DEVELOPMENT AGREEMENT

BETWEEN

CITY OF SANTA MONICA

AND

DK BROADWAY LLC,
A DELAWARE LIMITED LIABILITY COMPANY

______________________, 2016
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DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement"), dated June 24, 2016 ("Effective Date"), is entered into by and between DK BROADWAY 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., Chapter 9.60 of the Santa Monica Municipal Code, and Santa Monica Interim Ordinance No. 2487, as extended and modified, (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 67,500 square feet of land located in the City of Santa Monica, State of California, commonly known as 500 Broadway, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"). The Property is improved with a commercial building and a surface parking lot.

C. The City has included the Property within the Downtown Core land use designation under the City’s recently adopted Land Use and Circulation Element of its General Plan (the “LUCE”). The Property is located within the Downtown Specific Plan District under the City’s Zoning Ordinance. To aid in the redevelopment of the Property, the City and Developer desire to allow Developer to demolish the existing building and construct a new mixed-use project with subterranean parking.

D. On August 27, 2013, 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. DEV 13-008. The Development Application is for a mixed-use project that will include commercial uses (ground floor and subterranean levels only), residential uses (including accessory uses), and subterranean parking, and is more fully described in this Agreement (the “Project”). The Project is more particularly shown on the Project Plans attached hereto as Exhibit “B” (the “Project Plans”).

E. On June 23, 2015, the City Council adopted Interim Ordinance No. 2487 (CCS) ("Downtown IZO"). The City Council extended the Downtown IZO on July 28, 2015. The Downtown IZO prohibits the issuance of permits for development projects which would exceed 32 feet in height in the Downtown Core as delineated in the Land Use Designation Map approved by the City Council on July 6, 2010 unless developed pursuant to a development agreement adopted in accordance with SMMC Chapter 9.60. Adoption of this Agreement will allow for the issuance of permits for the Project.
F. Developer has paid all necessary costs and fees associated with the City’s processing of the Development Application and this Agreement.

G. Following filing of the Development Application, 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. 2014111051. Following close of the comment period, the City prepared a Final Environmental Impact Report pursuant to CEQA (the “FEIR”).

H. The primary purpose of the Project is to establish a new mixed-use residential/commercial project. Consistent with the LUCE, the Project is designed to be pedestrian-friendly and is located approximately 500 feet from the Exposition Light Rail terminus station in the City’s Downtown. 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.

I. The City Council has determined that a development agreement is appropriate for the proposed development of 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 subsequent development of the Property, (5) secure for the City improvements that benefit the public, (6) ensure the provision of community benefits as envisioned in the LUCE, and (7) otherwise achieve the goals and purposes for which the Development Agreement Statutes were enacted.

J. 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 LUCE, 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.

K. The City Council has found that the provisions of this Development Agreement are consistent with the relevant provisions of the City’s General Plan, including the LUCE.

L. On April 23, 2015, Developer filed a text amendment application (15ENT-0232) to amend the 1984 LUCE to authorize an unlimited number of stories provided there is at least one level of residential use and an FAR of 4.0 (the “Text Amendment”).

M. On April 27, 2015, Developer filed a demolition permit application for the existing building located on the Property (15BLD-1628). On May 11, 2015, the City’s Landmarks Commission reviewed the existing building located on the Property and took no action to nominate or further evaluate the existing building.
N. On October 29, 2015, Developer filed a vesting tentative tract map application for the Project (15ENT-0329). The subdivision application will allow the residential and commercial components of the project to be separately leased and/or financed and/or potentially sold in bulk. The subdivision application will not create for-sale residential condominiums.

O. On March 9, 2016, the City's Planning Commission held a duly noticed public hearing on the Development Application, the EIR, the Text Amendment, and this Agreement, and at such hearing, the Planning Commission recommended that the City Council certify the EIR, approve the Project including this Agreement, and approve the Text Amendment.

P. On May 10, 2016, the City Council held a duly noticed public hearing on the Development Application, the EIR, the Text Amendment, and this Agreement, and at such hearing the City certified the EIR (Resolution No. 10954) and adopted a Statement of Overriding Considerations and Mitigation Monitoring Plan (Resolution No. 10956) approving the Text Amendment (Resolution No. 10955) and introduced Ordinance No. 2518 for first reading, approving this Agreement.

Q. On May 24, 2016, the City Council adopted Ordinance No. 2518, 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 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(a)(2). This definition is specific to this Agreement and modifies the definition of 100% Affordable Housing Project included in SMMC §9.52.020.0050.

1.2 “1626 Lincoln” means the approximately 27,808 square feet of land located in the City of Santa Monica, State of California, commonly known as 1626 Lincoln Boulevard, as more particularly described in Exhibit “C” attached hereto and incorporated herein by this reference.

1.3 “Affordable Rent” means:

1.3.1 For fifty percent income households, the product of thirty percent times fifty percent of the Area Median Income adjusted for household size appropriate for the unit.
1.3.2 For eighty percent income households whose gross incomes exceed the maximum incomes for fifty percent income households, the product of thirty percent times sixty percent of the Area Median Income adjusted for household size appropriate for the unit.

1.4 “Agreement” means this Development Agreement entered into between the City and Developer as of the Effective Date.

1.5 “ARB” means the City’s Architectural Review Board.

1.6 “Area Median Income” or “AMI” means the median family income published from time to time by the United States Department of Housing and Urban Development (“HUD”) for the Los Angeles-Long Beach Primary Metropolitan Statistical Area.

1.7 “Building” means a new multi-story residential/commercial mixed-use building with 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), Segmented Average Natural Grade (SANG), or Theoretical Grade (TG) as defined in Section 9.04.050 of the Zoning Ordinance.

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

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

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

1.12 “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.

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

1.14 “Eighty Percent Income Household” means a household whose gross income does not exceed the eighty percent income limits applicable to the Los Angeles-Long Beach Primary Metropolitan Statistical Area, adjusted for household size, as published and periodically updated by HUD.

1.15 “Fifty Percent Income Household” means a household whose gross income does not exceed the fifty percent income limits applicable to the Los Angeles-
Long Beach Primary Metropolitan Statistical Area, adjusted for household size, as published and periodically updated by HUD.

1.16 "Floor Area" has the meaning as defined in Section 9.52.020.0870 of the Zoning Ordinance. However, 500 square feet of outdoor dining area shall be excluded when calculating the parking requirement for the Project.

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

1.18 “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.

1.19 “Including” means “including, but not limited to.”


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

1.22 “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.

1.23 “Maximum Floor Area” means 301,830 square feet of Floor Area.

1.24 “Mid-Level Residential Amenities and Accessory Use Area” means up to 3,130 square feet of Floor Area located above the ground floor commercial uses and below the first residential floor as shown on the Project Plans.

1.25 “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.

1.26 “On-Site Affordable Units” means dwelling units within the Project that are deed restricted for the Life of the Project and are available to and occupied by Fifty Percent Income Households and Eighty Percent Income Households at Affordable Rent.

1.27 “Parties” mean both the City and Developer and “Party” means either the City or Developer, as applicable.
1.28 "Planning Director" means the Planning Director of the City of Santa Monica, or his or her designee.

1.29 "PM peak period" means the period between 5:00 PM and 7:00 PM on weekdays that are not the following holidays: New Year’s Day, Presidents’ Day, Cesar Chavez Day, Martin Luther King Day, Independence Day, Columbus Day, Labor Day, Veterans Day, Thanksgiving Day, day after Thanksgiving, Christmas Eve, and Christmas Day. If any such holiday falls on Saturday or Sunday, and as a result such holiday is observed on the preceding Friday or succeeding Monday, then such Friday or Monday, as the case may be, shall be considered to be a holiday under this Section.

1.30 "PM Peak hour" means the four highest consecutive quarter-hour increments that generate the greatest number of vehicle trips within the PM peak period.

1.31 "Project" means the development project reflected on the Project Plans.

1.32 "Project Plans" mean the plans for the Project that are attached to this Agreement as Exhibit “B”.

1.33 "Rental Housing Units" means the residential rental units in the Project.

1.34 "Residential Amenities and Accessory Uses for Interior Space" means amenities and accessory uses for residents and their guests, including but not limited to lobbies, reception areas/desk, resident/visitors lounges, property management/administrative/leasing offices, bicycle parking, dog wash facilities, mail/package delivery facilities and storage, exercise/fitness rooms, recreation rooms, and television and film screening rooms.

1.35 "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.

1.36 "Subterranean Space" means all space in the Project below the ground floor as shown on the Project Plans attached as Exhibit “B”.

1.37 "Zoning Ordinance" means the City of Santa Monica Comprehensive Land Use and Zoning Ordinance (Chapters 9.01 to 9.52 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) Demolition and removal of the existing commercial building and surface parking lot on the Property.

(b) Construction of a new multi-story mixed-use residential/commercial building with a Maximum Floor Area of 301,830 square feet, including:

(1) Above the ground floor, 249 market-rate residential apartment units, consisting of 25 three-bedrooms, 50 two-bedrooms, 125 one-bedrooms, and 49 studios units, and accessory uses, including courtyards and roof decks for use by the occupants of the housing units and their guests as described in Section 2.5 below;

(2) Up to 3,130 square feet of Mid-Level Residential Amenities and Accessory Use Area as shown on the Project Plans and described further in Section 2.5 below;

(3) Up to 62,435 square feet of commercial Floor Area on the ground floor (including outdoor dining) and in the Subterranean Space as shown on the Project Plans with Permitted Uses described in Section 2.5 below, subject to satisfying all of the four following criteria:

<table>
<thead>
<tr>
<th>Uses</th>
<th>Square Footage Maximum</th>
</tr>
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<tbody>
<tr>
<td>General Market</td>
<td>37,834 square feet of Floor Area</td>
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<tr>
<td>Sum of:</td>
<td>39,834 square feet of Floor Area</td>
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<tr>
<td>(a) General Market, and</td>
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<td>(b) Restaurants, Full-Service and Limited Service &amp; Take Out uses</td>
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<tr>
<td>with Outdoor Dining and Seating Area uses.</td>
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</tr>
<tr>
<td>Uses</td>
<td>Square Footage Maximum</td>
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<tr>
<td>Sum of:</td>
<td>51,834 square feet of Floor Area</td>
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<tr>
<td>(a) General Market,</td>
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<tr>
<td>(b) Restaurants, Full-Service and Limited Service &amp; Take Out uses</td>
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<tr>
<td>with Outdoor Dining and Seating Area uses, and</td>
<td></td>
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<tr>
<td>(c) Fitness/exercise center uses, including fitness centers that</td>
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<tr>
<td>qualify as Commercial Entertainment and Recreation, Large- and</td>
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</tr>
<tr>
<td>Small-Scale Facilities.</td>
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<tr>
<td>Sum of:</td>
<td>62,435 square feet of Floor Area</td>
</tr>
<tr>
<td>(a) General Market,</td>
<td></td>
</tr>
<tr>
<td>(b) Restaurants, Full-Service and Limited Service &amp; Take Out uses</td>
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<tr>
<td>with Outdoor Dining and Seating Area uses,</td>
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<td>(c) Fitness/exercise center uses, including fitness centers that</td>
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<tr>
<td>qualify as Commercial Entertainment and Recreation, Large- and</td>
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<tr>
<td>Small-Scale Facilities, and</td>
<td></td>
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<tr>
<td>(d) All other commercial Authorized Uses per Section 2.5.</td>
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</tbody>
</table>

(c) Construction of a four-level subterranean parking garage with 524 parking spaces and other uses in accordance with the Project Plans and as described further in subsection (2) above and Section 2.5 below; and

(d) Ensuring the development of affordable housing through the dedication or transfer of the property located at 1626 Lincoln 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 1626 Lincoln in accordance with Sections 2.7.5(a) and 2.8.1(a). Alternatively, due to the risk that the 100% Affordable Housing Project described in Section 2.8.1(a) may not be completed despite Developer’s good faith efforts to ensure the 100% Affordable Housing Project is realized, On-Site Affordable Housing units may be provided pursuant to Sections 2.7.5(b) and 2.8.1(c).
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) 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.

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 Planning Director, may make minor changes to the Project or Project Plans (“Minor Modifications”) without amending this Agreement; provided that the Planning 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 public benefits associated with the Project. The Planning 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
Planning Director denies as not qualifying for a Minor Modification based on the above findings must be processed as a Major 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 is permitted in the applicable zoning district under the Zoning Ordinance in effect on the date such modification is applied for;

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

(c) Any reduction in the number of Rental Housing Units specified in Section 2.2 by more than 25 units;

(d) Any change in the Rental Housing Units that results in the Project having less than 10% three-bedroom units, less than 20% two-bedroom units, or more than 20% studio units;

(e) Any increase in the total number of Rental Housing Units in excess of 249;

(f) Any increase in the number of parking spaces shown on the Project Plans by more than five percent (5%) above the amount 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 Downtown Specific Plan or SMMC, as applicable;

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

(h) Any variation in the design, massing, open space, location of On-Site Affordable Units, if any, 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 ARB approval; and

(i) Any change that would substantially reduce or alter the significant project features as set forth in Section 2.7 and community benefits as set forth in 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 Planning Director shall not unreasonably withhold, condition, or delay his or her approval of a request for such Minor 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 Planning 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 ARB approval, in the case of certain Major Modifications.

