gallons per minute at 20 psi for a duration of two hours. If more than one on-site fire hydrant is required, the on-site fire flow shall be at least 2,500 gallons per minute at 20 psi, flowing from two hydrants simultaneously. On site flow may be greater depending upon the size of the structure and the distance from public hydrants.
- NOTE: ONE OF THE TWO HYDRANTS TESTED SHALL BE THE FARTHEST FROM THE PUBLIC WATER SOURCE.
3. Distance from structures
- All on-site hydrants shall be installed a minimum of 25 feet from a structure or protected by a two-hour firewall.
4. Shut-off valves
- All on-site hydrants shall be equipped with a shut-off (gate) valve, which shall be located as follows:
- a. Minimum distance to the hydrant 10 feet.
 - b. Maximum distance from the hydrant 25 feet
5. Inspection of new installations
- All new on-site hydrants and underground installations are subject to inspection of the following items by a representative of the Department:
- a. Piping materials and the bracing and support thereof.
 - b. A hydrostatic test of 200 psi for two hours.
 - c. Adequate flushing of the installation.
 - d. Flow test to satisfy required fire flow.
 - (1) Hydrants shall be painted with two coats of red primer and one coat of red paint, with the exception of the stem and threads, prior to flow test and acceptance of the system.
6. Maintenance
- It shall be the responsibility of the property management company, the homeowners association, or the property owner to maintain on-site hydrants.
- a. Hydrants shall be painted with two coats of red primer and one coat

of red, with the exception of the stem and threads, prior to flow test and acceptance of the system.

- b. No barricades, walls, fences, landscaping, etc., shall be installed or planted within three feet of a fire hydrant.

E. Public Hydrant Flow Procedure

The minimum acceptable flow from any existing public hydrant shall be 1,000 GPM unless the required fire flow is less. Hydrants used to satisfy fire flow requirements will be determined by the following items:

1. Only hydrants that meet spacing requirements are acceptable for meeting fire flow requirements.
2. In order to meet the required fire flow:
 - a. Flow closest hydrant and calculate to determine flow at 20 pounds per square inch residual pressure. If the calculated flow does not meet the fire flow requirement, the next closest hydrant shall be flowed simultaneously with the first hydrant, providing it meets the spacing requirement, etc.
 - b. If more than one hydrant is to be flowed in order to meet the required fire flow, the number of hydrants shall be flowed as follows:

One hydrant	1,250 GPM and below
Two hydrants	1,251– 3,500 GPM flowing simultaneously
Three hydrants	3,501– 5,000 GPM flowing simultaneously

F. Hydrant Upgrade Policy

1. Existing single outlet 2 1/2" inch hydrants shall be upgraded to a double outlet 6" x 4" x 2 1/2" hydrant when the required fire flow exceeds 1,250 GPM.
2. An upgrade of the fire hydrant will not be required if the required fire flow is between the minimum requirement of 750 gallons per minute, up to and including 1,250 gallons per minute, and the existing public water system will provide the required fire flow through an existing wharf fire hydrant.
3. All new required fire hydrant installations shall be approved 6" x 4" x 2 1/2" fire hydrants.
4. When water main improvements are required to meet GPM flow, and the existing water main has single outlet 2 1/2" fire hydrant(s), then a hydrant(s) upgrade will be required. This upgrade shall apply regardless of flow requirements.
5. The owner-developer shall be responsible for making the necessary arrangements with the local water purveyor for the installation of all public facilities.
6. Approved fire hydrant barricades shall be installed if curbs are not provided (see Figures 1, 2, and 3 following on pages 11 and 12).

G. Hydrant Specifications

All required public and on-site fire hydrants shall be installed to the following specifications prior to flow test and acceptance of the system.

1. Hydrants shall be:
 - a. Installed so that the center line of the lowest outlet is between 14 and 24 inches above finished grade
 - b. Installed so that the front of the riser is between 12 and 24 inches behind the curb face
 - c. Installed with outlets facing the curb at a 45-degree angle to the curb line if there are double outlet hydrants
 - d. Similar to the type of construction which conforms to current A.W.W.A. Standards
 - e. Provided with three-foot unobstructed clearance on all sides.
 - f. Provided with approved plastic caps
 - g. Painted with two coats of red primer and one coat of traffic signal yellow for public hydrants and one coat of red for on-site hydrants, with the exception of the stems and threads
2. Underground shut-off valves are to be located:
 - a. A minimum distance of 10 feet from the hydrant
 - b. A maximum distance of 25 feet from the hydrantException: Location can be less than 10 feet when the water main is already installed and the 10-foot minimum distance cannot be satisfied.
3. All new water mains, laterals, gate valves, buries, and riser shall be a minimum of six inches inside diameter.
4. When sidewalks are contiguous with a curb and are five feet wide or less, fire hydrants shall be placed immediately behind the sidewalk. Under no circumstances shall hydrants be more than six feet from a curb line.
5. The owner-developer shall be responsible for making the necessary arrangements with the local water purveyor for the installation of all public facilities.
6. Approved fire hydrant barricades shall be installed if curbs are not provided (see Figures 1, 2, and 3 following on pages 11 and 12).

Barricade/Clearance Details

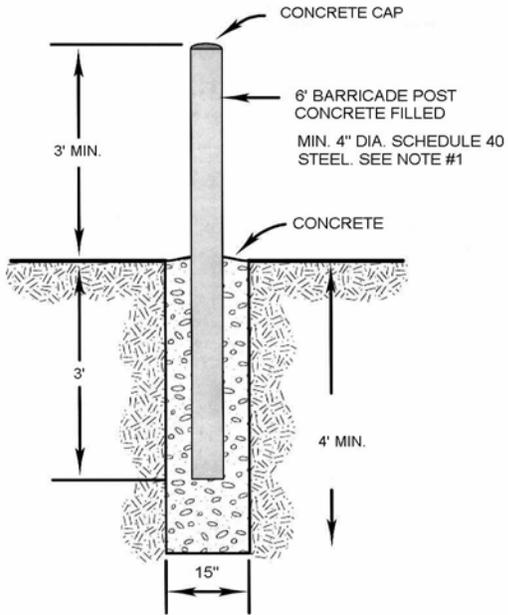


Figure 1

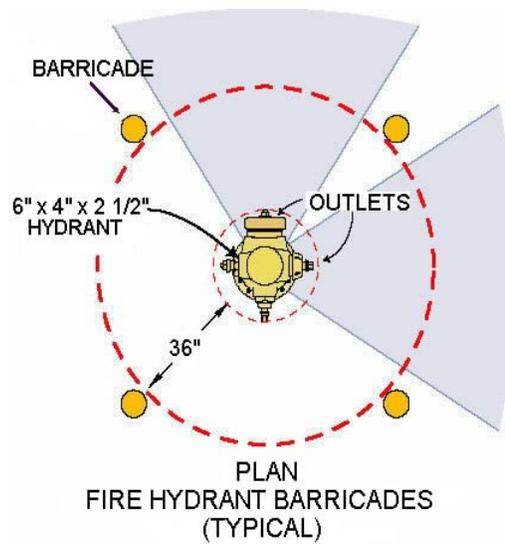


Figure 2

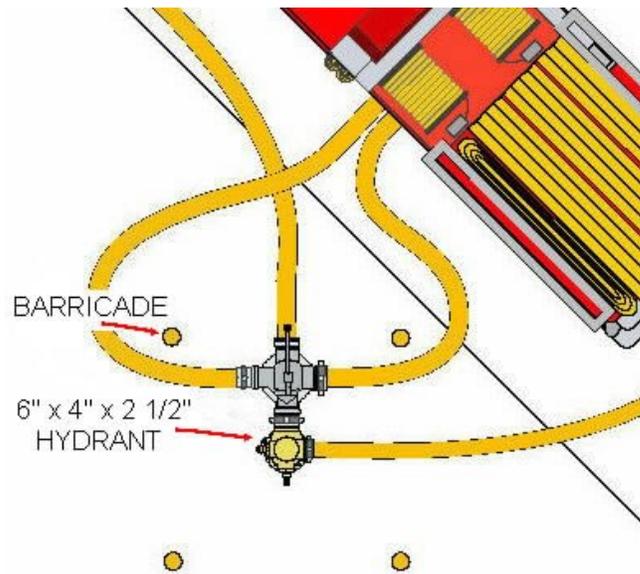


Figure 3

Notes:

1. Constructed of steel not less than four inches in diameter, six inches if heavy truck traffic is anticipated, schedule 40 steel and concrete filled.
2. Posts shall be set not less than three feet deep in a concrete footing of not less than 15 inches in diameter, with the top of the posts not less than three feet above ground and not less than three feet from the hydrant
3. Posts, fences, vehicles, growth, trash storage and other materials or things shall not be placed or kept near fire hydrants in a manner that would prevent fire hydrants from being immediately discernible.
4. If hydrant is to be barricaded, no barricade shall be constructed in front of the hydrant outlets (Figure 2, shaded area).
5. The exact location of barricades may be changed by the field inspector during a field inspection.
6. The steel pipe above ground shall be painted a minimum of two field coats of primer.
7. Two finish coats of "traffic signal yellow" shall be used for fire hydrant barricades.
8. Figure 3 shows hydrant hook up during fireground operations. Notice apparatus (hydra-assist-valve) connected to hydrant and the required area. Figure 3 shows the importance of not constructing barricades or other obstructions in front of hydrant outlets.