2.4.5 Right to Develop. Subject to the provisions of Section 3.3 below, during the Term (as defined in Section 9.2 below) of this Development 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 Section 2.5. Except for any required approvals from the ARB pursuant to Section 6.1 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 subject to the limitations specified in Section 2.2(b) above and Section 2.9.3 below:

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

(a) Above the ground floor, Residential use and amenities for the residential units, including roof decks, pools or spas, exercise rooms and recreation rooms.

(b) In the Mid-Level Residential Amenity and Accessory Use Area: Residential Amenities and Accessory Uses for Interior Space.

(c) In the commercial areas shown on the Project Plans on the ground floor and Subterranean Space, the following are Permitted Uses:
(1) General Market uses as defined in SMMC §9.51.030(B)(10)(c),

(2) Fitness/exercise center uses, including fitness centers that qualify as Commercial Entertainment and Recreation, Large- and Small-Scale Facilities uses as defined in SMMC §§9.51.030(B)(7)(d) and (e),

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

(4) Convenience Market uses as defined in §9.51.030(B)(10)(a),

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

(6) In the Subterranean Space or on the ground floor at least 50 feet from the property line along either 5th Street or Broadway, Residential Amenities and Accessory Uses for Interior Space, and

(7) Any other uses that are designated as permitted uses for the Project 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.

(d) In the Subterranean Space not designated for commercial uses, the following additional uses are Permitted Uses:

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

(2) Residential Amenities and Accessory Uses for Interior Space;

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

(4) Employee showers and lockers;

(5) Car wash and detail for Project residents and tenants;

(6) Mechanical and electrical equipment; and

(7) Storage space for Project residents and tenants.

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 Priority General Market Uses. A General Market as defined in SMMC §9.51.030(B)(10)(c) that (a) has at least 15,000 square feet of Floor Area, and (b) participates in the United States Department of Agriculture Supplemental Nutrition Assistance Program (to the extent such program exists and the eligibility requirements for participation in such program are substantially the same as the eligibility requirements as of the Effective Date of this Agreement), shall be required on the ground floor. However, if the Developer is unable to secure a lease with a tenant for a General Market use of at least 15,000 square feet of Floor Area on the ground floor within 180 days after undertaking documented good faith attempts to do so prior to the initial leasing of the anticipated ground floor General Market space, the Developer may thereafter lease the anticipated ground floor General Market space to other authorized uses as provided in Section 2.5.1(c) of this Agreement, with the approval of the Planning Director (which shall be provided in writing) in accordance with Section 2.4.2 of this Agreement. If, and only if, a General Market use is not located in the Project (regardless of the location of the General Market), then each time there is a change in tenancy or anticipated vacancy of any contiguous portions of ground floor commercial space consisting of at least 15,000 square feet of Floor Area, Developer shall, for a period of not less than sixty (60) days, again attempt to secure a lease with a tenant for a General Market use that participates in the United States Department of Agriculture Supplemental Nutrition Assistance Program.
(to the extent such program exists and the eligibility requirements for participation in such program are substantially the same as the eligibility requirements as of the Effective Date of this Agreement), for the ground floor, provided however, that if Developer is unable to secure a lease with a tenant for a General Market use within that 60 day period after undertaking documented good faith attempts to do so, Developer may thereafter lease the subject commercial space to other authorized uses as provided in Section 2.5.1(c) of this Agreement, with the approval of the Planning Director (which shall be provided in writing) in accordance with Section 2.4.2 of this Agreement.

2.5.6 Prohibited Uses. Notwithstanding the foregoing:

a) All 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.

b) Vacation rentals as defined in SMMC Section 6.20.010(c), and any successor thereto, and corporate housing as defined in SMMC Section 9.51.020(A)(2), and any successor thereto, are prohibited. These prohibitions shall be included in all residential leases in the Project and shall be acknowledged by the tenant in the lease.

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 shall be required pursuant to SMMC Section 9.30.040, or any successor thereto, except for Restaurants complying with Section 2.6.2 or General Market uses complying with Section 2.6.3. Notwithstanding the foregoing, no Conditional Use Permit shall be required for catered events for which the necessary permits then required for such events have been obtained.

2.6.2 Restaurants, Full Service with or without Outdoor Dining and Seating Areas and Restaurants, Limited-Service and Take-Out with or without Outdoor Dining and Seating Areas which offer alcoholic beverages including beer or wine incidental to meal service shall be exempt from the provisions of SMMC 9.31.040 of the Zoning Ordinance (and 9.04.10.18 of the SMMC), provided that the operator of the Restaurant (or Developer, if Developer is the applicant) agrees in writing to comply with all of the criteria and conditions in Exhibit “G-1” of this Agreement and the Developer shall cause the applicable lease to contain a clause that requires the restaurant tenant to comply with such terms and conditions.

2.6.3 General Markets which sell alcoholic beverages for off-site consumption shall be exempt from the provisions of SMMC 9.31.040 of the Zoning Ordinance (or 9.04.10.18 of the SMMC), provided that the operator of the General Market (or Developer, if Developer is the applicant) agrees in writing to comply with all of the criteria and conditions in Exhibit “G-2” of this Agreement and the Developer shall cause the applicable lease to contain a clause that requires the tenant to comply with such
terms and conditions. Designated spaces within the General Market qualifying as (a) Restaurants, Full Service with or without Outdoor Dining and Seating Areas or (b) Restaurants, Limited-Service and Take-Out with or without Outdoor Dining and Seating Areas may offer alcoholic beverages for sale and on-site consumption including beer or wine incidental to meal service and be exempt from the provisions of SMMC 9.31.040 of the Zoning Ordinance (and 9.04.10.18 of the SMMC) pursuant to Section 2.6.2 above.

2.6.4 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. Set forth below in this Section 2.7 are the significant project features to be achieved and/or developed in accordance with the terms of this Agreement.

2.7.1 Desirable Mix of Uses in the Downtown. Development in the Downtown of a desirable mix of uses, including Rental Housing with varying unit types and sizes and ground floor commercial and restaurants/cafés and the potential for a General Market, with a strong pedestrian and open space connection to the Exposition Light Rail terminus station;

2.7.2 Increased Tax Revenues. Increasing tax revenues, including sales tax, property tax, business license tax, parking tax, and utility user’s tax;

2.7.3 Aesthetic Enhancement to the Downtown Core. Development of a well-designed mixed use development;

2.7.4 Construction Employment Opportunities. New design and construction-related employment opportunities;

2.7.5 Affordable Housing Production Program. In satisfaction of its affordable housing obligations under SMMC Chapter 9.64, the City’s Affordable Housing Production Program (AHP):

(a) Developer shall transfer or dedicate that portion of the land located at 1626 Lincoln equivalent in value to the amount required per Section 5.A.2 of the City’s Affordable Housing Production Program Guidelines to a non-profit housing provider or sell such land to a non-profit housing provider at below market value so that the value of the discounted price is equivalent to the amount required per Section 5.A.2 of the City’s Affordable Housing Production Program Guidelines; or

(b) Alternatively, if a 100% Affordable Housing Project described in Section 2.8.1(a) is not completed in accordance with this Agreement despite Developer’s good faith efforts, twenty-five (25) of the units in the Project as shown on the Project Plans shall be made available to and occupied by 50% Income Households at Affordable Rents for the Life of the Project (the “Onsite AHPP Units”). These Onsite AHPP Units shall be comprised of five (5) studios, thirteen (13) one-bedrooms, five (5)
two-bedrooms, and two (2) 3-bedrooms. In this event, Developer shall not be obligated to dedicate or transfer land to a non-profit housing provider as outlined in Section 2.7.5(a) above.

2.7.6 Developer Contribution for Cultural Arts.

(a) Developer shall, prior to issuance of a full building permit for the Project, diligently pursue approval of a public art plan by the Arts Commission (or City Council on appeal) pursuant to SMMC Section 9.30.090 except as modified by this Section 2.7.6. Developer may obtain a Foundation Only Permit per Section 2.4.6 prior to approval of a public art plan.

(b) In the event, despite Developer’s good faith efforts and diligent pursuit, which have been demonstrated to the satisfaction of the Planning Director, Developer is unable to secure an approved public art plan prior to the time the City is ready to issue the full building permit for the Project, then, at the Planning Director’s sole and absolute discretion, either:

(1) Developer shall pay a cultural arts fee in the amount of 1% of the average square foot cost of construction of the development project, as set forth by resolution of the City Council, times the project’s square footage prior to issuance of the full building permit, or

(2) The Planning Director shall authorize issuance of the full building permit for the Project and require Developer to (x) continue to diligently pursue approval of a public art plan for at least 12 months beyond issuance of the full building permit for the Project and (y) provide the City with financial security (e.g. a bond) in the amount of 2% of the average square foot cost of construction of the development project, as set forth by resolution of the City Council, times the project’s square footage. In the event Developer is unable to secure an approved public art plan within 12 months of issuance of the full building permit for the Project, despite Developer’s good faith efforts and diligent pursuit, which have been demonstrated to the satisfaction of the Planning Director, Developer shall pay the cultural arts fee described in Section 2.7.6(b)(1) and City shall return Developer’s financial security for such payment described in this subsection (2) to Developer.

(c) In the event Developer secures an approved public art plan, then Developer shall obtain City verification that the approved art work has been installed prior to the certificate of occupancy for the Project pursuant to SMMC Section 9.30.160.

2.7.7 Developer Contribution for School Facilities. Developer shall provide the Santa Monica-Malibu Unified School District with fee revenue for capital improvements as required by California Gov’t Code § 65995;

2.7.8 Various standard public improvements and fees. Developer shall pay fees and construct improvements as required by the SMMC codified on the Effective Date of this Agreement.
2.8  **LUCE Community Benefits.** Set forth below in this Section 2.8 are the additional community benefits that will be provided by the Project.

2.8.1  **Affordable Housing.**

(a)  In addition to the value of the land Developer is providing pursuant to Section 2.7.5(a):

(1)  Developer has purchased or will purchase 1626 Lincoln at a cost exceeding the minimum fair market value required per Section 5.A.2 of the City’s Affordable Housing Production Program Guidelines for the land acquisition option and shall dedicate or transfer this property to a non-profit housing provider;

(2)  Developer has paid for the fees and costs related to entitling 1626 Lincoln with a 64-unit 100% Affordable Housing Project with rents and unit sizes that meet the California Tax Credit Allocation Committee (“TCAC”) Regulations and on-site community room(s) for residents (the “100% Affordable Housing Project”). The 100% Affordable Housing project will meet all of the following criteria:  (a) 64-units total, (b) 29 one-bedroom units, (c) 18 two-bedroom units, (d) 17 three-bedroom units, (e) 7 units deed-restricted for 30% AMI or lower households per TCAC, (f) 13 units deed-restricted for 40% AMI or lower households per TCAC, (g) 26 units deed-restricted for 50% AMI or lower households per TCAC, (h) 17 units deed-restricted for 60% AMI or lower households per TCAC, and (g) one manager’s unit deed restricted for 80% AMI or lower households per TCAC;

(3)  Developer shall transfer 1626 Lincoln to an entity owned in whole or in part by a non-profit housing provider to construct, own, and operate the 100% Affordable Housing Project;

(4)  Developer shall provide additional financing, at terms agreed between the Developer and non-profit housing provider, to complete construction of the 100% Affordable Housing Project;

(5)  Developer shall pay for the cost of a Transportation Allowance for the residents of the 100% Affordable Housing Project as described in this subsection (5). Developer shall pay for the cost of a monthly transportation allowance equal to at least 100 percent of the current cost of a monthly regional transit pass of the resident’s choice [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]. 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 Transportation Allowance to the residents of the 100% Affordable Housing Project on Developer’s behalf. The Resident Transportation Allowance shall be available to all residents of the 100% Affordable Housing Project listed on a lease and their immediate family living at the same address. Immediate family includes partner, spouse, children, 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. A resident accepting the Transportation Allowance shall elect not to take a parking space(s) at the 100% Affordable Housing Project and be required to execute a contract (and reaffirm such contract each time the Transportation Allowance is distributed) agreeing that said resident does not own or long term lease an automobile and will not own or long term lease an automobile for so long as they are in receipt of the Transportation Allowance. The contract shall also specify the resident’s non-single occupancy vehicle commute mode (e.g. transit, bike, walk). Children who reside full time at the 100% Affordable Housing Project shall be eligible for the Transportation Allowance if the parent that is primarily responsible for transporting the child is also eligible for the Transportation Allowance. The child’s parent or guardian shall sign an affidavit (and reaffirm such affidavit each time the Transportation Allowance is distributed) 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 Transportation Allowance;

(6) Developer shall pay for the cost of wi-fi access (or other comparable technology as long as wi-fi or other comparable technology is commercially readily available and provided by a local carrier) for the residents of the 100% Affordable Housing Project; and

(7) If the 100% Affordable Housing Project includes one or more community rooms that are not financed by TCAC, then Developer shall provide additional financing, at terms agreed between the Developer and non-profit housing provider, to cover the cost of such community room(s).