- H. Private fire protection systems for rural commercial and industrial development
Where the standards of this regulation cannot be met for industrial and commercial developments in rural areas, alternate proposals which meet NFPA Standard 1142 may be submitted to the Fire Marshal for review. Such proposals shall also be subject to the following:
1. The structure is beyond 3,000 feet of any existing, adequately-sized water system.
 - a. Structures within 3,000 feet of an existing, adequately-sized water system, but beyond a water purveyor service area, will be reviewed on an individual basis.
 2. The structure is in an area designated by the County of Los Angeles' General Plan as rural non-urban.
- I. Blue reflective hydrant markers replacement policy
1. Purpose: To provide information regarding the replacement of blue reflective hydrant markers, following street construction or repair work.
 - a. Fire station personnel shall inform Department of Public Works Road Construction Inspectors of the importance of the blue reflective hydrant markers, and encourage them to enforce their Department permit requirement, that streets and roads be returned to their original condition, following construction or repair work.
 - b. When street construction or repair work occurs within this Department's jurisdiction, the nearest Department of Public Works Permit Office shall be contacted. The location can be found by searching for the jurisdiction office in the "County of Los Angeles Telephone Directory" under "Department of Public Works Road Maintenance Division." The importance of the blue reflective hydrant markers should be explained, and the requirement encouraged that the street be returned to its original condition, by replacing the hydrant markers.

TABLE 1 *

BUILDING SIZE (First floor area)		Fire Flow* (1) (2)	Duration	Hydrant Spacing
Under 3,000	sq. ft.	1,000 GPM	2 hrs	300 ft
3,000 to 4,999	sq. ft.	1,250 GPM	2 hrs	300 ft
5,000 to 7,999	sq. ft.	1,500 GPM	2 hrs	300 ft
8,000 to 9,999	sq. ft.	2,000 GPM	2 hrs	300 ft
10,000 to 14,999	sq. ft.	2,500 GPM	2 hrs	300 ft
15,000 to 19,999	sq. ft.	3,000 GPM	3 hrs	300 ft
20,000 to 24,999	sq. ft.	3,500 GPM	3 hrs	300 ft
25,000 to 29,999	sq. ft.	4,000 GPM	4 hrs	300 ft
30,000 to 34,999	sq. ft.	4,500 GPM	4 hrs	300 ft
35,000 or more	sq. ft.	5,000 GPM	5 hrs	300 ft

* See applicable footnotes below:

(FIRE FLOWS MEASURED AT 20 POUNDS PER SQUARE INCH
RESIDUAL PRESSURE)

(1) Conditions requiring additional fire flow.

- a. Each story above ground level - add 500 GPM per story.
- b. Any exposure within 50 feet - add a total of 500 GPM.
- c. Any high-rise building (as determined by the jurisdictional building code) the fire flow shall be a

fire
minimum of 3,500 GPM for 3 hours at 20 psi.

d. Any flow may be increased up to 1,000 GPM for a hazardous occupancy.

(2) Reductions in fire flow shall be cumulative for type of construction and a fully sprinklered building. The following allowances and/or additions may be made to standard fire flow requirements:

- a. A 25% reduction shall be granted for the following types of construction: Type I-F.R, Type II-F.R., Type II one-hour, Type II-N, Type III one-hour, Type III-N, Type IV, Type IV one hour, and Type V one-hour. This reduction shall be automatic and credited on all projects using these types of construction. Credit will not be given for Type V-N structures (to a minimum of 2,000 GPM available fire flow).
- b. A 25% reduction shall be granted for fully sprinklered buildings (to a minimum of 2,000 GPM available fire flow).
- c. When determining required fire flows for structures that total 70,000 square feet or greater, such flows shall not be reduced below 3,500 GPM at 20 psi for three hours.

Exhibit "F"
SMMC Article 9 (Planning and Zoning)
[To come.]

Exhibit "G"
Conditions of Approval to Dispense Alcohol

Hotel operator (which may be Developer) may sell or furnish alcoholic beverages for consumption in the portions of Lot 1 and in the residential units and residential common area in Lot 2 as shown on the Exhibit "G-1" ("**Licensed Premises**") on the following terms and conditions without obtaining a Conditional Use Permit.

1. This approval is for the following alcohol license types only: Type 21 (Off-Sale General), Type 47 (On Sale General -- Eating Place), Type 58 (Caterer's Permit), Type 66 (Controlled Access Cabinet), and Type 68 (Portable Bar). For any particular license type, the Licensed Premises may have more than one license and/or duplicates.
2. Seating and Locations. Seating and locations in which alcohol is served shall not exceed the following:
 - Licensed Premises as shown on Exhibit "G-1" including:
 - Hotel minibars;
 - Room service to hotel rooms;
 - 1st Floor Lobby Lounge: up to 100 interior seats and up to 100 exterior seats;
 - 1st Floor Cafes: up to 125 interior seats and up to 70 exterior seats;
 - Meeting/Banquet Space on the 1st and 3rd Floors;
 - Bungalow: up to 150 interior seats and up to 200 exterior seats;
 - 2nd Floor Restaurant: up to 150 interior seats and up to 80 exterior seats;
 - 3rd Floor Pool Café: up to 40 interior seats and up to 40 exterior seats;
 - 3rd Floor Pool Deck;
 - Sundry shop;
 - Lot 1 hotel common areas shown on Exhibit "G-1", including the lobby areas, spa, residential amenities areas and the outdoor areas shown on Exhibit "G-1"; and
 - Residential common areas in Lots 1 and 2 and room service to residential units in Lot 2.

The seating configurations for each of the alcohol serving areas may be altered or rearranged so long as the overall number of seats in the Licensed Premises is not expanded. No more than 15% of the overall seating in the Licensed Premises shall be counter/bar seating.

3. Only the Sundry shop may be covered by a Type 21 (Off-Sale General) alcohol license(s). A separate conditional use permit or amendment to this Agreement

shall be required for additional locations within the Licensed Premises or on the Property to be authorized for a Type 21 (Off-Sale General) alcohol license. In the remainder of the Licensed Premises, off-site sales of beer and wine are allowed consistent with and pursuant to the applicable Type 47 (On Sale General -- Eating Place) alcohol license.

4. Hotel employees may sell or furnish alcoholic beverages for consumption within the areas described in Section 2 above between the hours of 6:00 AM to 2:00 AM (next day) daily, except for the following additional restrictions:
 - a. 1st Floor Cafes and 2nd Floor Restaurant: The permitted hours of alcoholic beverage service shall be 6:00 AM to 12:00 AM (next day) daily.
 - b. Pool Café, Pool Deck, Lot 1 outdoor hotel common areas, and Lot 2 outdoor residential common areas: The permitted hours of alcoholic beverage service shall be 8:00 AM to 10:00 PM daily, except if pursuant to an event with catering license.
 - c. Sundry Shop: The permitted hours of off-site alcoholic beverage sales shall be 6:00 AM to 12:00 AM (next day) daily.

5. Hotel Rooms and Room Service.

- a. Mini-bars/refrigerators shall be permitted in individual hotel rooms, subject to the terms and conditions in this Exhibit "G" in addition to the following conditions if they will contain alcoholic beverages:
 1. Restocking of the mini-bars/refrigerators shall be performed during daily service of the hotel rooms, but shall not be performed between the hours of 2:00 am and 6:00 am; and
 2. Alcohol shall be stored only within approved liquor cabinets, which shall be accessible through key access or other controls restricting availability only to registered guests 21 years of age or older.
- b. Room service of alcoholic beverages for consumption in hotel guest rooms and adjoining private outdoor space is permitted to hotel guests and their guests 21 years of age or older who provide proof of age if requested by room service personnel and subject to the terms and conditions in this Exhibit "G".
- c. Room service of alcoholic beverages for consumption in residential units and adjoining private outdoor space in Lot 2 is permitted to residents and their guests 21 years of age or older who provide proof of age if requested by room service personnel and subject to the terms and conditions in this Exhibit "G".
- d. With respect to the mini-bars/refrigerators in individual hotel rooms described in subsection (a) of this Section 5 and room service of alcoholic beverages as provided in subsections (b) and (c) of this Section 5, the hotel operator shall not be obligated to obtain any additional Discretionary

Approvals from the City, including without limitation any Conditional Use Permits, so long as they are operated within the scope of this Exhibit "G".

6. Hotel shall maintain a kitchen or food-serving area in which a variety of food is prepared and cooked on the Licensed Premises. The Hotel shall serve food during all hours alcohol service is available in the Licensed Premises. If there are hours during which food is not served in a particular area of the Licensed Premises, alcohol shall not be served in such area during such hours.
7. Bungalow operations shall be subject to the following additional conditions:
 - a. Notices shall be prominently displayed urging patrons to leave the premises and neighborhood in a quiet, peaceful, and orderly fashion and not to litter in the neighborhood,
 - b. Employees shall walk a 100-foot radius from the Bungalow at some point prior to 30 minutes after Bungalow closing and shall pick up and dispose of any discarded beverage containers and other trash left by patrons, and
 - c. No lines shall be permitted to extend beyond the Hotel Property and onto the public right-of-way. If necessary to achieve compliance with this subsection, Hotel Operator shall provide a waiting list or other predictable system to avoid patrons queuing onto the public right-of-way.
8. Pool Café and Pool Deck: Liquor bottle service shall be prohibited. Wine and beer bottle service shall not be available to patrons unless full meal service is provided concurrent with the bottle service. For purposes of this paragraph, "Liquor bottle service" means the service of any full bottle of liquor, wine, or beer of more than 375 ml, along with glass ware, mixers, garnishes, or other items used for the mixing of drinks, which patrons are able to then use to make their own drinks.
9. The Hotel shall not organize or participate in organized "pub-crawl" events where participants or customers pre-purchase tickets or tokens to be exchanged for alcoholic beverages at the premises and other alcohol-serving venues participating in the "pub-crawl".
10. The operation of the Licensed Premises shall at all times be conducted in a manner not detrimental to surrounding properties or residents by reason of lights, noise, activities, parking or other actions.
11. Any alcoholic beverages sold for consumption beyond the Licensed Premises must be sold in sealed, unopened bottles, packages or containers.
12. The primary use of the Licensed Premises shall be for Hotel Uses, residential uses and Residential Amenities and Accessory Uses. In Lot 1, Alcohol may be available to registered hotel guests and their visitors, patrons of the Hotel (including its bar, restaurants/café's, spa and sundry shop), occupants of the

Residential Condominiums in Lot 2 and their guests, and persons attending functions in the Meeting/Banquet Rooms. In Lot 2, alcohol shall only be available to occupants of the residential condominium units and their guests.

13. Music (live, acoustical, amplified, disc jockey, or recorded) shall be permitted in all areas of the Licensed Premises covered by this Exhibit "G" provided (a) there is no dancing or dance floor, (b) there is no cover charge or minimum drink purchase requirement, and (c) the volume of the music complies with the provisions of the Noise Ordinance (SMMC Chapter 4.12) at all times. Notwithstanding the foregoing, dancing shall be permitted in all areas of the Licensed Premises when dancing is associated with an event/activities such as wedding receptions, charity events, instructional classes, reunions, performances, ceremonies, parties, banquets, receptions, celebrations, etc.
14. Notwithstanding the foregoing, alcohol service is only permitted within the Meeting/Banquet spaces on the 1st Floor and 3rd Floor provided these rooms, at the time alcohol is served, are being used for an event or activities such as meetings, conferences, lectures, training or instructional classes, conventions, demonstrations, competitions, speeches, services, presentations, celebrations, contests, fundraisers, commemorations, reunions, performances, auctions, ceremonies, parties, banquets, receptions, and other analogous events or activities occurring in comparable hotel meeting and banquet facilities.
15. Except for special events and in the outdoor areas (including the pool decks), alcohol shall not be served in any disposable container such as disposable plastic or paper cups.
16. The hotel operator shall prohibit loitering and control noisy guests leaving the Licensed Premises.
17. Any minimum purchase requirement may be satisfied by the purchase of beverages or food.
18. The hotel shall at all times comply with the provisions of the Noise Ordinance (SMMC Chapter 4.12).
19. The hotel shall not conduct recycling deposits, pressure washing, or other noise generating activity audible from the exterior of the buildings between the hours of 11 PM and 7 AM.
20. Window or other signage visible from the public right-of-way that advertises beer or alcohol shall not be permitted.
21. The hotel operator shall insure any graffiti on the Licensed Premises is promptly removed through compliance with the City's graffiti removal program.

22. The hotel operator shall employ staff to patrol the Licensed Premises to ensure patrons of the hotel are not disruptive to adjoining properties and area residents.
23. Prior to issuance commencement of alcohol service pursuant to this Exhibit "G", a security plan shall be submitted to the Chief of Police for review of approval. The plan shall address both physical and operational security issues.
24. Prior to commencement of alcohol sales pursuant to this Exhibit "G", the hotel operator shall submit a plan for approval by the Planning Director regarding employee alcohol awareness training programs and policies. The plan shall outline a mandatory alcohol awareness training program for all employees having contact with the public and shall state management's policies addressing alcohol consumption and inebriation. The hotel operator shall provide the City with an annual report regarding compliance with this condition within 60 days of receiving a written request from the City. The hotel shall be subject to any future citywide alcohol awareness training program condition affecting similar establishments.
25. Prior to commencement of alcohol service pursuant to this Exhibit "G", the hotel operator shall also submit a plan describing the establishment's designated driver program, which shall be offered by the hotel operator to the establishment's patrons. The plan shall specify how the hotel operator will inform patrons of the program, such as offering on the menu a free non-alcoholic drink for every party of two or more ordering more than one alcoholic beverage.
26. The hotel operator authorizes reasonable City inspection of the Licensed Premises to ensure compliance with the conditions set forth in this Exhibit "G" and will bear the reasonable costs of these inspections as established by SMMC Section 2.72.010 and Resolution No. 9905 (CCS) or any successor legislation thereto. These inspections shall be no more intrusive than necessary to ensure compliance with this Section.
27. Minor amendments to the seating and location where alcohol is served as shown on Exhibit "G-1" shall be subject to approval by the Planning Director in accordance with Section 2.4.2 (Minor Modifications) of this Agreement. A significant change in the approved concept for the alcohol service areas in this Exhibit "G" shall require either a Conditional Use Permit or a Development Agreement amendment pursuant to Section 2.4.3 (Major Modifications). Construction shall be in substantial conformance with the Project Plans as modified by the City Council, Landmarks Commission, California Coastal Commission or Planning Director. No increase in the intensity of operations allowed by this Exhibit "G" shall occur without prior approval from the City of Santa Monica and State ABC (if required by the ABC).

28. Concurrently with filing an application to the State ABC for one or more alcohol licenses, the applicant shall provide a copy of this signed Exhibit "G" to the local office of the State Alcoholic Beverage Control Department.

Acknowledgement of Hotel Operator

I hereby agree to the above conditions of approval and acknowledge that failure to comply with such conditions shall constitute grounds for potential revocation of the approval to dispense alcoholic beverages.

Print Name and Title

Date

Signature

Exhibit "G-1"

LICENSED PREMISES

[See separate PDF attachment.]

Exhibit “H”
Transportation Demand Management Plan

Transportation Demand Management Plan. Developer shall implement and maintain a Transportation Demand Management Plan (“**TDM Plan**”) commencing with the issuance of a Certificate of Occupancy as set forth below:

(a) TDM Plan Format. Prior to issuance of Certificate of Occupancy, Developer shall prepare a TDM Plan for review and approval by the City. Physical components of the TDM Plan as required by Exhibit H, Section (d) must be shown on the construction drawings and be approved by the City, it being acknowledged and agreed that the City’s issuance of the Project’s building permit shall be deemed “approval by the City”, and no further changes to the City-approved plans shall be mandated by the City following granting of the building permit. The purpose of the TDM Plan is to result in the Project achieving the AVR Target in accordance with Section (e)(1)(iv) below and shall include:

- (1) Project description
- (2) Site conditions that affect commute travel
- (3) Statement of commitment from Developer to:
 - i. Conduct annual surveys in conformance with this Agreement to determine vehicle trip behavior including collection of data on employee means of travel, arrival time, and interest in information on ridesharing opportunities. The annual survey shall not be required for Residential Condominiums.
 - ii. Monitor the TDM Plan, and
 - iii. Report annually in a manner required by this Agreement,
- (4) Initial annual budget to implement the TDM Plan,
- (5) Duties, responsibilities, and qualifications of the Project Transportation Coordinator, as defined by Exhibit H, Section (e)(1)(i) below, who is responsible for the preparation, implementation, and monitoring of the TDM Plan,
- (6) TDM Plan program measures as required by this Agreement, and
- (7) Implementation strategy that specifies how the TDM Plan will be implemented, monitored, and who will be responsible for submitting annual status report to the City.

(b) Annual Report on TDM Plan. Developer shall submit an annual monitoring report on the TDM Plan (“**TDM Annual Status Report**”) starting on the first anniversary of issuance of the project’s Certificate of Occupancy; provided, however, if the Certificate of Occupancy is not issued on the first day of the month the report may be filed by the first day of the month following the first anniversary of the project’s Certificate of Occupancy (e.g. if the Certificate of Occupancy is issued July 9, 2021, then the first annual report would be submitted by August 1, 2022 and by August 1st annually thereafter). The TDM Annual Status Report shall include the following:

- (1) Confirmation of compliance with all TDM Plan elements,
- (2) AVR calculations and documentation for the monitoring year based upon cumulative employee surveys for the project undertaken for one consecutive week each year. The survey must be conducted in accordance with Exhibit H, Section (e)(1)(iv),
- (3) Updated statement of commitment from Developer,
- (4) Updated annual budget to implement TDM Plan,
- (5) Updated contact information including name, e-mail address, and proof of certification of the Project Transportation Coordinator,
- (6) Effect of the TDM Plan on commute modes, parking availability, and transit ridership during the previous Plan year, and
- (7) Updated implementation strategy.

(c) Applicability of Transportation Demand Management Ordinance. The TDM Plan referred to in this Exhibit H replaces and supersedes the “developer” TDM Plan requirements included in SMMC Chapter 9.53 (the Transportation Demand Management Ordinance), or any successor thereto including but not limited to SMMC Section 9.53.110-140. Any “employer” (as defined in SMMC Section 9.53.020(S)) located within the Project will be required to comply with the employer requirements set forth in SMMC Chapter 9.53 (the Transportation Demand Management Ordinance), or any successor thereto, including SMMC Sections 9.53.050 to 9.53.100 as applicable.