(b) The 100% Affordable Housing Project shall not be subject to Santa Monica Municipal Code Chapter 9.64 (AHPP) if it is owned, in whole or in part, and operated by a nonprofit housing provider receiving public financial assistance, or any successor thereto, and the project’s affordability obligations are secured by a regulatory agreement or recorded covenant with or approved by the City for a minimum period of fifty-five years. California Tax Credit Allocation Committee agreements are deemed approved agreements satisfying this requirement.

(c) Due to the risk that the 100% Affordable Housing Project described in subsection (a) above may not be completed despite Developer’s good faith efforts, Developer may elect or be required pursuant to this Agreement to provide on-site affordable units as provided in this subsection (c) and Section 2.7.5(b) instead of providing affordable housing through the land acquisition option described in Sections 2.7.5(a) and 2.8.1(a)-(b) above. Developer will provide City with written notice of its election to provide affordable units on-site in accordance with this subsection (c) and Section 2.7.5(b). Developer, if it elects to provide the affordable housing units required by the Development Agreement on-site as a part of the Project, shall: (1) record a Notice of Election (in the form of Exhibit “B” to Exhibit “H” described below) in the Official
Records of the County of Los Angeles, State of California and (2) provide the City with a conformed copy of the Notice of Election within two (2) business days of its recordation. In addition to the On-Site AHPP Units required in Section 2.7.5(b), Developer shall provide the following:

1. Twelve (12) additional 1-bedroom units to be available to and occupied by 50% Income Households at Affordable Rents and twenty (20) additional units to be available to and occupied by 80% Income Households at Affordable Rents for the Life of the Project as shown on the Project Plans which shall be comprised of twelve (12) 1-bedroom, five (5) 2-bedrooms, and three (3) 3-bedrooms (the “Community Benefit Units”). The twenty-five (25) On-Site AHPP Units provided pursuant to Section 2.7.5(b) and the thirty-two (32) Community Benefit Units (collectively the “On-Site Affordable Units”) shall be subject to the Affordable Housing Production Program except as expressly modified in this Agreement.

2. An agreement restricting the On-Site Affordable Units in accordance with Section 2.7.5(b) and this Section 2.8.1(c) (the “Deed Restriction”) shall be recorded concurrently with the recordation of this Agreement, but shall only become effective and be enforceable if a certificate of occupancy for the 100% Affordable Housing Project is not issued and Developer files a Notice of Election to Provide On-Site Affordable Units in the form of Exhibit “B” to Exhibit “H”. The deed restriction for the On-Site Affordable Units shall survive the Term of this Agreement and shall remain binding on Developer, its successor and assigns, and shall continue in effect for the Life of the Project. The deed restriction shall be in the form of Exhibit “H” and shall be recorded separately from and currently with this Agreement.

This Section 2.8.1(c) and Section 2.7.5(b) shall have no effect provided that the Certificate of Occupancy for the 100% Affordable Housing Project described in Section 2.8.1(a) is issued. Alternatively, Sections 2.7.5(a) and Section 2.8.1(a)-(b) shall have no effect if Developer provides the On-Site Affordable Units pursuant to Section 2.7.5(b) and this Section 2.8.1(c).

(d) If the City does not approve the 100% Affordable Housing Project at 1626 Lincoln, Developer may seek City approval of an equivalent 100% Affordable Housing Project at another location(s) within the LUCE’s Downtown District after undertaking all necessary additional environment review. Such affordable housing project would be required to comply with all of the provisions of Sections 2.8.1(a)-(b) and 2.7.5(a) except that the location of the project would not be at 1626 Lincoln;

(e) The Project may not obtain its Certificate of Occupancy and shall not offer residential units for rent until one of the following occurs:

1. The 100% Affordable Housing Project has been issued a certificate of occupancy by City and has offered residential units for rent; or

2. Developer makes an election to provide on-site affordable housing units pursuant to Section 2.8.1(c) above; or
(3) The City Council, acting in its sole and absolute discretion, approves issuance of the Project’s Certificate of Occupancy prior to the Certificate of Occupancy for the 100% Affordable Housing Project being issued. If Developer files a request in writing with the Planning Director for such hearing, the City Council will agendize the request for a hearing as soon as the City Council’s agenda schedule reasonably permits. In considering whether to approve this request, the City Council shall take into account whether:

(i) The 100% Affordable Housing Project has been subject to Excusable Delays and/or failure of non-profit housing provider to timely perform; and

(ii) Developer has provided the City with reasonable and acceptable assurance that the 100% Affordable Housing Project will be completed within a reasonable time period, including without limitation financial security to ensure completion of construction of the 100% Affordable Housing Project (e.g. performance bond).

However, these considerations shall not constrain the City Council in the exercise of its sole and absolute discretion. City Council approval, if any, shall not require an amendment to this Agreement.

2.8.2 Publicly Accessible Open Space. Developer shall construct the open space that is identified in Exhibit “L” of this Agreement (“Publicly-Accessible Open Space”). Developer shall make the Publicly-Accessible Open Space accessible to the public at all times, and shall maintain a minimum 4’6”-wide clear pedestrian zone along the Broadway project frontage and a minimum 6’0”-wide clear pedestrian zone along the 5th Street project frontage (“Clear Pedestrian Zones”). Developer may limit public access to such Publicly-Accessible Open Space between the hours of 2:00 a.m. through 5:00 a.m. The public use of the Publicly-Accessible Open Space shall be: (a) consistent with the terms and conditions of this Agreement; (b) solely for pedestrian access to and passive use of the Publicly-Accessible Open Space by the public, including walking, strolling, and similar activity; and (c) compatible with Developer’s development, use and enjoyment of the Project. No use other than passive use of the Publicly-Accessible Open Space by the public shall be permitted on the Publicly-Accessible Open Space. Prior to or concurrent with the submittal of plans for Architectural Review Board review, Developer shall submit a signage proposal, subject to the approval of the Planning Director, that clearly identifies the Publicly-Accessible Open Space location, hours of operation, and access restrictions identified in this Section 2.8.2. Prior to Certificate of Occupancy, Developer shall install such approved signage in the Project. Notwithstanding the above, Developer may:

(a) Limit public access to the Publicly-Accessible Open Space during hours other than 2:00 a.m.-5:00 a.m. for outdoor dining use as shown on the Project Plans excluding the Clear Pedestrian Zones on the Broadway and 5th Street project frontage,
(b) Limit public access to Publicly-Accessible Open Space located within six (6) feet of the building face during hours other than 2:00 a.m.-5:00 a.m. for typical outdoor merchandising by the Project’s commercial tenants so long as such merchandising does not take place within the Clear Pedestrian Zones,

(c) Utilize the Publicly-Accessible Open Space for public events and art or cultural installations that are programmed by Developer and open to the public,

(d) Utilize the Publicly-Accessible Open Space for installation of on-site art, excluding the Clear Pedestrian Zones on the Broadway and 5th Street project frontage (unless Planning Director approves use of a portion of the Clear Pedestrian Zones for on-site art pursuant to Section 2.4.2), consistent with Section 2.7.6,

(e) Subject to review by the Architectural Review Board, if necessary, place informational wayfinding kiosks and signage (including directory of commercial tenants) within the Publicly-Accessible Open Space that is for the benefit of the public; and

(f) Limit public access to the Publicly-Accessible Open Space during hours other than 2:00 a.m.-5:00 a.m. for property maintenance/repairs.

The Publicly-Accessible Open Space Areas shall remain the private property of Developer with members of the public having only a license to occupy and use the Publicly-Accessible Open Space in a manner consistent with this Section 2.8.2. Nothing in this Agreement shall give members of the public the right, without the 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 on the Publicly-Accessible Open Space, including, without limitation any of the following: (i) cooking, dispensing or preparing food; (ii) selling any item or engaging in the solicitation of money, signatures, or other goods or services; (iii) sleeping or staying overnight; (iv) using sound amplifying equipment; or (v) engaging in any illegal, dangerous, intimidating or other activity that Developer reasonably deems to be inconsistent with other uses in 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), and Developer shall retain the right to cause persons engaging in such conduct to be removed from the Project. Should any such persons refuse to leave the Property, they may be deemed by Developer to be trespassing and Developer may contact local law enforcement to request that appropriate law enforcement actions be taken. Developer shall be entitled to establish and post rules and regulations for use of the Publicly-Accessible Open Space consistent with the foregoing. Nothing in this Agreement or in the Project Plans shall be deemed to mean that the Publicly-Accessible Open Space are a public park or are subject to legal requirements applicable to a public park or other public space. Nothing in this Section 2.8.2 is intended to limit the rights of any member of the public to use the Publicly-Accessible Open Space for any purpose.
which 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 Development Agreement with respect to limitations on use of the Publicly-Accessible Open Space.

2.8.3 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® Rating System known as “LEED for Homes: Multifamily Mid-Rise, October 2010, CA Version, 2011 Update” (the “Sustainable Design Status”). Developer shall retain the services of a LEED accredited professional to consult with Developer regarding inclusion 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 Architecture Review Board review, 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 Building is likely to achieve the Sustainable Design Status;

2) Retain the services of a third party, independent individual designated to organize, lead, review, and complete the process of verifying and documenting that a building and all of its systems and assemblies are planned, designed, installed, and tested to meet the Building’s requirements (the “Commissioning Authority”); 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.

(c) 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.

(d) 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.

(e) If the Project is denied certification for the Sustainable Design Status by the US Green Building Certification Institute, 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 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.

2.8.4 Water Conservation. Developer shall achieve a Water Conservation Requirement, defined as (i) fifty percent (50%) below the 2013 CALGreen (Title 24) baseline for exterior water use and landscaping, and (ii) thirty percent (30%) below the 2013 CALGreen (Title 24) baseline for interior building water use. Water supply may include potable and non-potable water to the extent possible due to regulatory approval. The following measures shall be required for the commercial and residential component of the Project, as applicable:

(a) 1.0 gallons per flush or less tank-type toilets in the residential units and 1.1 gallons per flush, flush valve toilets in the commercial spaces;

(b) 1.75 gallons per minute or less showerheads;

(c) Individual clothes washers shall have a CEE integrated water factor of 3.2 or less;

(d) Common use clothes washers installed shall have an integrated water factor of 4.5 or less;

(e) 0.5 gallons per minute or less bathroom faucets for the residential units, unless prohibited by applicable government regulations; otherwise, lowest per minute residential lavatory faucets that are commercially available;

(f) 0.5 gallons per minutes or less bathroom faucets for the common areas and commercial areas;

(g) 1.5 gallon per minute or less kitchen sink faucets;

(h) Swimming pool volume shall be limited to 12,000 gallons and spa volume shall be limited to 3,000 gallons.

(i) All commercial tenant space and residential units shall be individually sub-metered for potable water;
(j) Landscaping shall be irrigated with greywater, stormwater, rainwater, recycled water and/or other approved non-potable water supply. Use of SMURRF water or treated wastewater will require connection to an extension of the SMURRF line from Colorado Avenue to the Project; and

(k) At least 15% of the landscape area of the Project shall be planted with edible plans unless prohibited by applicable government regulations.

2.8.5 Purple Pipe. Subject to the criteria and conditions established in this Section 2.8.5, residential toilets (in the units and residential common areas) and toilets in the P1 level associated with the community room and common employees shower/locker area will be flushed with recycled SMURRF water. One set of conditions relates to the installation of purple piping in the Building; the second set of conditions relates to the use of SMURRF water in the Purple Piping System (defined in subsection (a) below). These conditions do not abrogate or alter the Developer’s separate and independent obligations under Section 2.8.4(k) of this Agreement to use SMURRF water for landscaping irrigation in the Project.

(a) Purple pipe installation.

Subject to the following conditions precedent, during the Project’s construction, Developer shall install purple piping plumbing lines, including backflow protection devices, in the Building connecting to each residential toilet (in the units and residential common area) and the toilets in the P1 level associated with the community room and common employees shower/locker area (“Purple Piping System”). This requirement shall not apply to toilets within commercial space in the Project for grocery, restaurant, and food service uses. The conditions precedent to installation of this Purple Piping System are as follows:

(1) No later than thirty (30) days after Developer’s first application to the City for architectural review of the Project’s design, colors and materials is determined complete, the City’s Building and Safety Division shall have officially prepared a publicly-available handout generally describing the regulatory procedures for dual plumbing of a building and the other regulatory and permitting agencies having jurisdiction over the installation of the Purple Piping System in the Project. (“Purple Pipe Standards”).

(2) The Purple Pipe Standards shall expressly permit a single master water meter to measure the usage of water within the Project’s purple pipe system and shall not require individual submetering of apartment units, regardless of whether the purple piping is using potable water or SMURRF water as provided below.

(3) Unless and until the conditions set forth below for use of SMURRF water within the Project’s Purple Piping System are fully satisfied to the satisfaction of all parties, potable water shall be circulated through the Purple Piping System in lieu of SMURRF water.

(4) Applicant shall submit schematic designs for the Purple Piping Systems for preliminary discussion to the City prior to submittal of the
ARB application. City shall schedule meetings to discuss the schematic designs with the Applicant in a timely manner. City shall make good faith efforts to include the LA County Department of Public Health in these discussions.