(d) Physical Elements

- (1) Measures Applicable to Project’s Commercial Component Only:
 - (i) On-Site Transportation Information. Developer shall provide, for the Life of the Project, on-site transportation information located where the greatest number of employees, hotel guests and visitors are likely to see it. Such information may be provided in an on-site physical location(s), such as a bulletin board or kiosk, or through other media, such as on a website or other digital means. The location(s) may be relocated from time to time thereafter by the Developer. The transportation

information for employees, visitors and residents shall include information about access to various transportation options, which may be different for each group, and shall include:

- A. Current maps, routes and schedules for public transit routes within one-half mile of the Project site.
- B. Transportation agency information, including regional ridesharing agency, local transit operators, and certified Transportation Management Organization ("TMO") where available.
- C. Ridesharing promotional material supplied by commuter-oriented organizations.
- D. Bicycle route and facility information, including rental and sale locations within one-half mile of the Project site, regional/local bicycle maps, and bicycle safety information.
- E. A list of facilities available for carpoolers, vanpoolers, bicyclists, transit riders and pedestrian commuters at the site.
- F. Walking and biking maps for employees and visitors, which shall include but not be limited to information about convenient local services and restaurants within walking distance of the Project.
- G. Information to commercial tenants and employees of the Project regarding local rental housing agencies.

(ii) Employee Secure Bicycle Storage. Developer shall provide secure bicycle parking for commercial employees in the Subterranean Space and/or the ground floor as shown on the Project Plans but no less than 0.2 spaces/hotel room and 1 space/3,000 square feet of Floor Area for the retail/restaurant space. For the purpose of this Section (d)(1)(ii), secure bicycle parking shall mean an enclosed bicycle locker; a fenced, covered, locked or guarded bicycle storage area with bike racks within; a rack or stand inside a building that is within view of an attendant or security guard or visible from employee work areas; or a secure, non-public parking garage. No more than 50% of the secure employee bicycle parking may be provided in a vertical or hanging rack. At least one electrical outlet shall be available in the secure employee bicycle parking area for the use of electrical assisted bicycle charging. Prior to the Project's Design Review approval, the location and type of secure bicycle storage shall be submitted for review and approval by the Community Development Director. If the secure bicycle storage is not secure individual bicycle lockers, commercial employee secure bicycle storage shall be provided in an area separate from the secure bicycle storage for residents.

(iii) Employee Showers and Locker Facilities. Developer shall provide a minimum of four showers with dressing areas for use by employees and lockers as shown on the Project Plans but no less than one (1) clothes locker per seventy-five percent (75%) of the actually provided secure employee bicycle parking for employees of commercial uses on site who bicycle or use another active means, powered by human propulsion, of getting to work or who exercise during the work day. Lockers shall be for short-term use by employees, located in close proximity to the showers and dressing areas, and shall be distributed with priority given to those who utilize active commutes.

(iv) Short-Term Bicycle Parking. Developer shall provide bicycle parking for short-term public use as shown on the Project Plans but no less than eight (8) spaces plus one (1) space per 4,000 square feet of Floor Area for the retail/restaurant uses. No more than 50% of the short-term bicycle parking may be provided in a vertical or hanging rack. Prior to the Project's Design Review approval, the location and type of bike racks to be provided shall be submitted for review and approval by the Community Development Director. For each required short-term bicycle parking space, a stationary, securely anchored object shall be provided to which a bicycle frame and one wheel can be secured with a high-security U-shaped shackle lock if both wheels are left on the bicycle. One such object may serve multiple bicycle parking spaces.

(2) Measures Applicable to Project's Residential Component Only:

(i) Convenient and Secure Bicycle Storage for Residents. Developer shall provide a convenient and secure bicycle parking area for residents of the Project in the Subterranean Space and/or the ground floor as shown on the Project Plans but no less than one (1) secure bicycle space per residential bedroom and/or studio. For the purposes of this Section (d)(2)(i), secure bicycle parking shall mean an enclosed bicycle locker; a fenced, covered, locked or guarded bicycle storage area with bike racks within; a rack or stand inside a building that is within view of an attendant or security guard or visible from employee work areas; or a secure, non-public parking garage. No more than 50% of the secure resident bicycle parking may be provided in a vertical or hanging rack. At least one electrical outlet shall be available in the secure resident bicycle parking area for the use of electrical assisted bicycle charging. Prior to the Project's Design Review approval, the location and type of secure bicycle storage shall be submitted for review and approval by the Community Development Director. If the secure bicycle storage is not secure individual bicycle lockers, the residential secure bicycle storage shall be provided in an area separate from the secure bicycle storage for commercial employees.

(ii) Short-Term Public Bicycle Parking. Developer shall provide bicycle parking for short-term public use as shown on the Project Plans but no less than 10% of the secure residential spaces required by Section (d)(2)(i). No more than 50% of the short-term bicycle parking may be provided in a vertical or hanging rack. Prior to the Project's Design Review approval, the location and type of bike racks to be provided

shall be submitted for review and approval by the Community Development Director. For each required short-term bicycle parking space, a stationary, securely anchored object shall be provided to which a bicycle frame and one wheel can be secured with a high-security U-shaped shackle lock if both wheels are left on the bicycle. One such object may serve multiple bicycle parking spaces.

(e) Programmatic Elements.

(1) Measures Applicable to Project's Commercial Component Only:

(i) Project Transportation Coordinator. Developer shall designate a Project Transportation Coordinator (the "**PTC**") to manage the TDM Plan elements applicable to the Project's commercial component and participate in City-sponsored workshops and information roundtables relating to transportation demand management. The PTC shall be responsible for making informational materials on options for alternative transportation modes and opportunities, particularly programs that involve commuter subsidies such as parking cash out and vanpool subsidies, available to employees of the commercial components of the Project. In addition, transit fare media and day/month passes shall be made available through the PTC to employees, visitors, and residents during typical business hours to the extent transit providers make such media/passes available for third party distribution/sale (i.e., if a transit provider does not provide physical passes for distribution/sale, the PTC's role may be assisting employees, visitors and residents with purchasing such passes online or directing them to the nearest location to purchase such passes). In the event that the Project is sold or transferred, the developer shall notify the Community Development Director of the new point of contact for the successor within thirty calendar days of such sale or transfer. At Developer's option, any responsibilities of the Transportation Coordinator under this Exhibit H may be provided through the TMO contemplated in Exhibit H, Section (e)(1)(ii) below.

(ii) Transportation Management Organization. Developer shall be required to actively participate in the establishment and ongoing activities of a certified Transportation Management Organization ("**TMO**") or any successor entity, if established and includes the Project site, including payment of annual dues at a level commensurate with the trip reduction services provided by the TMO and assuming that Developer is granted voting rights commensurate with its dues level, attendance at organizational meetings, providing travel and parking demand data to the TMO, and making available information to commercial tenants relative to the services provided by the TMO. Developer shall require in all leases it executes as landlord for commercial space within the Project that any commercial tenants qualifying as an "employer" as defined in SMMC Section 9.53.020(S) be required to participate in the TMO and that all subleases contain this same provision. At the discretion of Developer, to be approved by the Community Development Director through a Minor Modification, some or all of the services required by this Exhibit H may be provided through the TMO.

(iii) Unbundled Parking. Developer shall not require tenants occupying commercial space in the Project to lease parking. The cost of any parking leased by such tenants shall be a separate line item in the lease and priced to have (a) a minimum daily rate of \$8 (Eight Dollars) and (b) if parking spaces are leased on a monthly basis, the monthly rate shall not be less than \$150 (One Hundred Fifty Dollars) per month. A variable parking rate for off-peak hours may also be introduced. Developer may, subject to the Community Development Director's approval, reconfigure the parking spaces and operations from time-to-time in order to facilitate unbundling of parking. Developer shall require in all tenant leases it executes as landlord that each tenant charge its employees for parking and that all subleases contain this same provision.

Remaining commercial unbundled parking spaces that are not leased or sold to on-site users may be leased to other on-site users or to off-site residential or commercial users on a month-to-month basis.

If the California Coastal Commission refuses to approve this section's requirement for unbundled parking for commercial space, this provision shall be null and void and an amendment to this Development Agreement shall not be required.

(iv) AVR Target. For Project employees, Developer shall endeavor to achieve an average vehicle ridership ("**AVR**") of 2.2 (the "**AVR Target**") within three years of Certificate of Occupancy. The 2.2 AVR shall continue to be achieved and maintained thereafter.

A. Remedy for Not Achieving AVR Target. If the AVR Target has not been achieved, then, within 60 days of the submission of the annual report showing non-compliance, the Developer shall submit to the Community Development Director modifications to the TDM Plan that are designed to achieve the AVR Target. In addition, during this 60-day period, the Community Development Director may recommend modifications to the TDM Plan. Any of the modifications to the TDM Plan proposed by Developer and approved by the City (or proposed by the City and agreed to by the Developer) designed to achieve the AVR Target shall be implemented within 30 days following approval. Within six (6) months of implementation of the TDM Plan modifications, Developer shall submit a follow-up monitoring report. For purposes of the follow-up monitoring report, Developer may elect to use one of the following methods to calculate AVR achievement in lieu of a comprehensive employee survey: (1) Developer may survey a statistically representative sample of commute modes of peak period employees based on the prior AVR survey, so long as at least 10% of all peak period employees respond; or (2) if Developer has implemented an online or mobile survey tool that allows periodic or automatic reporting of employee transportation modes, Developer may use some or all of the information from said tool to calculate AVR so long as the information used reflects a statistically representative sample of peak period employees. If the project continues to not achieve the applicable AVR Target, Developer has the option of: (a) continuing to implement additional measures for approval by the Community Development Director; or (b) bringing the

project AVR into alternative compliance through the payment of an Alternative Compliance Fee pursuant to SMMC Section 9.53.140(E).