(5) The City will diligently work to plan check the Developer’s Purple Piping System and will comply with the City’s general review timeframes for major projects (8 weeks for 1st submittal and 4 weeks for resubmittal), subject to extension at Developer’s sole and absolute discretion. If the Developer does not: (i) receive comments on the Purple Piping System from the City within the timeframes stated in the preceding sentence or (ii) at the conclusion of 2nd round of plan check comments, the City and Developer mutually determine that implementation of the Purple Piping System is infeasible then Developer shall pay the fee described in Section 2.8.5(a)(6). The term “feasible” in this section shall mean capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, technological factors, and other required governmental approvals. Notwithstanding the foregoing, if Developer does not receive comments on the Purple Piping System from the LA County Department of Public Health by conclusion of the City’s 2nd round of plan check comments, then Developer, in its sole and absolute discretion, may pay the fee described in Section 2.8.5(a)(6) and have no further obligations with respect to Section 2.8.5.

(6) If any of the conditions precedent set forth above are not fully satisfied, then in lieu of installing purple piping, Developer shall pay to the City prior to issuance of the Project’s building permit, a supplemental fee in the amount of three hundred thousand dollars ($300,000) to be used by the City for capital improvements related to water conservation.

(b) SMURRF Water Usage.

If the Purple Piping System has been installed within the Project pursuant to the provisions set forth in subsection 2.8.5(a) above, Developer shall be required to switch from using potable water in the Purple Piping System to using SMURRF water if and when the following additional conditions are fully met to the satisfaction of all parties:

(1) The City shall have obtained all necessary regulatory approvals fully authorizing SMURRF water for indoor toilet use in multi-family residential structures and in mixed-use buildings such as the Project (which includes both residential apartments and commercial uses including grocery stores and restaurants, as well as all other uses authorized by the Development Agreement) consistent with the Purple Piping System installed within the Project, with said approval(s) being final and binding and the time for legal challenge of such final approval(s) having expired or, in the event a legal challenge has been timely initiated, the legal challenge shall have been fully and finally resolved in favor of the City. The City shall provide Developer with copies of all such final determinations.

(2) The City shall have provided Developer with timely written or electronic notice of all public hearings, if any, and public review periods, if
any, pertaining to the City’s efforts to obtain approval for the use of SMURRF water for indoor toilet use in multi-family residential structures and in mixed-use buildings such as the Project as set forth in subsection 2.8.5(b)(1) above.

(3) The City shall have promptly provided Developer with written or electronic copies of all reports submitted to the permitting agency pertaining to the use of SMURRF water for indoor toilet use in multi-family residential structures and in mixed-use buildings such as the Project, including but not limited to a written engineering report consistent with the provisions of Title 22 of the California Code of Regulations generally applicable to dual-plumbed structures. The City shall further have provided Developer with written or electronic copies of all responses by any public agency, member of the general public, or interested party commenting on any such submission.

(4) SMURRF water shall be sold at an equal or lower cost than the City’s potable water.

(5) The City shall have completed a six-month pilot program using SMURRF water in multi-family residential toilets to successfully “demonstrate that conversion to the use of recycled water in residential buildings for toilet and urinal flushing does not pose a threat to public health and safety.”

(6) This City shall have partnered with another multi-family residential project to install purple pipe for residential toilets, which have access to SMURRF water.

Upon satisfaction of the foregoing conditions precedent and provided that no physical modifications are then legally required to be made to the existing Purple Piping System already then installed in the Project and further provided that no ancillary treatment of the SMURRF water is required to be performed by Developer, the City may give the Developer one hundred and twenty (120) days written notice to convert the Project’s existing Purple Piping System to use of SMURRF water for residential toilets (in the units and residential common areas) and toilets in the P1 level associated with the community room and common employee shower/locker area instead of potable water. If any physical modifications to the Project’s then-existing Purple Piping System are legally required in order to convert from potable water use to SMURRF water use, then Developer shall only be required to convert the Building’s use of potable water in the purple piping if the physical changes are minor in nature and can be accomplished without material disruption to the residential and commercial tenants of the Project. If major changes would be legally required to the Purple Piping System installed within the Project in order to accommodate the use of SMURRF water for the residential and common area commercial toilets, including if such changes would materially disrupt existing residential or commercial tenancies in the Building, then Developer shall have no obligation to perform the work or convert to the use of SMURRF water for toilet flushing and Developer may thereafter continue using potable water in the purple piping system without change.
Beyond the initial extension of the SMURRF line from Colorado to Broadway as mandated by Section 2.8.20 of this Agreement, Developer shall not be required to make any further improvements to the SMURRF system or infrastructure.

2.8.6 Energy Conservation.

(a) Developer shall install photovoltaic panels on the roof deck of the Project as shown on the Project Plans. The photovoltaic panels shall have the capacity to generate at least 100 kilowatts (the amount of energy determined to be sufficient to power the Project’s common areas excluding the energy required to power any electric vehicle charging stations, elevators, and water pumps, if any related to the purple pipe required by Section 2.8.5). With plan check submittal, Developer shall submit an updated energy study to the Planning Director to confirm that 100 kilowatts is sufficient to power the Project’s common areas.

(b) The swimming pool shall be heated with 100% renewable energy sources.

(c) The Project shall be designed to use and shall achieve 15% less energy than required by the California Energy Code.

2.8.7 Transportation Demand Management Plan ("TDM Plan"). Developer shall implement and maintain the following Transportation Demand Management Plan ("TDM Plan") commencing with the issuance of a Certificate of Occupancy:

(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 Section 2.8.7(d) must be shown on the construction drawings and be approved by the City. The TDM Plan shall result in the Developer achieving the AVR Target 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 units.

   ii. Monitor the TDM Plan

   iii. Report annually in a manner required by this Agreement
(4) Annual Budget to implement the TDM Plan

(5) Duties, responsibilities, and qualifications of the Project Transportation Coordinator

(6) TDM Plan program measures as required by this Agreement

(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. 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 Section 2.8.7(e)(2)(v) except that zero emission vehicles shall be counted as vehicles.

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, as defined by 2.8.7(e)(1)(iii) below, who is responsible for the preparation, implementation, and monitoring of the TDM Plan.

6. Effect of the TDM Plan on on-site transportation choice, parking availability, and transit ridership.

7. Updated implementation strategy.

c) **Transportation Demand Management Ordinance.** Commercial tenants in the Project shall be subject to SMMC Chapter 9.53 (the Transportation Demand Management Ordinance), or any successor thereto. In the case of any inconsistency between this Agreement and the Transportation Demand Management Ordinance, the more restrictive requirements shall apply.

d) **Physical Elements**
(1) **Measures Applicable to Entire Project (Commercial and Residential Elements):**

   i. **Transportation Information Center.** The Developer shall maintain, for the life of the Project, a Transportation Information Center ("TIC") in a location to be approved by the Planning Director, such as the elevator lobby(ies). The location may be relocated from time to time thereafter by the Developer. The TIC shall include information for employees, visitors and residents about:

   A. Local public transit services, including current maps, bus lines, light rail lines, fare information, schedules for public transit routes serving the Project, telephone numbers and website links for referrals on transportation information, including numbers for the regional ridesharing agency, vanpool providers, ridematching and local transit operators, ridesharing promotional material supplied by commuter-oriented organizations and shuttles; and

   B. Bicycle facilities, including routes, rental and sales locations, on-site bicycle facilities, bicycle safety information and the shower facility for the commercial tenants of the Project.

   C. Facilities available for carpoolers, vanpoolers, bicyclists, transit riders and pedestrians at the site, including locations of EV charging stations, and car share and bike share locations. Walking maps and information about local services, restaurants, movie theaters and recreational activities within walking distance of the Project shall also be made available. Such transportation information shall be provided on-site, regardless of whether also provided on a website.

   ii. **Bicycle Amenities.** A bicycle tool and repair stand shall be provided on-site for residents as shown on the Project Plans.

   iii. **Carshare Parking Spaces.** Developer shall offer a minimum of two (2) parking spaces free of charge to a carsharing service, if such a service is available from a third party provider on terms mutually and reasonably acceptable to such third party provider and the Developer (including reasonable indemnification and reasonable insurance from the car share provider). Any car share service operating at the Project will be available to customers of the particular car share provider. Required parking spaces may be used for carshare vehicles. The carshare parking spaces shall be located on the P1 or P2 levels, as identified on the Project Plans.

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

   i. **Employee Secure Bicycle Storage.** Developer shall provide secure bicycle parking for commercial employees as shown on the Project Plans but no less 64 spaces. For the purpose of this Section, secure bicycle parking shall mean an enclosed bicycle locker; a fenced, covered, locked or guarded bicycle storage area with bike racks within; or a rack or stand inside a building that is within view of an attendant or security guard or visible from employee work areas. At
least one electrical outlet shall be available in the long-term bicycle parking area for the use of electrical assisted bicycle charging. Prior to ARB approval, the location and type of secure bicycle storage shall be submitted for review and approval by the City. 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.

(ii)  **Employee Showers and Locker Facilities.** Developer shall provide two (2) unisex shower 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 long-term 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 distributed with priority given to those who utilize active commutes.

(iii)  **Short-Term Bicycle Parking.** Developer shall provide bicycle parking for short-term public use as shown on the Project Plans but no less than one (1) space per 1,000 square feet of commercial Floor Area. No more than 50% of the short-term bicycle parking may be provided in a vertical or hanging rack. Prior to ARB approval, the location and type of bike racks to be provided shall be submitted for review and approval by the City. The short-term bicycle parking shall meet the following standard:

- For each bicycle parking space required 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.

(3)  **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 long-term bicycle space per residential bedroom and/or studio. For the purposes of this Section, secure bicycle parking shall mean an enclosed bicycle locker; a fenced, covered, locked or guarded bicycle storage area with bike racks within; or a rack or stand inside a building that is within view of an attendant or security guard or visible from employee work areas. At least one electrical outlet shall be available in the long-term bicycle parking area for the use of electrical assisted bicycle charging. Prior to ARB approval, the location and type of secure bicycle storage shall be submitted for review and approval by the City. 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 long-term spaces required by Section 2.8.7(d)(3)(i). No
more than 50% of the short-term bicycle parking may be provided in a vertical or hanging rack. Prior to ARB approval, the location and type of bike racks to be provided shall be submitted for review and approval by the City. The short-term bicycle parking spaces shall meet the following standard:

- For each bicycle parking space required 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 the Entire Project

(i) **Parking Pricing.** Parking pricing may be established at the discretion of the Developer but shall be noncompetitive with the price for comparable transit fares. All parking spaces shall be priced at an hourly or daily rate as follows:

A. On-site employees or residents (Reserved Parking): A minimum daily rate of $8 shall be charged, with the minimum hourly rate not more than 1/8th of the daily rate.

B. Unreserved Parking (i.e. customers, visitors, and employees who choose not to obtain a reserved parking space): A minimum daily and hourly rate of at least 150% more than the rate charged to on-site employees and residents for reserved parking.

If parking spaces are leased on a monthly basis, the monthly rate shall not be less than twenty (20) times the minimum daily rate. The rate charged to local employees may vary significantly from those of park-and-ride transit users in order to discourage AM and PM peak period commute park and ride transit use. A variable parking rate for off-peak hours may also be introduced. The City shall ensure compliance with this provision as part of the annual compliance report required in Article 10 of this Agreement.

(ii) **Marketing.** Developer shall promote ridesharing quarterly through newsletters or other communications to tenants, both residential and commercial. Furthermore, Developer shall hold at least one rideshare event annually for residential tenants and commercial employees of the Project, which may be provided in conjunction with the contemplated TMA.

(iii) **Project Transportation Coordinator.** Developer shall designate a Project Transportation Coordinator (the “PTC”) to manage all aspects of the TDM Plan and participate in City-sponsored workshops and information
roundtables. The PTC shall assist the commercial and residential tenants which shall include new employee orientation and distribution/explanation of the transportation welcome packages for residents. The PTC shall be responsible for making information materials available on options for alternative transportation modes and opportunities, particularly programs that involve commuter subsidies such as parking cash out and vanpool subsidies. In addition, transit fare media and day/month passes will be made available through the PTC to employees, visitors, and residents during typical business hours. In the event that the PTC is changed, Developer shall provide written notification to the City of the contact information for the new PTC for the Project within 15 days of such change. Transportation Coordinator services may be provided through the TMA contemplated in Section 2.8.7(f) below. The PTC shall be available to assist the non-profit housing developer of 1626 Lincoln, at no charge to the non-profit housing developer, with managing the 1626 Lincoln Transportation Demand Management Plan as needed.

(iv) PM Peak Hour Trip Cap.

A. PM Peak Hour Trip Generation Monitoring. PM peak hour trip generation shall be monitored annually by a third party consultant selected by the Developer and this consultant shall prepare a report (“PM Peak Hour Trip Generation Report”) on this monitoring within 30 days of the monitoring. The report shall compare the monitored PM peak hour trip generation to the PM peak hour trip generation based on the EIR for the Project when fully completed: 459 trips (the “Trip Generation Limit”). To facilitate this monitoring and in accordance with this Section 2.8.7(e)(1)(iv), Developer shall implement a key card entry and exit system for on-site parking that will differentiate between: residential; commercial; on-site visitors and customers; and off-site users.