B. Failure to Achieve AVR Not a Default. Developer's failure to achieve the AVR Target will not constitute a default under this Agreement so long as either (a) Developer is continuing to implement additional measures designed to achieve compliance with its AVR Target pursuant to Exhibit H, Section (e)(1)(iv)(A) above or (b) Developer has paid the alternative compliance fee pursuant to Exhibit H, Section (e)(1)(iv)(A) above.

C. AVR Calculation. AVR calculations and documentation for a monitoring year shall be based on data obtained from cumulative employee surveys for the Project, undertaken for one consecutive week each year. The survey must be conducted in accordance with SMMC Section 9.53.060(B)(2)(d), except that zero emission vehicles shall be counted as a vehicle arriving at the worksite.

(v) New Employee Orientation. As part of new employee orientation for new employees of Developer, Developer shall notify Project employees in writing regarding the Project's TDM Plan, including the TDM Plan's incentives for employees to commute to/from the Project via a non-single occupancy vehicle commute mode.

Developer shall write the requirements of the New Employee Orientation into any leases executed with commercial tenants of the Project, who shall have ultimate responsibility for adherence to the New Employee Orientation requirements by their own employees. Failure of such tenant to comply with the New Employee Orientation requirement shall not constitute a Default by Developer under this Agreement so long as such tenant's lease requires such compliance and Developer is actively pursuing reasonable enforcement actions to bring such tenant into compliance with this lease provision.

(vi) Parking Cash Out. Developer shall require all commercial tenants to meet the requirements of California Health and Safety Code Section 43845, if applicable (the "Parking Cash Out"). Developer shall require that commercial tenants require its employees accepting the parking cash out to execute a contract agreeing said employee did not utilize a single occupancy vehicle for the majority (at least 51%) of their daily commute distance and did not park in the City of Santa Monica. If an employee is eligible to receive both (a) the Parking Cash Out described in this section and (b) the Daily Transportation Allowance described in Exhibit H, Section (e)(1)(xiv) below, commercial tenant shall only be required to offer such employee the greater of the Parking Cash Out and the Daily Transportation Allowance. Developer shall write the requirements of the Parking Cash Out into any leases executed with commercial tenants of the Project. Commercial tenants shall have ultimate responsibility for adherence to the Parking Cash Out requirements. Failure of such tenant to comply with the Parking Cash Out requirement shall not constitute a Default by Developer under this Agreement so long as such tenant's lease requires such compliance and Developer is

actively pursuing reasonable enforcement actions to bring such tenant into compliance with this lease provision.

(vii) Employee Incentives Living Close to Project. Developer shall provide incentives for employees that live within one mile of the Project to commute to/from the Project via a non-single occupancy vehicle commute mode. Details of the incentives shall be specified in the TDM Plan.

(viii) Bicycle Commuting Training Information. Developer shall provide information regarding availability of bike commute training either on-site or offsite, including on the internet. Such information may be provided by a third-party.

(ix) Shared Bicycles/Mobility Devices. If Citywide bikeshare or dockless mobility devices are not available within a 2-block radius of the Project site, Developer shall provide free on-site shared bicycles intended for employee use during the workday (e.g. Bike@Work Program).

(x) Free Bike Valet. Developer shall provide bike valet service, free of charge, during all automobile valet operating hours. This requirement shall only apply if automobile valet service is provided.

(xi) Commuter Matching Services. Developer shall provide commuter matching services for all of its employees on an annual basis and for all of its new employees upon hiring.

(xii) Employee Flex-Time Schedule. Developer shall provide information about any options available for compressed work schedule, flex-time schedule, and telecommuting and the benefits of such options.

(xiii) Employee Guaranteed Return Trip. Developer shall provide its employees who rideshare or bicycle to work (this includes transit riders, vanpoolers, walkers, carpool), with a return trip to their point of commute origin at no additional cost to the employee, when a personal emergency situation or unplanned overtime requires it. The Developer shall also write the requirements of the Employee Guaranteed Return Trip into any leases it executes as landlord for space within the Project.

Commercial tenants shall have ultimate responsibility for adherence to the Employee Guaranteed Return Trip requirements. Failure of such tenant to comply with the Employee Guaranteed Return Trip requirement shall not constitute a Default by Developer under this Agreement so long as such tenant's lease requires such compliance and Developer is actively pursuing reasonable enforcement actions to bring such tenant into compliance with this lease provision.

(xiv) Daily Transportation Allowance. Developer shall provide employees who use a non-single occupancy vehicle commute mode a daily direct cash subsidy/transportation allowance for each day that they use a non-single occupancy -

vehicle commute mode equal to at least 100% of the value of the applicable monthly regional transit pass (i.e., the level of transit pass necessary for commuting to/from employee's home to the Property) divided by 20 (the "**Daily Transportation Allowance**"). Developer and City agree that the Metro EZ Pass (or a pass of no substantially greater geographic coverage in this same region) constitutes an applicable regional transit pass and that Developer shall not be obligated to pay for any pass that exceeds the cost of the Metro EZ Pass. An employee accepting the Daily Transportation Allowance shall be required to (i) execute a contract agreeing said employee will not utilize a single occupancy vehicle for the majority (at least 51%) of their daily commute distance and (ii) shall be required to submit a daily commute tracking form affirming that said employee utilized an eligible non-single occupancy vehicle commute mode for at least 51% of their daily commute. The subsidies will be disbursed quarterly at a minimum. The employee recipient must demonstrate compliance as reasonably required by Developer.

Notwithstanding the above, in the event a commercial tenant's employee qualifies for the Parking Cash Out described in Exhibit H, Section (e)(1)(vi) above, the value of the Daily Transportation Allowance for such commercial tenant's employees must be at least 110% of the value of the Parking Cash Out divided by 20 and the commercial tenant shall only be required to offer such employee the Daily Transportation Allowance described in this section and not also the Parking Cash Out. Developer shall write the Daily Transportation Allowance requirements into any leases executed with commercial tenants of the Project. Failure of such tenant to comply with the Daily Transportation Allowance requirements shall not constitute a Default by Developer under this Agreement so long as such tenant's lease requires such compliance and Developer is actively pursuing reasonable enforcement actions to bring such tenant into compliance with this lease provision.

(xv) Customer and Visitor Incentives. Developer shall provide customer and visitor incentives for uses with significant numbers of customers and visitors such as retail, food service and hospitality. Such incentives shall include the following:

- A. Customer incentive program
- B. Public directions prioritizing rideshare modes
- C. Special event rideshare services
- D. Shared ride service

(2) Measures Applicable to Project's Residential Component:

(i) Unbundled Parking. On the initial sale of the Residential Condominiums, Developer shall not require purchasers of the Residential Condominiums to lease or purchase parking spaces. On the initial sale of the

Residential Condominiums, any parking space shall either (a) be a separate line item on the purchase agreement or (b) be leased from Developer separate from the initial purchase transaction for the Residential Condominiums. Developer may, subject to the Community Development Director's approval, reconfigure the parking spaces and operations from time-to-time in order to facilitate unbundling of parking.

On the initial sale of the Residential Condominiums, purchasers of each Residential Condominium shall have the right of first refusal to lease or purchase at least one parking space per unit. Residential unbundled parking spaces that are not leased or sold to on-site users built for their unit or use may be used for other on-site uses, leased to other on-site tenants, or leased to off-site users on a month-to-month basis.

If the California Coastal Commission refuses to approve this requirement for unbundled parking for Residential Condominiums, this provision shall be null and void and an amendment to this Agreement shall not be required.

(ii) Transportation Welcome Package for Residents. On initial sale of the Residential Condominiums, the Developer shall provide the purchasers of each Residential Condominium with one Transportation Welcome Package. The welcome package shall, at a minimum, include the information required in Exhibit H, Section (d)(1)(i)(A)-(F), above.

(iii) TMO Participation. The Residential CC&Rs shall provide that it shall actively participate in the ongoing activities of a certified TMO if established, or any successor entity, and includes the Project site, including attendance at organizational meetings and making information available to Project residents about the services provided by the TMO. In accordance with Section 13.1.6(b)(ii) of the Agreement, compliance with this Exhibit H, Section (e)(2)(iii) shall be assumed by the Residential Association and evaluated separately from Developer's compliance with the other TDM Plan requirements hereunder.

(f) Changes to TDM Plan. Subject to approval by the Community Development Director, the Developer may modify the TDM Plan provided the TDM Plan, as modified, is reasonably anticipated to be equal or superior in its effectiveness at mitigating the traffic-generating effects of the Project.