PM peak trip generation shall be measured by counting the number of parking users that use an on-site residential or commercial key card to enter or exit the garage during the PM peak period. Other on-site users (i.e. those who pull a ticket upon entry) who enter or exit the garage during the PM peak period shall also be included in the measurement of PM peak period trip generation. In an effort to encourage shared and/or unreserved parking, any exclusively off-site users entering or exiting during the PM peak period will not be counted toward the Project’s PM peak period trip generation. Vehicles entering or exiting that are part of a car-sharing service or van pool will also not be counted towards PM peak period trip generation counts.

At Developer’s sole and absolute discretion, Developer may conduct a survey of all PM peak period trips to determine the number of trips that were the result of a user who parked in the Project’s garage, visited a use in the Project, and also went off-site. The methodology for the survey shall be submitted for review and approval by the Planning Director. Each user who indicates that he/she went off-site in addition to visiting a Project use shall be considered a “Shared Trip.” In addition, any parker who pulls a ticket upon entry (i.e. does not have a key card), is parked in the garage for longer than three (3) hours, and is not an exclusively off-site user, shall be deemed a Shared Trip. Each Shared Trip shall result in a credit of one-half PM peak period trip which shall be subtracted from the total PM peak period trip generation for that day.
PM peak period trip generation shall be measured over the PM peak period for a consecutive two day period (excluding weekends, holidays as specified in Section 1.29, ‘Rideshare Week’, or other ‘event’ weeks designed to reduce vehicle trips such as Bicycle Week, Walk to Work Week, Transit Week, etc.). The average of the PM peak hour trips on each of the two days shall represent the Project’s measured PM peak hour trip generation. As part of the annual compliance report required by Article 10 of this Agreement, Developer shall by October 1 of each year commencing two years after receipt of Certificate of Occupancy for the Project deliver the PM Peak Hour Trip Generation Report to the City.

B. Remedy for Exceeding PM Peak Hour Trip Generation Limit. If the Project’s PM peak hour trip generation, as shown in the annual report, exceeds the applicable Trip Generation Limit, Developer shall submit a list of changes to the TDM Plan to the Planning Director for approval within 60 days of the submission of the annual report, with such approval not to be unreasonably withheld, conditioned or delayed. Upon approval of the requested changes, Developer shall have 30 days to implement the approved measures. Developer shall submit a follow-up monitoring report within 120 days following the implementation of the new measures.

If the Project’s PM peak hour trip generation, as measured in the follow-up report, continues to exceed the Trip Generation Limit, then Developer shall pay to the City for each business day of non-compliance (inclusive of the business days during the days of non-compliance following implementation of the approved changes) a fine calculated by multiplying the number of PM peak hour trips exceeding the Trip Generation Limit by a penalty of $5.00 plus the average daily parking rate charged to all on-site users of the garage over the two-day monitoring period [Number of PM peak hour trips exceeding Trip Generation Limit x ($5.00 + average daily parking rate)]. The average daily parking rate shall be calculated by dividing the total parking revenue collected from on-site users (including all pro-rated on-site monthly parking users and excluding exclusively off-site users) on the monitoring days by the total number of vehicles entering and exiting the garage (excluding exclusively off-site users).

The fine shall be used to fund the Transportation Demand Management Organization (TMO) established for the Downtown area. The fine shall cease upon Developer submitting two monitoring reports that are a minimum of 30 days apart that demonstrate PM peak hour trip generation at or below the Trip Generation Limit. Developer shall not be required to pay the fine for any business days following submittal of the first monitoring report demonstrating compliance provided the second follow-up report also demonstrates compliance with the applicable Trip Generation Limit. Failure to meet the applicable Trip Generation Limit shall not constitute a default under this Agreement so long as Developer is working cooperatively with the City to achieve compliance; provided, however, that failure to pay any fine that might be required under this Section 2.8.7(e)(1)(iv)(B) shall constitute a monetary Breach under Article 11 below.

C. Timely Notification to City for Exceeding PM Peak Hour Trip Generation Limit. If monitoring of PM peak hour trip generation is completed and a report prepared more than 90 days prior to October 1 and such report demonstrates that the Project’s PM peak hour trip generation exceeds the
applicable Trip Generation Limit, Developer shall notify the City in writing within 10 days of receipt of such report. Thereafter, Developer shall immediately follow all steps to remedy the Project exceeding the Trip Generation Limit as described in Section 2.8.7(e)(1)(iv)(B) and shall be subject to the fines specified therein for non-compliance.

(2) Measures Applicable to Project’s Commercial Component Only:

(i) 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 in accordance with Section 2.8.7(e)(1)(i). Developer may, subject to the Planning 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. Tenants have the right of first refusal to parking spaces built for their space.

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. New leaseholders shall have the opportunity to lease or purchase parking spaces built for their unit or use upon occupancy of the commercial or residential use.

(ii) AVR Target. For employees of the commercial tenants, Developer shall achieve an average vehicle ridership ("AVR") of 2.2 within two years of Certificate of Occupancy. The 2.2 AVR shall continue to be achieved and maintained thereafter.

(iii) Remedy for Exceeding AVR Target. If the AVR Target has not been achieved then the Developer shall pay the City the Compliance Penalty required by Section 2.8.7(h) of this Agreement and submit modifications to the TDM Plan that are designed to achieve the AVR Target by the date of the next annual report to the City. Developer shall submit modifications to the TDM Plan to the City for approval within 60 days of the submission of the annual report showing non-compliance, with such approval not be unreasonably withheld, conditioned or delayed. In addition, during this 60-day period, the City 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 upon approval of the TDM Plan modifications.

(iv) Failure to Achieve AVR Not a Default. Failure to achieve the AVR performance standard as provided in this Agreement will not constitute a Default within the meaning of the Agreement so long as Developer is working cooperatively with the City and taking all feasible steps to achieve compliance as required by this Agreement. The term “feasible” shall mean capable of being
accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, and technological factors.

(v) **AVR Calculation.** AVR calculations and documentation for the 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), except that zero emission vehicles shall be counted as a vehicle arriving at the worksite.

(vi) **Parking Cash Out.** Developer shall require all commercial tenants to meet the requirements of California Health and Safety Code Section 43845 (Parking Cash Out Program) by offering a parking cash-out if an employee eligible under such Section chooses not to accept a subsidized parking space; however, in no case shall such parking cash-out be less than the monthly cost of the subsidy to employees of a parking pass. Eligible employees may choose to have a portion of their parking cash-out applied towards the purchase of a monthly transit pass at their discretion and receive the remainder in cash. Where employees are also residents of the Project, only the higher of the parking cash-out/transportation allowance identified in this Section 2.8.7(e)(2)(vi) and Section 2.8.7(e)(2)(vii), as applicable, or the Transportation Allowance identified in Section 2.8.7(e)(3)(iii) shall be offered to the resident/employee.

Developer shall write the requirements of the Parking Cash Out into any leases executed with commercial tenants of the Project. Commercial tenants of the project which would otherwise not be subject to California Health and Safety Code Section 43485 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 all necessary enforcement actions to bring such tenant into compliance with this lease provision.

(vii) **Transportation Allowance.** Developer must provide a transportation allowance equal to at least 100 percent of the current cost of a monthly regional transit pass of employee’s choice (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). 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. An employee accepting the Transportation Allowance shall be required to execute a contract agreeing that said employee will not utilize a single occupancy vehicle for the majority (at least 51%) of their daily commute distance more than five business days per month. The contract shall also specify the employee’s alternative commute mode (e.g., transit, bike, walk). The employee must demonstrate compliance as reasonably required by the Developer. Where employees are also residents of the Project, only the higher of the parking cash-out/transportation allowance identified in Section 2.8.7(e)(2)(vi) and this Section 2.8.7(e)(2)(vii), as applicable, or the Transportation Allowance identified in Section 2.8.7(e)(3)(iii) shall be offered to the resident/employee.
Developer shall write the requirements of the Transportation Allowance into any leases executed with commercial tenants of the Project. Failure of such tenant to comply with the 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 all necessary enforcement actions to bring such tenant into compliance with this lease provision. If tenant fails to adhere to the requirements of the Transportation Allowance, Developer shall be required to do so.

(viii) **Employee Flex-Time Schedule.** The Developer shall require in all commercial leases it executes as landlord for space within the Project that, when commercially feasible, employers shall permit employees within the Project to adjust their work hours in order to accommodate public transit schedules, rideshare arrangements, or off-peak hour commuting.

(ix) **Employee Guaranteed Return Trip.** The Developer shall require in all leases it executes as landlord for space within the Project that tenants provide 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. Developer, or Developer’s successor in interest, shall be responsible for ensuring this obligation is satisfied. The employee guaranteed return trip may be provided through the TMA contemplated in this Agreement.

(x) **On-site Shared Bikes.** Developer shall provide free on-site shared bicycles intended for employee use during the work day (e.g. Bike@Work Program). This shall be optional if citywide bikeshare is available within a 2-block radius of the project site.

(xi) **Free Bike Valet.** Developer shall provide bike valet, free of charge, during all automobile valet operating hours. This requirement shall only apply if automobile valet is provided by a commercial tenant.

(xii) **Employee Incentives Living Close to Project.** Developer shall provide incentives for employees that live within one-half mile of the Project. Details of the incentives shall be specified in the TDM Plan.

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

(xiv) **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, hospitality, and medical office. 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

3) Measures Applicable to Project’s Residential Component Only:

   (i) Unbundled Parking. Developer shall not require residents of the rental housing units to lease parking spaces. Any parking leased by such tenants shall be a separate line item on the lease and priced in accordance with Section 2.8.7(e)(1)(i). Developer may, subject to the Planning Director’s approval, reconfigure the parking spaces and operations from time-to-time in order to facilitate unbundling of parking.

For On-Site Affordable Units, if any, the tenant may choose to either receive one parking space, which shall be included in the unit’s affordable rent level, or receive a rent discount equivalent to half the amount charged for monthly lease of a parking space for the Market-Rate units, in exchange for not receiving a parking space. Tenants of On-Site Affordable Units shall not be permitted to sublease their parking spaces.

Residential tenants have the right of first refusal to 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 leased to other on-site tenants or to off-site users on a month-to-month basis.

   (ii) Transportation Welcome Package for Residents. The Developer shall provide new residents of the rental housing units of the Project with a Transportation Welcome Package (TWP). One TWP shall be provided to each unit upon the commencement of a new tenancy. The TWP will inform residents about the physical and programmatic elements of the TDM Plan and explain how to access the features of the Plan. In addition, the TWP will notify new residents of the rental housing units that if the new resident is not electing to obtain the Resident Transportation Allowance described in Section 2.8.7(e)(3)(iii) below, Developer will subsidize 25 percent of the current cost of a monthly regional transit pass of the resident’s choice (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 the first three months of the tenant's residency.

   (iii) Resident Transportation Allowance. Developer shall offer a monthly transportation allowance equal to at least 100 percent of the current cost of a monthly regional transit pass of the resident’s choice (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). 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 Resident Transportation Allowance shall be offered to all residents listed on a lease and their immediate family living at the same address. Immediate family includes partner, spouse, children, 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. A resident accepting the Transportation Allowance shall elect not to lease parking spaces at the Project and be required to execute a contract agreeing that said resident does not own or long term lease an automobile and will not own or long term lease an automobile for so long as they are in receipt of the Transportation Allowance. The contract shall also specify the resident’s non-single occupancy vehicle commute mode (e.g. transit, bike, walk). Children who reside full time at the Building shall be eligible for the Transportation Allowance if the parent that is primarily responsible for transporting the child is also eligible for the Transportation Allowance. The child’s parent or guardian shall sign an affidavit (and reaffirm such affidavit each time the Transportation Allowance is distributed) stating that the child permanently resides at the building on a full time basis, and the child is primarily transported by a parent or guardian on the lease that is eligible for the Transportation Allowance.

(iv) **On-Site Shared Bikes.** Developer shall provide free on-site shared bicycles intended for resident and guest use. This shall be optional if citywide bikeshare is available within a 2-block radius of the project site.

(v) **Local Preference Marketing Plan.** Prior to issuance of a Certificate of Occupancy, the Developer shall prepare and implement a marketing and outreach program for the rental of the Rental Housing Units, except for any On-Site Affordable Units, which program shall be subject to the prior written approval of the Planning Director, which approval shall not be unreasonably withheld, conditioned or delayed. This marketing and outreach program shall target (i) employees of the City’s police and fire departments, (ii) employees of local hospitals and healthcare providers, (iii) employees of the Santa Monica Malibu Unified School District, (iv) employees of businesses located within a one-half mile radius of the Property, and (v) employees of businesses outside the one-half mile radius but within the City of Santa Monica. For purposes of this Section 2.8.7(e)(3)(v), employees shall also include households with persons who are job training in Santa Monica or persons who were previously in the Santa Monica workforce but are now receiving unemployment, worker’s compensation, vocational rehabilitation benefits, disability benefits or retirement benefits. Developer shall market the Rental Housing Units, except for any On-Site Affordable Units, exclusively to the foregoing employee categories for a period of 90 days when the units are initially offered for rent. In leasing units, the Developer shall give priority to applicants in the foregoing categories, provided that all such applicants meet generally applicable leasing qualifications and criteria imposed by such Developer. Nothing in this Agreement shall require that any units in the Project be occupied by such persons.