Exhibit "I-1"

Local Hiring Program for Construction

Local Hiring Policy For Construction. Developer shall implement a local hiring policy (the "**Local Hiring Policy**") for construction of the Project, consistent with the following guidelines:

1. Purpose. The purpose of the Local Hiring Policy is to facilitate the employment by Developer and its contractors at the Project of residents of the City of Santa Monica (the "**Targeted Job Applicants**"), and in particular, those residents who are "Low-Income Individuals" (defined below) by ensuring Targeted Job Applicants are aware of Project construction employment opportunities and have a fair opportunity to apply and compete for such jobs.
2. Findings.
 - a. Approximately 73,000-74,000 individuals work in the City. The City has a resident labor force of approximately 57,300. However, only about one-third (32.2 percent) of the City's resident labor force works at jobs located in the City, with the balance working outside of the City. Consequently, a significant portion of the City's resident and non-resident work force is required to commute long distances to find work, causing increased traffic on state highways, increased pollution, increased use of gas and other fuels and other serious environmental impacts.
 - b. Due to their employment outside of the City, many residents of the City are forced to leave for work very early in the morning and return late in the evening, often leaving children and teenagers alone and unsupervised during the hours between school and the parent return from work outside the area.
 - c. The Pico Neighborhood is Santa Monica's most culturally diverse and economically disadvantaged neighborhood. Serving the most vulnerable members of the Pico Neighborhood has long been a priority for the City of Santa Monica. Economic recovery and improvement programs, such as local hire opportunities with prioritization for residents in the Pico Neighborhood, defined as the 90404 zip code, would be one important step to support these priorities.
 - d. Of the approximately 45,000 households in the City, thirty percent are defined as low-income households or lower, with eleven percent of these households defined as extremely low income and eight percent very low income. Approximately 7.6% of the City's residents are unemployed.

- e. By ensuring that Targeted Job Applicants are aware of and have a fair opportunity to compete for Project Construction jobs, this Local Hiring Policy will facilitate job opportunities to City residents which would expand the City's employment base and reduce the impacts on the environment caused by long commuting times to jobs outside the area.

3. Definitions.

- a. **“Contract”** means a contract or other agreement for the providing of any combination of labor, materials, supplies, and equipment to the construction of the Project that will result in On-Site Jobs, directly or indirectly, either pursuant to the terms of such contract or other agreement or through one or more subcontracts.
- b. **“Contractor”** means a prime contractor, a sub-contractor, or any other entity that enters into a Contract with Developer for any portion or component of the work necessary to construct the Project (excluding architectural, design and other “soft” components of the construction of the Project).
- c. **“Low Income Individual”** means a resident of the City of Santa Monica whose household income is no greater than 80% of the Median Income.
- d. **“Median Income”** means the median family income published from time to time by HUD for the Los Angeles-Long Beach Metropolitan Statistical Area.
- e. **“On-Site Jobs”** means all jobs by a Contractor under a Contract for which at least fifty percent (50%) of the work hours for such job requires the employee to be at the Project site, regardless of whether such job is in the nature of an employee or an independent contractor. On-Site Jobs shall not include jobs at the Project site which will be performed by the Contractor's established work crew who have not been hired specifically to work at the Project site.

4. Priority for Targeted Job Applicants. Subject to Section 7 below in this **Exhibit “I-1,”** the Local Hiring Policy provides that the Targeted Job Applicants shall be considered for each On-Site Job in the following order of priority:

- a. First Priority: Any resident of a household with no greater than 80% Median Income that resides within the Low and Moderate Income Areas identified in Figure 3-12 of the City of Santa Monica's 2013-2021 Housing Element or any resident who resides in Santa Monica's 90404 zip code (Pico Neighborhood).

- b. Second Priority: Any resident of a household with no greater than 80% Median Income that resides within the City; and
- c. Third Priority: Any resident of a household with no greater than 80% Median Income that resides within a five (5) mile radius of the project site.

For purposes of this Local Hiring Policy, Developer and/or its Contractors are authorized to rely on the most recent year's income tax records (W-2) and proof of residency (e.g. driver's license, utility bill, voter registration) if voluntarily submitted by a prospective job applicant for purposes of assessing a Targeted Job Applicant's place of residence and income.

- 5. Coverage. The Local Hiring Policy shall apply to all hiring for On-Site Jobs related to the construction of the Project, by Developer and its Contractors.
- 6. Outreach. So that Targeted Job Applicants are made aware of the availability of On-Site Jobs, Developer or its Contractors shall advertise available On-Site Jobs in the *Santa Monica Daily Press* or similar local media and electronically on a City-sponsored website, if such a resource exists. In addition, Developer shall consult with and provide written notice to at least five first source hiring organizations, which may include but are not limited to the following:
 - (a) Local first source hiring programs.
 - (b) Trade unions.
 - (c) Apprenticeship programs at local colleges.
 - (d) Santa Monica educational institutions.
 - (e) Other non-profit organizations involved in referring eligible applicants for job opportunities.

Developer shall also notify the City's Director of Community Development, or his or her designee, of the availability of On-Site Jobs and solicit the City's input as to first source hiring organizations or other organizations to provide notice of the On-Site Jobs. If the City's Director of Community Development, or his or her designee, does not respond to a request for input with thirty (30) days of Developer's request, Developer's obligation to solicit City's input under this Exhibit "I-1", Section 6 shall be satisfied.

- 7. Hiring. Developer and its contractor(s) shall consider in good faith all applications submitted by Targeted Job Applicants for On-Site Jobs, in accordance with their normal practice to hire the most qualified candidate for each position and shall make a good faith effort to hire Targeted Job Applicants when most qualified or equally qualified as other applicants. The City acknowledges that the Contractors shall determine in their respective subjective

business judgment whether any particular Targeted Job Applicant is qualified to perform the On-Site Job for which such Targeted Job Applicant has applied. Contactors are not precluded from advertising regionally or nationally for employees in addition to its local outreach efforts.

8. Term. The Local Hiring Policy shall continue to apply to the construction of the Project until the final certificate of occupancy for the Project has been issued by the City.

Exhibit "I-2"
Local Hiring for Permanent Employees

Local Hiring Policy For Permanent Employment. The Developer (if an Operator) or Commercial Operator shall implement a local hiring policy (the "**Local Hiring Policy**"), consistent with the following guidelines:

1. Purpose. The purpose of the Local Hiring Policy is to facilitate the employment by the commercial tenants of the Project of residents of the City of Santa Monica (the "**Targeted Job Applicants**"), and in particular, those residents who are "Low-Income Individuals" (defined below) by ensuring Targeted Job Applicants are aware of Project employment opportunities and have a fair opportunity to apply and compete for such jobs. The goal of this policy is local hiring.
2. Findings.
 - a. Approximately 73,000-74,000 individuals work in the City. The City has a resident labor force of approximately 57,300. However, only about one-third (32.2 percent) of the City's resident labor force works at jobs located in the City, with the balance working outside of the City. Consequently, a significant portion of the City's resident and non-resident work force is required to commute long distances to find work, causing increased traffic on state highways, increased pollution, increased use of gas and other fuels and other serious environmental impacts.
 - b. Due to their employment outside of the City, many residents of the City are forced to leave for work very early in the morning and return late in the evening, often leaving children and teenagers alone and unsupervised during the hours between school and the parent return from work outside the area.
 - c. The Pico Neighborhood is Santa Monica's most culturally diverse and economically disadvantaged neighborhood. Serving the most vulnerable members of the Pico Neighborhood has long been a priority for the City of Santa Monica. Economic recovery and improvement programs, such as local hire opportunities with prioritization for residents in the Pico Neighborhood, defined as the 90404 zip code, would be one important step to support these priorities.
 - d. Of the approximately 45,000 households in the City, thirty percent are defined as low-income households or lower, with eleven percent of these households defined as extremely low income and eight percent very low income. Approximately 7.6% of the City's residents are unemployed.

- e. By ensuring that Targeted Job Applicants are aware of and have a fair opportunity to compete for Project jobs, this Local Hiring Policy will facilitate job opportunities to City residents which would expand the City's employment base and reduce the impacts on the environment caused by long commuting times to jobs outside the area.

3. Definitions.

- a. **“Low Income Individual”** means a resident of the City of Santa Monica whose household income is no greater than 80% of the Median Income.
- b. **“Median Income”** means the median family income published from time to time by HUD for the Los Angeles-Long Beach Metropolitan Statistical Area.
- c. **“On-Site Jobs”** means all jobs on the Project site within the non-residential uses of greater than 1,500 gross square feet, regardless of whether such job is in the nature of an employee or an independent contractor.
- d. **“Commercial Operator”** means the operators of non-residential uses on the Project site.

4. Priority for Targeted Job Applicants. Subject to Section 7 below in this **Exhibit “I-2,”** the Local Hiring Policy provides that the Targeted Job Applicants shall be considered for each On-Site Job in the following order of priority:

- a. First Priority: Any resident of a household with no greater than 80% Median Income that resides within the low and Moderate Income Areas identified in Figure 3-12 of the City of Santa Monica’s 2013-2021 Housing Element or any resident who resides in Santa Monica’s 90404 zip code (Pico Neighborhood);
- b. Second Priority: Any resident of a household with no greater than 80% Median Income that resides within the City; and
- c. Third Priority: Any resident of a household with no greater than 80% Median Income that resides within a five (5) mile radius of the project site.

For purposes of this Local Hiring Policy, the Commercial Operator is authorized to rely on the most recent year’s income tax records (W-2) and proof of residency (e.g. driver’s license, utility bill, voter registration) if voluntarily submitted by a prospective job applicant for purposes of assessing a Targeted Job Applicant’s place of residence and income.

5. Coverage. The Local Hiring Policy shall apply to all hiring for On-Site Jobs. Notwithstanding the foregoing, the Local Hiring Policy shall not apply to

temporary employees utilized while a permanent employee is temporarily absent or while a replacement is being actively sought for a recently-departed permanent employee. Furthermore, the Local Hiring Policy shall not preclude the re-hiring of a prior employee or the transfer of an existing employee from another location.

6. Recruitment.

- a. Local Hiring Goal – The Developer has established a local hiring goal of 30% of the total full and part-time jobs in the Project being held by Santa Monica residents. There shall be no penalties to the Developer, nor shall the Developer be deemed to be in default under the Development Agreement, if such goal is not achieved. The Developer shall report its actual local hiring results to the City as part of its annual reports as mandated by Section 10.2 of the Development Agreement. The annual report shall include the following information:
- (i) First source hiring organizations that were contacted;
 - (ii) How many referrals from first source hiring organizations were interviewed;
 - (iii) How many Targeted Job Applicants were hired;
 - (iv) Any community activities related to recruitment and local hiring that took place in the past calendar year, and;
 - (v) Recruitment initiatives planned for the following calendar year.
- b. Advanced Local Recruitment - Initial Hiring for New Business. So that Targeted Job Applicants are made aware of the availability of On-Site Jobs, at least 30 days before recruitment (“**Advanced Recruitment Period**”) is opened up to general circulation for the initial hiring by a new business, the Commercial Operator shall advertise available On-Site Jobs in the *Santa Monica Daily Press*, or Santa Monica Police Activity League or similar organization, or similar local media and electronically on a City-sponsored website, if such a resource exists. In addition, the Commercial Operator shall consult with and provide written notice to at least five first source hiring organizations, which may include but are not limited to the following:
- (i) Local first source hiring programs
 - (ii) Trade unions
 - (iii) Apprenticeship programs at local colleges

- (iv) Santa Monica educational institutions
- (v) Other non-profit organizations involved in referring eligible applicants for job opportunities

Commercial Operator shall also notify the City's Director of Community Development, or his or her designee, of the availability of On-Site Jobs and solicit the City's input as to first source hiring organizations or other organizations to provide notice of the On-Site Jobs. If the City's Director of Community Development, or his or her designee, does not respond to a request for input with thirty (30) days of Commercial Operator's request, Commercial Operator's obligation to solicit City's input under this Exhibit "I-2", Section 6(b) shall be satisfied.

The Commercial Operator shall hold the positions open for no more than 30 days in order to allow for referrals from the first source hiring organizations. The Commercial Operator shall review information provided by the selected organizations with respect to all applicants referred by such organizations and interview those individuals, who, following a review of such information, are determined by the Commercial Operator to meet the Commercial Operator's written minimum qualifications for the position. The Commercial Operator shall maintain a written record explaining the reasons for not selecting any individual referred to Commercial Operator by the selected organizations who was interviewed by Commercial Operator for the position.

- c. Advanced Local Recruitment - Subsequent Hiring. For subsequent employment opportunities, the Advanced Recruitment Period for Targeted Job Applicants can be reduced to at least 7 days before recruitment is opened up to general circulation. Alternatively, Commercial Operator may also use an established list of potential Targeted Job Applicants of not more than one year old.
 - d. Obligations After Completion of Advanced Recruitment Period. Once these advanced local recruitment obligations have been met, the Commercial Operator is not precluded from advertising regionally or nationally for employees.
7. Hiring. The Commercial Operator shall consider in good faith all applications submitted by Targeted Job Applicants for On-Site Jobs in accordance with their normal practice to hire the most qualified candidate for each position and shall be make good faith efforts to hire Targeted Job Applicants when such Applicants are most qualified or equally qualified as other applicants. The City acknowledges that the Commercial Operator shall determine in their respective subjective business judgment whether any particular Targeted Job Applicant is qualified to perform the On-Site Job for which such Targeted Job Applicant has applied.

8. Proactive Outreach. Developer shall designate a “**First-Source Hiring Coordinator**” (FHC) that shall manage all aspects of the Local Hiring Policy. The FHC shall be responsible for actively seeking partnerships with local first-source hiring organizations prior to employment opportunities being available. The FHC shall also be responsible for encouraging and making available information on first-source hiring to respective commercial tenants of the Project. The FHC shall contact new employers on the Project site to inform them of the available resources on first-source hiring. In addition to implementation of the Local Hiring Policy, the FHC can have other work duties unrelated to the Local Hiring Policy.
9. Term. The Local Hiring Policy shall apply for the Life of the Project.
10. Condition of Lease. Developer shall write the requirements of this program into any leases executed with Employers. The FHC shall reach out to Employers not less than once each calendar quarter to remind them of the programs and policies. Employers shall have ultimate responsibility for adherence to the program guidelines. Failure of an Employer to comply with the requirements of this program shall not constitute a Default by any Developer under this Agreement so long as such Employer's lease requires such compliance and such Developer is actively pursuing all necessary enforcement actions to bring such Employer into compliance with this lease provision.

Exhibit “J”
Construction Mitigation Plan

Construction Mitigation Plan

1. A construction mitigation plan shall be prepared by the applicant in accordance with SMMC Chapter 8.98, for approval by the following City departments prior to issuance of a building permit: PWD; Fire; Planning and Community Development; and Police. The approved mitigation plan shall be posted on the site for the duration of the project construction and shall be produced upon request. Without limiting the generality of the foregoing, this plan shall:
 - a. Specify the names, addresses, telephone numbers and business license numbers of all contractors and subcontractors as well as the developer and architect;
 - b. Indicate where any cranes are to be located for erection/construction;
 - c. Describe how much of the public street, alleyway, or sidewalk is proposed to be used in conjunction with construction;
 - d. Set forth the extent and nature of any pile-driving operations;
 - e. Describe the length and number of any tiebacks which must extend under the public right-of-way and other private properties;
 - f. Specify the nature and extent of any dewatering and its effect on any adjacent buildings;
 - g. Describe anticipated construction-related truck routes, number of truck trips, hours of hauling and parking location;
 - h. Specify the nature and extent of any helicopter hauling;
 - i. State whether any construction activity beyond normally permitted hours is proposed;
 - j. Describe any proposed construction noise mitigation measures, including measures to limit the duration of idling construction trucks;
 - k. Describe construction-period security measures including any fencing, lighting, and security personnel;
 - l. Provide a grading and drainage plan;
 - m. Provide a construction-period parking plan which shall minimize use of

- public streets for parking;
- n. List a designated on-site construction manager;
 - o. Provide a construction materials recycling plan which seeks to maximize the reuse/recycling of construction waste;
 - p. Provide a plan regarding use of recycled and low-environmental-impact materials in building construction; and
 - q. Provide a construction period urban runoff control plan.

Ongoing Requirements throughout the Period of Construction

- 2. The following requirements shall be maintained throughout the period of the Project's construction:
 - a. A detailed traffic control plan for work zones shall be maintained which includes at a minimum accurate existing and proposed: parking and travel lane configurations; warning, regulatory, guide and directional signage; and area sidewalks, bicycle lanes and parking lanes. The plan shall include specific information regarding the project's construction activities that may disrupt normal pedestrian and traffic flow and the measures to address these disruptions. Such plans must be reviewed and approved by the Transportation Management Division prior to commencement of construction and implemented in accordance with this approval.
 - b. Work within the public right-of-way shall be performed between 9:00 AM and 4:00 PM, including: dirt and demolition material hauling and construction material delivery. Work within the public right-of-way outside of these hours shall only be allowed after the issuance of an after-hours construction permit.
 - c. Streets and equipment shall be cleaned in accordance with established PWD requirements.
 - d. Trucks shall only travel on a City approved construction route. Truck queuing/staging shall not be allowed on Santa Monica streets. Queuing may occur on the construction site itself to the extent there is space available on the construction site.
 - e. Materials and equipment shall be minimally visible to the public; the preferred location for materials is to be on-site, with a minimum amount of materials within a work area in the public right-of-way, subject to a current Use of Public Property Permit.

- f. Any requests for work before or after normal construction hours within the public right-of-way shall be subject to review and approval through the After Hours Permit process administered by the Building and Safety Division.
- g. Off-street parking shall be provided for construction workers. This may include the use of a remote location with shuttle transport to the site, if determined necessary by the City of Santa Monica.

Project Coordination Elements That Shall Be Implemented Prior To Commencement of Construction

- 3. Developer shall implement the following measures before construction is commenced:
 - a. The traveling public shall be advised of impending construction activities (e.g. information signs, portable message signs, media listing/notification, implementation of an approved traffic control plan).
 - b. Any construction work requiring encroachment into public rights-of-way, detours or any other work within the public right-of-way shall require approval from the City through issuance of a Use of Public Property Permit, Excavation Permit, Sewer Permit or Oversize Load Permit, as well as any Caltrans Permits required.
 - c. Timely notification of construction schedules shall be given to all affected agencies (e.g., Big Blue Bus, Police Department, Fire Department, Department of Public Works, and Planning and Community Development Department) and to all owners and residential and commercial tenants of property within a radius of 1000 feet.
 - d. Construction work shall be coordinated with affected agencies in advance of start of work. Approvals may take up to two weeks per each submittal.
 - e. The Strategic Transportation Planning Division shall approve of any haul routes, for earth, concrete or construction materials and equipment hauling.