(f) **Transportation Management Association.** Developer shall be required to actively participate in the establishment of a Transportation Management Association (“TMA”) that may be defined by the City, including payment of annual dues at a level so that trip reduction services are provided as set forth by the TMA, attendance
at organizational meetings, providing travel and parking demand data to the TMA, and making available information to project tenants relative to the services provided by the TMA. Developer shall require in all leases it executes as landlord for commercial space within the Project that commercial building tenants be required to participate in the TMA and that all subleases contain this same provision. At the discretion of Developer, to be approved by the Planning Director through a Minor Modification, some or all of the services required by this Section 2.8.7 may be provided through the TMA.

(g) Changes to TDM Plan. Subject to approval by the Planning Director, the Developer may modify the TDM Plan provided the TDM Plan, as modified, can be demonstrated as equal or superior in its effectiveness at mitigating the traffic-generating effects of this Project. If the annual monitoring report shows that the AVR has not been achieved for the Project then Developer shall submit modifications to the TDM Plan that are likely to achieve the AVR by the date of the next annual report. Such modifications to the TDM Plan shall be submitted to the Planning Director for approval within 60 days of submission of the annual report, with such approval not be unreasonably withheld, conditioned, or delayed. In addition, during this 60-day period, the Planning Director may recommend modifications to the TDM Plan. Any of the modifications to the TDM Plan proposed by Developer and approved by the Planning Director (or proposed by the Planning Department and agreed to by the Developer) to help the Project achieve the AVR shall be implemented within 30 days upon approval of the TDM Plan modifications.

(h) Compliance Penalty if AVR Target is Not Achieved. If the Project does not achieve the AVR Target, Developer shall pay the City a penalty (“Compliance Penalty”) to offset the AVR Target deficiency in order to achieve the AVR Target/work day. The Compliance Penalty shall be paid at the time that the TDM Annual Status Report is submitted to the City and shall be based on the following calculation:

Step 1:
\[
\text{Total Number of Employee Trips Per Week} \quad \text{Actual AVR} \quad \frac{\text{Total Number of Vehicle Trips}}{\text{Produced by Project Per Week}}
\]

Step 2:
\[
\frac{\text{Total Number of Employee Trips Per Week}}{\text{AVR Target}} = \frac{\text{Total Number of Vehicle Trips Allowed}}{\text{to Achieve Target AVR Per Week}}
\]

Step 3:
\[
\text{Total Number of Produced Trips} - \text{Total Number of Allowable Trips} = \frac{\text{Vehicle Trip Reduction Necessary to Achieve AVR Target}}{5} = \text{Daily Vehicle Reduction Needed to Achieve AVR Target}
\]

Step 4:
Compliance Penalty = Compliance Penalty Rate x Daily Vehicle Reduction Needed to Achieve AVR Target x work days per year (based on 22 work days per month)

The Compliance Penalty Rate shall be five dollars ($5.00) plus the average daily parking rate ($5.00 + average daily parking rate). The average daily parking rate shall be calculated by dividing the total parking revenue collected from on-site users (including
all pro-rated on-site monthly parking users and excluding exclusively off-site users) during the employee survey period by the total number of vehicles entering and exiting the garage. The Compliance Penalty shall be imposed each year that the Project does not achieve the AVR Target.

2.8.8 Electric Vehicle Parking: Developer shall in the parking garage provide panel capacity and conduit stubs for installation of electrical outlets designed to allow the simultaneous charging of a minimum number of 208/240 V 40 amp, grounded AC outlets of at least ten percent (10%) of the total parking spaces as shown on the Project Plans (the “EV Ready Parking Spaces”). At least three of the EV Ready Parking Spaces shall be Unreserved Spaces per Section 2.8.10 below, and Developer shall, prior to issuance of a final Certificate of Occupancy, install electric charging stations in these three EV Ready Parking Spaces. If the Planning Director makes a determination, based on demonstrated demand by drivers at the Project, that some or all of the additional EV Ready Parking Spaces should be equipped with electric vehicle charging stations, then Developer shall install such electric vehicle charging stations. Such electric vehicle charging service shall be made available to the public and Project tenants at no charge and the cost of leasing an EV Ready Parking Space equipped with electric vehicle charging stations in the Project shall be the same as the cost of leasing a regular non-tandem single-car parking space in the Project. All parking spaces with electric charging stations may be utilized without regard to vehicle type at Developer’s sole and absolute discretion. Notwithstanding the foregoing, to the extent permissible by law, Developer shall, within sixty days of Developer’s receipt of a request from a tenant and to the extent such spaces are not already leased to tenants who own or long-term (2 years or more) lease electric vehicles, make any EV Ready Parking Spaces equipped with electric charging stations available to tenants who then own or long-term (2 years or more) lease an electric vehicle on a first-come first-served basis. Developer shall require any tenant leasing EV Ready Parking Spaces equipped with electric vehicle infrastructure (be it panel capacity and conduit stubs for installation of electrical outlets or electrical vehicle charging stations) to enter into a contract acknowledging and agreeing that:

(a) Tenants of the Project who own or long-term lease an electric vehicle have a superior right to lease such EV spaces on a first-come first-served basis; and

(b) If such tenant, as the current lessee of the EV space, does not then own or long-term lease an electric vehicle, that tenant’s lease of the EV space may be terminated upon 30-days’ notice and its parking rights relocated to another available automobile parking space in the Project of Developer’s choosing (irrespective of whether the location of such replacement parking space is less convenient than the EV space).

If the Planning Director makes a determination, based on demonstrated demand by drivers at the Project, that some or all of the EV Ready Parking Spaces already equipped with electric vehicle charging stations are not needed, then Developer shall be allowed to remove such electric vehicle charging stations.
2.8.9 **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 Planning 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 Planning Director’s review and approval.

2.8.10 **Unreserved Commercial Parking Spaces.**

(a) At all times during the operation of the Project, Developer shall cause at least 145 of the parking spaces (“Unreserved Spaces”) provided in the Project to be shared among commercial customers, all guests for residential units, any commercial tenants and their employees, and any third parties.

(b) Commencing two years after receipt of Certificate of Occupancy for the Project, Developer shall retain a third party consultant selected by the Developer to prepare a written report documenting the peak parking demand for the commercial parking spaces. The City shall review and approve the scope and methodology for the study. After the report is completed, the Developer shall provide such report to the City. Concurrent with submittal of such report, Developer shall provide the City with a letter documenting the number of commercial parking spaces Developer is contractually obligated to provide to the then-existing commercial tenants. The Planning Director shall review such information and the PM Peak Hour Trip Generation Report to determine whether any more of the commercial parking spaces, up to a maximum of 55 additional commercial parking spaces, should become Unreserved Spaces. The Planning Director may not require Developer to provide additional Unreserved Spaces if (i) the parking study demonstrates that there is insufficient parking defined as 90% occupancy of parking to serve Project users or (ii) Developer is contractually obligated to provide such parking spaces to one or more of the Project’s then-existing commercial tenants.

(c) The Unreserved Spaces shall be shared on a first-come, first-served basis. The Unreserved Spaces shall be offered at market rates in accordance with Section 2.8.7(e)(1)(i) of this Agreement. This Section 2.8.10 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 these terms and conditions shall be recorded separately from and concurrently with this Agreement.

2.8.11 **Community Meeting Space.** Developer shall make community meeting space of at least 400 square feet (“Community Meeting Space”) available to the public not less than four (4) times per month for the Life of the Project. Prior to issuance of Certificate of Occupancy, written rental facility 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. Such rental facility guidelines regarding public availability may be amended by Developer from time to time thereafter, subject to the Planning Director’s review and approval as a Minor Modification. 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. An on-site public restroom shall be made available at all times that the Community Meeting Space is being rented. This Section 2.8.11 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 these terms and conditions shall be recorded separately from and concurrently with this Agreement.

2.8.12 Bioswale. Developer shall design and install a bioswale and infiltration system in the public right-of-way adjacent to the Project site in accordance with the following criteria:

(a) One or more landscape surface capture points shall be located in the public right-of-way adjacent to the Project Site on the street side of the curb along the south side of Broadway and east side of 5th Street. The exact dimensions and placement of the surface collection points in the public right-of-way shall be subject to the City’s reasonable satisfaction. At any time after the Effective Date of this Agreement, Developer may submit a written request to the Planning Director requesting that City identify the specific location of the capture points desired by the City. City shall respond in writing within 60 days specifying the locations of the surface capture points. Alternatively, the City may notify Developer that City prefers Developer to pay the in-lieu fee specified in Section 2.8.12(i).

(b) The system will accommodate a minimum capacity of 1720 cubic feet for percolation beneath the center of 5th Street.

(c) Prior to or concurrent with submittal of the plan check application, Developer shall perform initial soil and percolation tests related to the feasibility and effectiveness of such a system and share the test results with the City. City shall consent to the necessary testing in the public right-of-way.

(d) Prior to or concurrent with submittal of the plan check application for the Project, Developer shall submit preliminary design of the bioswale and infiltration system for review by the City. The City shall not charge a plan check application fee related to the bioswale and infiltration system.

(e) Prior to issuance of a building permit, Developer shall have obtained plan check approval from the City for final design of the bioswale and infiltration system.

(f) Developer shall obtain a Use of Public Property Permit prior to initiating any construction of the system in the public right-of-way. All filing, processing and issuance fees relating to the foregoing permit shall be waived by the City.

(g) Prior to issuance of a Certificate of Occupancy, Developer shall have completed its installation of the bioswale and infiltration system in accordance with the approved design, obtained approved “as built” drawings from the City, and submitted such drawings to the City.
Following Developer’s completion of installation in accordance with the approved plans, all future maintenance and repair of the bioswale and infiltration system, including the above ground vegetation and landscaping, shall be the responsibility of the City.

If the City or Developer’s civil engineer of record finds, or if the soil and percolation tests demonstrate that, it is impractical to install a bioswale and infiltration system, then the City shall issue a building permit for the Project (or Certificate of Occupancy for the Project, if applicable) upon the Developer paying an in lieu fee of two hundred and five thousand dollars ($205,000) that would be used by the City to design and construct a similar system elsewhere in the City.

2.8.13 Enhanced Transportation Impact Fee. Developer shall pay to the City, prior to obtaining a building permit for the Project, the sum of one million and six hundred and fifty thousand dollars ($1,650,000.00) to be used by the City for transportation infrastructure improvements.

2.8.14 Enhanced Parks and Recreation Fee. Developer shall pay to the City, prior to obtaining a building permit for the Project, the sum of one million and seven hundred thousand dollars ($1,700,000.00) to be used by the City for off-site parks and recreation.

2.8.15 Enhanced Affordable Housing Commercial Linkage Fee. Prior to issuance of a building permit for the Project, Developer shall pay the City an Affordable Housing Commercial Linkage Fee of three hundred and twenty-five thousand dollars ($325,000) for affordable housing.

2.8.16 Developer Contribution for Early Childhood Initiatives and Resident Services. Prior to issuance of the Certificate of Occupancy for the Project, Developer shall make a contribution to the City in the amount of one million and one hundred thousand dollars ($1,100,000.00). The City shall utilize this contribution to support early childhood initiatives and resident services including but not limited to infant, toddler and pre-school tuition subsidies; family services, 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 and resident services 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 1626 Lincoln or agencies who will serve residents of the 1626 Lincoln project.

2.8.17 Historic Preservation. Prior to issuance of a building permit for the Project, Developer shall pay to the City the sum of one hundred and fifty thousand dollars ($150,000) to be used for historic preservation. The City shall deposit such monies into a separate restricted account to be used exclusively for historic preservation programs in the City. These monies shall be applied for and distributed in accordance with a process established by the Planning Director, whereby those entities that are exclusively devoted
to historic preservation may make an application to receive distribution of some or all of the funds.

2.8.18 **Big Blue Bus Contribution.** Prior to issuance of a building permit for the Project, Developer shall pay to the City the sum of two hundred and forty thousand dollars ($240,000) for Big Blue Bus transit improvements in the Downtown.

2.8.19 **Transportation Management Association Contribution:** Prior to issuance of a building permit for the Project, Developer shall pay to the City the sum of one hundred and fifty thousand dollars ($150,000) for Transportation Management Association programs. The City shall deposit such monies into a separate restricted account to be used exclusively for TMA programs.

2.8.20 **Recycled Water Infrastructure Program Improvements and Contribution.** Developer shall:

(a) Prior to certificate of occupancy for the Project, extend the existing Treated Urban Runoff distribution main in Colorado, pursuant to specifications provided by City, up to and not beyond the public right-of-way along the south side of Broadway (parallel to the northern boundary of the Project site) in order to service the project. After installation, Developer shall have no duty of maintenance or repairs;

(b) Prior to issuance of a building permit for the Project, pay to the City the sum of nine hundred thousand dollars ($900,000.00) to be used for recycled water infrastructure programs. The City shall deposit such monies into a separate restricted account to be used exclusively for recycled water infrastructure programs; and

(c) Prior to issuance of a building permit for the Project, pay to the City the sum of two hundred thousand dollars ($200,000.00) to be used for extending the Treated Urban Runoff distribution main across Broadway to Santa Monica Boulevard.

2.8.21 **Subterranean Area for Energy Storage Cells.** At least 400 square feet of space shall be allocated in the Subterranean Space for the storage of energy fuel cells.