Air Quality

- 4. Dust generated by the development activities shall be kept to a minimum with a goal of retaining dust on the site through implementation of the following measures recommended by the SCAQMD Rule 403 Handbook:
 - a. During clearing, grading, earth moving, excavation, or transportation of cut or fill materials, water trucks or sprinkler systems are to be used to the

extent necessary to prevent dust from leaving the site and to create a crust after each day's activities cease.

- b. All material excavated or graded shall be sufficiently watered to prevent excessive amounts of dust. Watering shall occur at least three times daily with complete coverage, preferably at the start of the day, in the late morning, and after work is done for the day.
- c. All active portions of the construction site shall be sufficiently watered three times a day to prevent excessive amounts of dust.
- d. Vehicles hauling dirt or other construction debris from the site shall cover any open load with a tarpaulin or other secure covering to minimize dust emissions. Install wheel washers where vehicles enter and exit the construction site onto paved roads or wash off trucks and any equipment leaving the site each trip. Immediately after commencing dirt removal from the site, the general contractor shall provide the City with written certification that all trucks leaving the site are covered in accordance with this condition of approval.
- e. During clearing, grading, earth moving, excavation, or transportation of cut or fill materials, streets and sidewalks within 150 feet of the site perimeter shall be swept and cleaned a minimum of twice weekly or as frequently as required by the PWD.
- f. During construction, water trucks or sprinkler systems shall be used to keep all areas of vehicle movement damp enough to prevent dust from leaving the site. The Project Site shall be wetted and kept sufficiently dampened in accordance with PDF AQ-1 in Section A of Exhibit "E".
- g. Soil stockpiles shall be covered, kept moist, or treated with soil binders to prevent dust generation.
- h. Cease all grading, earth moving or excavation activities during periods of high winds (i.e., greater than 25 mph measured as instantaneous wind gusts) so as to prevent excessive amounts of dust. As an alternative to discontinuing work, compliance with Rule 403, Table 3 control measures may be implemented in accordance with Rule 403 Section (g)(2). Securely cover all material transported on and off-site to prevent excessive amounts of dust.
- i. Limit on-site vehicle speeds to 15 mph.
- j. Sweep streets at the end of the day using SCAQMD Rule 1186 certified street sweepers or roadway trucks if visible soil is carried onto adjacent public paved roads (recommend water sweepers with reclaimed water).

- k. Appoint a construction relations officer to act as a community liaison concerning on-site construction activity including resolution of issues related to PM10 generation.
5. Construction equipment used on the site shall meet the following conditions in order to minimize NOx and ROC emissions:
 - a. Diesel-powered equipment such as booster pumps or generators should be replaced by electric equipment to the extent feasible; and
 - b. The operation of heavy-duty construction equipment shall be limited to no more than 5 pieces of equipment at one time.
 - c. Developer shall ensure that architectural coatings used on the Project comply with SCAQMD Rule 1113, which limits the VOC content of architectural coatings.

Noise Attenuation

6. All diesel equipment shall be operated with closed engine doors and shall be equipped with factory-recommended mufflers.
7. Electrical power shall be used to run air compressors and similar power tools.
8. For all noise-generating activity on the project site associated with the installation of new facilities, additional noise attenuation techniques shall be employed to reduce noise levels to City of Santa Monica noise standards. Such techniques may include, but are not limited to, the use of sound blankets on noise generating equipment and the construction of temporary sound barriers between construction sites and nearby sensitive receptors.
9. Pile driving, excavation, foundation-laying, and conditioning activities (the noisiest phases of construction) shall be restricted to between the hours of 10:00 AM and 3:00 PM, Monday through Friday, in accordance with Section 4.12.110(d) of the Santa Monica Municipal Code.
10. For all noise generating construction activity on the project site, additional noise attenuation techniques shall be employed to reduce noise levels at to 83 dB or less from 8:00 to 6:00 PM weekdays and 9:00 AM to 5:00 PM Saturdays. Per the Noise Ordinance, construction noise may exceed 83 dB if it only occurs between 10:00 AM and 3:00 PM. Such techniques may include, but are not limited to, the use of sound blankets on noise generating equipment and the construction of temporary sound barriers around the perimeter of the project construction site.

Construction Period

11. Any construction related activity in the public right-of-way will be required to

acquire the approvals by the City of Santa Monica, including but not limited to: Use of Public Property Permits, Sewer Permits, Excavation Permits, Alley Closure Permits, Street Closure Permits, and Temporary Traffic Control Plans.

12. During construction, a security fence eight feet in height shall be maintained around the perimeter of the lot. The lot shall be kept clear of all trash, weeds, etc.
13. Vehicles hauling dirt or other construction debris from the site shall cover any open load with a tarpaulin or other secure covering to minimize dust emissions. Immediately after commencing dirt removal from the site, the general contractor shall provide the City of Santa Monica with written certification that all trucks leaving the site are covered in accordance with this condition of approval.
14. Developer shall prepare a notice, subject to the review by the Director of Planning and Community Development, that lists all construction mitigation requirements, permitted hours of construction, and identifies a contact person at City Hall as well as the developer who will respond to complaints related to the proposed construction. The notice shall be mailed to property owners and residents of the neighborhood within 1000 feet of the Project at least five (5) days prior to the start of construction.
15. A sign shall be posted on the property in a manner consistent with the public hearing sign requirements which shall identify the address and phone number of the owner and/or applicant for the purposes of responding to questions and complaints during the construction period. Said sign shall also indicate the hours of permissible construction work.
16. A copy of these conditions shall be posted in an easily visible and accessible location at all times during construction at the project site. The pages shall be laminated or otherwise protected to ensure durability of the copy.
17. No construction-related vehicles may be parked on the street at any time. For the duration of construction, all construction-related vehicles must be parked for storage purposes either on-site or at an offsite location on a private lot. The offsite location shall be approved as part of the Department of Environmental and Public Works review of the construction period mitigation plan and by the Department of City Planning if a Temporary Use Permit is required.
18. In accordance with Municipal Code Section 4.12.120, the project applicant shall be required to post a sign informing all workers and subcontractors of the time restrictions for construction activities. The sign shall also include the City telephone numbers where violations can be reported and complaints associated with construction noise can be submitted. Construction period signage shall be subject to Municipal Code Chapter 9.61 Signs including Section 9.31.160(C) Temporary Sign Regulations.

Exhibit "K"

Form of Assignment and Assumption Agreement

Recording Requested By and
When Recorded Mail To:

Harding, Larmore, Kutcher & Kozal, LLP
1250 Sixth Street, Suite 200
Santa Monica, CA 90401
Attn: Paula J. Larmore

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made and entered into by and between _____, a _____ ("Assignor"), and _____, a _____ ("Assignee").

RECITALS

A. The City of Santa Monica ("City") and Assignor entered into that certain Development Agreement dated _____, (the "Development Agreement"), with respect to the real property located in the City of Santa Monica, State of California more particularly described in **Exhibit "A"** attached hereto (the "Property").

B. Assignor has obtained from the City certain development approvals and permits with respect to the development of the Property, including without limitation, approval of the Development Agreement for the Property (collectively, the "Project Approvals").

C. Assignor intends to sell, and Assignee intends to purchase, the Property.

D. In connection with such purchase and sale, Assignor desires to transfer all of the Assignor's right, title, and interest in and to the Development Agreement and the Project Approvals with respect to the Property. Assignee desires to accept such assignment from Assignor and assume the obligations of Assignor under the Development Agreement and the Project Approvals with respect to the Property.

THEREFORE, the parties agree as follows:

1. **Assignment.** Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, and interest in and to the Development Agreement and the Project Approvals with respect to the Property. Assignee hereby accepts such assignment from Assignor.

2. **Assumption.** Assignee expressly assumes and agrees to keep, perform, and fulfill all the terms, conditions, covenants, and obligations required to be kept,

performed, and fulfilled by Assignor under the Development Agreement and the Project Approvals with respect to the Property. [Note to Drafter: Depending on whether the "Property" is the entire Project Site, Lot 1, Lot 2 or a Residential Condominium, additional detail may be needed for clarity as to what is being assumed (e.g. a reference to the relevant subsection in 13.1.6).]

3. Effective Date. The execution by City of the attached receipt for this Agreement shall be considered as conclusive proof of (a) delivery of this Agreement, (b) the assignment and assumption contained herein, and (c) the release of Assignor in accordance with Section 13.2 of the Development Agreement. This Agreement shall be effective upon its recordation in the Official Records of Los Angeles County, California, provided that Assignee has closed the purchase and sale transaction and acquired legal title to the Property.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth next to their signatures below.

"ASSIGNOR"

"ASSIGNEE"

RECEIPT BY CITY

The attached ASSIGNMENT AND ASSUMPTION AGREEMENT is received by the City of Santa Monica on this ____ day of _____, _____.

CITY OF SANTA MONICA

By: _____
Community Development Director

Exhibit “L”

Palisades Building Performance Bond

[To Come.]

Exhibit “M”

Publicly-Accessible Open Space

[See separate PDF attachment.]