2.9 **Parking.**

2.9.1 **Total Number of Spaces.** The total number of parking spaces (including all standard-sized, compact, handicapped and tandem spaces) provided in the Project shall be 524, including up to 9% tandem (counting one of the two spaces as tandem and the other as a non-tandem) and 40% compact parking spaces, 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 if the parking garage is staffed with attendant or valet parking. This Agreement and the Project Plans set forth the exclusive off-street parking requirements for the Project and supersede all other minimum space
parking requirements under the Existing Regulations. Provided that 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 Agreement, the design,
location or position of any parking layout may be revised subject to approval by the
Director.

2.9.2 Commercial and Residential Guest Parking. The Project shall have
at least 205 parking spaces (including standard-sized, compact, handicapped and tandem
spaces) for use by the commercial uses and residential guest parking.

2.9.3 Changes of Commercial Uses. In addition to Sections 2.2(b)(3),
2.5.1 and 2.9.2 above, the City shall not allow any of the following uses to occupy the
Project unless and until Developer provides City with a written report demonstrating that
the peak parking demand for such use can be accommodated on-site and the Planning
Director approves such report:

(a) Permitted Uses described in Section 2.5.1(c)(7) requiring
more than one space per 300 square feet, as determined by the SMMC or Downtown
Specific Plan, as applicable, in effect at the time the use is proposed,

(b) Fitness/exercise center uses, including fitness centers that
quality as Commercial Entertainment and Recreation, Large and Small-Scale Facilities
uses cumulatively exceeding 15,000 square feet, and

(c) Cumulatively more than 22,000 square feet of (i) Fitness
centers that qualify as Commercial Entertainment and Recreation, Large and Small-Scale
Facilities uses and (ii) Restaurants that individually exceed 2,500 square feet (including
Full-Service or Limited Service & Take Out, including the Restaurant’s Outdoor Dining
and Seating Area exceeding 500 square feet).

2.9.4 Shared Parking. Developer may make any unused on-site
commercial parking available for lease consistent with the terms of Section 2.8.10 above.

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 84 feet
as set forth on the Project Plans. 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) Permitted Projections. Projections shall be permitted as reflected on the Project Plans, including up to 10 feet from the roof deck for photovoltaic panels, 14 feet from the roof deck for solar thermal water heaters, and projections for elevators, stairwells, mechanical equipment and other permitted projections 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) Signage. The location, size, materials, and color of any signage shall be reviewed by the ARB (or the Planning Commission on appeal) in accordance with the procedures set forth in Section 6.1 of this Agreement. All signs on the Property 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". Directional signs for vehicles shall be located at approaches to driveways as required by the City's Strategic Transportation Planning Division.

(f) Balconies. Balconies shall be provided in accordance with the Project Plans.

(g) Loading Spaces. Loading for the Project shall be provided in accordance with the Project Plans.

2.11 Contract with City. Developer hereby acknowledges that in approving this Development 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. 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 of the Development Agreement, including the requirement to either (a) dedicate or transfer land to a non-profit housing provider and other financial resources to ensure development of a 100% Affordable Housing Project or (b) provide and maintain the on-site affordable units for occupancy by income qualified households. 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, afterhours 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 the last day of the thirty-six (36th) full calendar month after the Effective Date; provided that the Outside Building Permit Issuance Date may be extended by applicable Excusable Delays and otherwise in accordance with the remainder of this paragraph. If the approval by the ARB of the Project design does not occur within six (6) months of the submittal by Developer to the ARB of the Project design, then the Outside Building Permit Issuance Date shall be extended one month for each additional month greater than four that the final ARB approval is delayed. At any time before the last day of the thirty-six (36th) full calendar month after the Effective Date, Developer may deliver written notice to the Planning Director, requesting an extension of the Outside Building Permit Issuance Date for an additional twelve (12) months. The Planning 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 initial 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 **Construction Period.** Construction of the Project shall be subject to the provisions of SMMC Section 8.08.070.

3.5 **Damage or Destruction.** If the Project, or any part thereof, is damaged or destroyed during the term of this Agreement, 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 Project is found to be consistent with the City’s General Plan. Alternatively, Developer shall be entitled to reconstruct the Project in accordance with SMMC Section 9.27.040.
3.6 Completed and Final Landmarks Commission Review of Property. Demolition of the existing building located on the Property shall be exempt from any further Landmarks Commission review up through the Outside Building Permit Issuance Date.

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 “L” 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 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, except as otherwise expressly limited in this Agreement, the obligations and requirements imposed by the mitigation measures and conditions of approval set forth in the attached Exhibit “E”, “G-1”, “G-2”, and “I-2” shall survive the expiration of 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 mitigation measures and conditions of approval shall be recorded by the City separately and concurrently with this Agreement.
4.3.3 **Affordable Fee Waivers and Reductions.** Notwithstanding the foregoing, the Project shall be entitled to all fee waivers and fee reductions available for projects involving affordable housing under the SMMC then in effect.

**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 Zoning Ordinance except as modified herein; (iii) 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 therefor, except as amended by this Agreement; and (iv) 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 Building 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 Building 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, 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 architectural review by the ARB as specified in Section 6.1 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 Core (as defined in the City’s General Plan 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.

(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) Regulations which do not impair the rights and approvals granted to Developer under this Agreement. For the purposes of this Section 5.2.1(g), 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 units that can be built each year on the Property except as expressly provided in this Agreement.

ARTICLE 6

ARCHITECTURAL REVIEW BOARD

6.1 **Architectural Review Board Approval.** The Project shall be subject to review and approval or conditional approval by the ARB in accordance with design review procedures in effect under the Existing Regulations. Consistent with Existing Regulations, the ARB cannot require modifications to the building design which negate the fundamental development standards established by this Agreement. For example, the ARB cannot require reduction in the overall height of the building, reduction in the number of stories in the building, reduction in number of Rental Housing units, or reduction in the Floor Area greater than four percent (4%) for the residential Floor Area only for the Project. Decisions of the ARB are appealable to the Planning Commission in accordance with the Existing Regulations.

6.2 **Expiration of ARB Approval.** Notwithstanding any provisions of the Existing Regulations, no ARB approval 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.

6.3 **Concurrent Processing of One Foundation Only Permit.** Developer may concurrently process plan check for one foundation only permit (SMMC § 8.08.060) with ARB design review (SMMC § 9.55); provided, however, that Developer hereby agrees to accept the risk of plan check revisions if necessitated by the outcome of the ARB design review.
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, and (f) 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 ARB 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, Chapter 1 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 Planning 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 Planning Director’s receipt of a written request for such relief from Developer. Developer is required to supply the Planning 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 Planning 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 Planning Director, which may be granted or withheld in the Planning Director’s sole discretion.

7.5 Accessibility of On-Site Affordable Units. Ten percent (10%) of the On-Site Affordable Units in the Project shall provide mobility features complying with 2013 California Building Code Chapter 11B, Sections 11B 809-2 through 11B 809-4, or any successor thereto, and shall be on an accessible route as required by Section 11B-206, or any successor thereto. Four percent (4%) of the On-Site Affordable Units in the Project shall provide communication features complying with 2013 California Building Code Chapter 11B-809.5, or any successor thereto. Any fractional On-Site Affordable Unit that results from these formulas shall be provided as a whole On-Site Affordable Unit (i.e. any resulting fraction shall be rounded up to the next largest integer). Prior to issuance of a building permit, Developer shall inform local disability advocacy organizations in writing of the availability of the On-Site Affordable Units, the mechanism for applying to be placed on the City’s Affordable Housing waiting list administered by the City’s Housing Division, and whether the City’s Affordable Housing waiting list is currently accepting applications.

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.

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 ten (10) 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.

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 Development 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. 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”), 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 thirty (30) business 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) thirty (30) business 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).
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 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 complete construction of the Building in accordance with the terms of the building permit and 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) ten (10) business 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 AND ASSIGNMENTS

13.1 Transfers and Assignments.

13.1.1 Not Severable from Ownership Interest in Property. 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, as applicable.

13.1.2 Transfer Rights. Developer may freely sell, transfer, exchange, hypothecate, encumber or otherwise dispose of its interest in the Property, without the consent of the City. Developer shall, however, give written notice to the City, in accordance with Section 15.1, of any transfer of the Property, disclosing in such notice (a) the identity of the transferee of the Property (the “Property Transferee”) and (b) the address of the Property Transferee as applicable.

13.2 Release Upon Transfer. Upon the sale, transfer, exchange or hypothecation of the rights and interests of Developer to the Property, Developer shall be released from its obligations under this Agreement to the extent of such sale, transfer or exchange with respect to the Property if: (a) Developer has provided written notice of such transfer to City; and (b) the Property Transferee executes and delivers to City a written agreement in which the Property 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 such transfer of the Property 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. Any such transferee shall be entitled to the benefits of this Agreement as “Developer” hereunder and shall be subject to the obligations of 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.

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; (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 costs 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, or (iv) facsimile (provided that any notice delivered by facsimile is followed by a separate notice sent within twenty-four (24) hours after the transmission by facsimile delivered in one of the other manners specified above). 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
Fax: (310) 917-6640

With a copy to:
City of Santa Monica
1685 Main Street, Room 212
Santa Monica, CA 90401
Attn: Planning and Community Development Director
Fax: (310) 458-3380
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. 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 Property 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.

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 Environmental Impact Report (“EIR”) related to the Project 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; and

(f) 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, 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, 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 disapproval by the City shall state in writing the reasons for such disapproval 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(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 Planning Director for a tolling of the applicable deadlines for Developer to otherwise comply with this Agreement. Within 40 days after receiving such an application, the Planning Director shall either toll the time period for up to five years during the pendency of the litigation or deny the requested tolling.

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”** Project Plans
- **Exhibit “C”** Legal Description of 1626 Lincoln
- **Exhibit “D”** Permitted Fees and Exactions
- **Exhibit “E”** Mitigation Measures and Conditions
- **Exhibit “F”** SMMC Article 9 (Planning and Zoning)
- **Exhibit “G-1”** Conditions of Approval to Dispense Alcohol for Restaurants
- **Exhibit “G-2”** Conditions of Approval to Dispense Alcohol for General Markets
- **Exhibit “H”** Agreement Imposing Restrictions on Rents & Occupancy of Real Property (if applicable)
- **Exhibit “I-1”** Local Hiring Program for Construction
- **Exhibit “I-2”** Local Hiring for Permanent Employees
- **Exhibit “J”** Construction Mitigation Plan
- **Exhibit “K”** Assignment and Assumption Agreement
- **Exhibit “L”** Publicly Accessible Open Space

Except as to the Project Plans (attached hereto as Exhibit B) 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 memorandum 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 **Planning Director Approval.** Whenever this Agreement requires Planning Director review and approval, such review shall be undertaken in good faith and with due diligence.

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:**

DK BROADWAY LLC,  
a Delaware limited liability company

By: ________________________  
MATTHEW KHOURY  
Executive Vice President

**CITY:**

CITY OF SANTA MONICA,  
a municipal corporation

By: ________________________  
RICK COLE  
City Manager

**ATTEST:**

By: ________________________  
DENISE ANDERSON-WARREN  
City Clerk

**APPROVED AS TO FORM:**

By: ________________________  
MARSHA JONES MOUTRIE  
City Attorney
EXHIBIT “A”

LEGAL DESCRIPTION OF PROPERTY


APN: 4291-024-028, 029
EXHIBIT “B”

PROJECT PLANS

On file with the City of Santa Monica
EXHIBIT “C”

LEGAL DESCRIPTION OF 1626 LINCOLN

PARCEL 1:

A PARCEL OF LAND, SITUATED IN THE CITY OF SANTA MONICA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, BEING ALL THAT PORTION OF THAT CERTAIN REAL PROPERTY DESCRIBED IN DEED TO THE LOS ANGELES-PACIFIC RAILWAY COMPANY RECORDED JULY 25, 1905 IN BOOK 2385, PAGE 42 OF DEEDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHEASTERLY OF THE SOUTHEASTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF LOT 16 OF TRACT NO. 284, AS PER MAP RECORDED IN BOOK 16, PAGE 57 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ALSO EXCEPT THE NORTHWESTERLY 2.70 FEET OF SAID LAND.

ALSO EXCEPTING THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS AND MINERAL ORES OF EVERY KIND OF CHARACTER, OCCURRING 500 FEET BENEATH THE SURFACE THEREOF, NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING SAID LAND OR THAT MAY BE PRODUCED THEREFROM, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVE THEREFROM TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, OR INGRESS AND EGRESS BENEATH THE SURFACE OF SAID LAND TO EXPLORE FOR, EXTRACT, MINE AND REMOVE THE SAME, AND TO MAKE SUCH USE OF SAID LAND BENEATH THE SURFACE AS IS NECESSARY OR USEFUL IN CONNECTION THERewith, AND OTHER USE THEREOF, WHICH USES MAY INCLUDE LATERAL OR SLANT DRILLING, DIGGING, BORING OR SINKING OF WELLS, SHAFTS, OR TUNNELS TO THE LANDS NOT SUBJECT TO THOSE RESERVATIONS AND EASEMENTS; PROVIDED, HOWEVER, THAT SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL NOT USE THE SURFACE OF SAID LAND IN THE EXERCISE OF ANY SAID RIGHTS THEREON OR REMOVE OR IMPAIR THE LATERAL OR SUBJACENT SUPPORT OF SAID LAND OR ANY IMPROVEMENTS THEREON, AND SHALL CONDUCT NO OPERATION WITHIN 500 FEET OF THE SURFACE OF SAID LAND, AS EXCEPTED AND RESERVED BY PACIFIC ELECTRIC RAILWAY COMPANY, A CORPORATION, IN THE DEED RECORDED MAY 8, 1960 IN BOOK D838, PAGE 435, AS DOCUMENT NO. 1854.
PARCEL 2:

A STRIP OF LAND 100 FEET WIDE, SITUATED IN THE CITY OF SANTA MONICA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THAT PORTION OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED FROM JOHN P. JONES, ROBERT S. BAKER TO LOS ANGELES AND INDEPENDENCE RAILROAD COMPANY DATED OCTOBER 14, 1875, RECORDED DECEMBER 11, 1875 IN BOOK 40, PAGE 282 OF DEEDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, EXTENDING FROM THE NORTHWESTERLY PROLONGATION OF THE SOUTHWESTERLY LINE OF LINCOLN BOULEVARD (FORMERLY 8TH STREET), AS SAID BOULEVARD IS SHOWN ON MAP OF THE "CENTRAL ADDITIONS TO SANTA MONICA" RECORDED IN BOOK 3, PAGES 176 AND 177 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE SAID RECORDER TO A LINE BEING PARALLEL WITH AND 96.00 FEET NORTHEASTERLY LINE OF SAID 7TH STREET.

EXCEPT THEREFROM THAT PORTION OF SAID LAND EXTENDING FROM THE NORTHEASTERLY LINE OF 7TH STREET AS SAID STREET IS SHOWN ON MAP OF THE "CENTRAL ADDITION TO SANTA MONICA". RECORDED IN BOOK 3, PAGES 176 AND 177 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF SAID RECORDER TO A LINE BEING PARALLEL WITH AND 96.00 FEET NORTHEASTERLY LINE OF SAID 7TH STREET.

ALSO EXCEPT THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS AND MINERALS ORES OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED UPON, WITHIN OR UNDERLYING SAID LAND OR THAT MAY BE PRODUCED THEREFROM, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM TOGETHER WITH THE EXCLUSIVE AND PERPETUAL RIGHT OF SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, OR INGRESS AND EGRESS BENEATH THE SURFACE OF SAID LAND TO EXPLORE FOR, EXTRACT, MINE AND REMOVE THE SAME, AND TO MAKE SUCH USE OF SAID LAND BENEATH THE SURFACE OF SAID LAND TO EXPLORE FOR, EXTRACT, MINE AND REMOVE THE SAME, AND TO MAKE SUCH USE OF SAID LAND BENEATH THE SURFACE AS IS NECESSARY OR USEFUL IN CONNECTION THEREWITH, WHICH USE MAY INCLUDE LATERAL OR SLANT DRILLING, BORING, DIGGING OR SINKING OF WELLS, SHAFTS, OR TUNNELS, PROVIDED, HOWEVER, THAT SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL NOT USE THE SURFACE OF SAID LAND IN THE EXERCISE OF ANY SAID RIGHTS AND SHALL NOT DISTURB THE SURFACE OF SAID LAND OR ANY IMPROVEMENTS THEREON, AS EXCEPTED AND
RESERVED BY SOUTHERN PACIFIC COMPANY, A CORPORATION, IN THE DEED RECORDED MAY 6, 1960 IN BOOK D838, PAGE 431, AS DOCUMENT NO. 1853.

PARCELS 1 AND 2 ARE SHOWN ON THAT CERTAIN CERTIFICATE OF COMPLIANCE NUMBER 1987-001 RECORDED FEBRUARY 23, 1987 AS INSTRUMENT NO. 87-261322, OF OFFICIAL RECORDS.

APN: 4290-001-020
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 Architectural Review Board (ARB) review, Developer shall pay City fees for processing of ARB applications;

   (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)
      - Shoring Tieback fee (collected by EPWM)
      - Construction and Demolition (C&D) Waste Management fee (SMMC Chapter 8.108) (collected by EPWM) (collected by EPWM)
      - Wastewater Capital Facilities Fee (SMMC Section 7.04.460) (collected by EPWM)
      - Water Capital Facilities Fee & Water Meter Instillation fee (Water Meter Permit fee) (SMMC Section 7.12.090) (collected by EPWM)
      - Fireline Meter fee (SMMC Section 7.12.090) (collected by EPWM)

   (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) (EPWM)
   - Utility Excavation Permit fee (SMMC 7.04.010) (EPWM)
• Street Permit fee (SMMC 7.04.790) (EPWM)

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 OF APPROVAL

SECTION A – MITIGATION MEASURES

1. **MM-CR-1a Archaeological Construction Monitoring.** Archaeological monitoring shall be conducted by a qualified professional archaeologist familiar with the types of prehistoric and historical archaeological resources that could be encountered within the project site. An approved Native American monitor(s) shall be present for all ground disturbing activities that involve excavation of previously undisturbed soil. A monitoring program shall be developed and implemented prior to the commencement of construction activities to ensure the effectiveness of monitoring.

2. **MM CR-1b Inadvertent Discoveries.** In the event of any inadvertent discovery of prehistoric or historic-period archaeological resources during construction, the applicant shall immediately cease all work within 50 feet of the discovery. The applicant 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. This investigation 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 further excavation or site investigation following discovery by a Registered Professional Archaeologist who is familiar with both historical resources and prehistoric archaeological resources. The Treatment Plan shall also provide for a final technical report on all cultural resource studies and for the curation of artifacts and other recovered remains at a qualified curation facility, to be funded by the applicant. If the archaeologist determines that the find may qualify for listing in the California Register, the site shall be avoided or a data recovery plan shall be developed. Any required testing or data recovery shall be directed by a Registered Professional Archaeologist prior to construction being resumed in the affected area. Work shall not resume until authorization is received from the City.

3. **MM-CR-2a Paleontological Construction Monitoring.** Construction activities involving excavation or other soil disturbance shall be required to retain a qualified Paleontological Monitor as defined by the Society for Vertebrate Paleontology (2010) equipped with necessary tools and supplies to monitor all excavation, trenching, or other ground disturbance below 3 feet which corresponds to average artificial fill on site. 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 long 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.

4. **MM-CR-2b Fossil Preparation and Curation Requirements.** If paleontological resources are uncovered, 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. Any fossils encountered and recovered shall be prepared to the point of identification and catalogued before they are donated to their final repository. 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. Any fossils collected shall be donated to a public, non-profit institution with a research interest in the materials, such as the Natural History Museum of Los Angeles County. Accompanying notes, maps, and photographs shall also be filed at the repository. The cost of curation is assessed by the repository and is the responsibility of the project owner. At the conclusion of laboratory work and museum curation, a final report will 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 geology and paleontology in the project vicinity, 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.

5. **MM GEO-1a Shoring Walls of the Excavated Area, Implementation of Retaining Wall Drainage, and Monitoring of Excavations near Existing Streets.** The means and methods of installation, design, and implementation of the shoring system shall be the responsibility of a licensed shoring engineer and general contractor who shall satisfy the requirements of City of Santa Monica Building & Safety and Public Works officials as well as applicable codes and laws. It is the responsibility of the applicant to find and secure the services of such an engineer prior to the plan check by the Planning and Development Department so that shoring plans can be reviewed with the rest of the construction plans. Approval of all plans would culminate in the issuance of a Building and Construction Permit by the Planning and Development Department. Appropriate contact information for the applicant and shoring contractor(s) should be available to the City in the event they need to be contacted.
Whenever excavation is made adjacent to existing streets, utilities, and structures, there is the potential for movement of these structures and underlying soils. The existing structures should be inspected and documented to preclude claims for damage or settlement that are not associated with the construction of the planned development. A monitoring program should be established so excessive movement is detected early. The monitoring program should include visual/optical surveying of the shoring and adjacent streets and buildings to detect any horizontal or vertical movement. The preliminary inspection of existing structures and the monitoring implementation plan should be completed by the applicant’s designated contractor for concurrent review with construction plans.

6. **MM GEO-1b Groundwater Management and Structural Reinforcements.** To control the potential for liquefaction where potentially expansive soils are encountered at excavated depths below 40 feet, the applicant shall employ measures to control subsurface and surface drainage from the site, and reinforce footings and slabs during excavation and construction of subterranean structures, consistent with the City of Santa Monica Building Code requirements. These measures may include dewatering and shall remain in place from excavation through foundation construction phases. The preliminary inspection of existing structures and the monitoring implementation plan should be completed by the applicant’s designated contractor for concurrent review with construction plans.

7. **MM HAZ-1a Lead-based Paint and Asbestos Surveys.** Prior to the issuance of a demolition permit, the contractor shall conduct a comprehensive survey of lead based paint (LBP) and asbestos containing materials (ACM). If such hazardous materials are found to be present, the contractor shall follow all applicable local, state and federal regulations, as well as best management practices related to the treatment, handling, and disposal of LBP and ACM.

8. **MM HAZ-1b Hazardous Materials Contingency Plan.** Prior to the issuance of a demolition permit, the project shall have a contingency plan to be implemented in the event that contaminants or structural features that could be associated with contaminants or hazardous materials are suspected or discovered, including the presence of discovered underground storage tanks or onsite wastewater treatment systems. The contingency plan shall stipulate that if contaminants or buried equipment are found or suspected, work around the area shall temporarily cease and appropriate measures shall be undertaken. The contingency plan shall include a provision stating at what point it is safe to continue with the excavation or demolition, and identify the person and/or agency authorized to make that determination. The contingency plan shall be reviewed and approved by the City’s Office of Sustainability or the Santa Monica Fire Department, whichever applicable.
9. **MM NOI-1 Construction Noise Management Plan.** A Construction Noise Management Plan shall be prepared by the applicant and approved by the City. The Plan would address noise and vibration impacts and outline measures that would be used to reduce impacts. Measures would include:

- To the extent that they exceed applicable construction noise limits, excavation, foundation-laying, and conditioning activities shall be restricted to between the hours of 10:00 a.m. and 3:00 p.m., Monday through Friday, in accordance with Section 4.12.110(d) of the Santa Monica Municipal Code.

- The applicant’s construction contracts shall require implementation of the following construction best management practices (BMPs) by all construction contractors and subcontractors working in or around the project site to reduce construction noise levels:
  - The applicant and its contractors and subcontractors shall ensure that construction equipment is properly muffled according to manufacturer's specifications or as required by the City’s Department of Building and Safety, whichever is the more stringent.
  - The applicant and its contractors and subcontractors shall place noise-generating construction equipment and locate construction staging areas away from sensitive uses, where feasible, to the satisfaction of the Department of Building and Safety.
  - The applicant and its contractors and subcontractors shall implement noise attenuation measures which may include, but are not limited to, noise barriers or noise blankets to the satisfaction of the City’s Department of Building and Safety.

- The applicant’s contracts with its construction contractors and subcontractors shall include the requirement that construction staging areas, construction worker parking and the operation of earthmoving equipment within the project site, are located as far away from vibration- and noise-sensitive sites as possible. Contract provisions incorporating the above requirements shall be included as part of the project’s construction documents, which shall be reviewed and approved by the City.

- The applicant shall require by contract specifications that heavily loaded trucks used during construction shall be routed away from residential streets to the extent possible. Contract specifications shall be included in the proposed project’s construction documents, which shall be reviewed by the City prior to issuance of a grading permit.

10. **MM PS-1 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. The plan shall be approved and reviewed by the SMFD prior to issuance of a building permit. 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 and submitted to the SMFD for review and approval.

11. **MM PS-2 Security Plan.** The applicant shall prepare and implement a security plan for common and public spaces, including parking structures/ lots, courtyards, other open areas, and public or common area walkways, stairways, and elevators. The security plan will identify feasible crime prevention features (such as security cameras), identify the locations of 911-capable phones in parking garages and other public areas, establish rules and regulations for public use of courtyard areas, and establish private security patrols for the property. Private security patrols shall work in coordination with the Santa Monica Police Department. The security plan shall be subject to review and approval by the Santa Monica Police Department prior to issuance of Certificates of Occupancy.

12. **MM T-1 Construction Impact Mitigation Plan.** The applicant shall prepare, implement and maintain a Construction Impact Mitigation Plan for review and approval prior to issuance of a building permit to address and manage traffic during construction and shall be designed to:

- Prevent 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
- Provide for coordination with adjacent or nearby construction projects

The Construction Impact Mitigation Plan shall be subject to review and approval by the following City departments: Public Works, Fire, Planning and Community Development, and Police to ensure that the Plan has been designed in accordance with this mitigation measure and meets City standards. This review shall occur prior to issuance of grading or building permits. It shall, at a minimum, include the following:

**Ongoing Requirements throughout the Duration of Construction**

- A detailed Construction Impact Mitigation Plan for work zones shall be maintained. At a minimum, this 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. Such plans shall be reviewed and approved by the Strategic and Transportation Planning Division prior to commencement of construction and implemented in accordance with this approval.
Work within the public right-of-way shall be performed between 9:00 AM and 4:00 PM. 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 construction permit.

An applicant-funded on-site monitor shall be present to ensure safety when Metro workers are in the immediate vicinity, or when more dangerous activities are occurring (e.g., raising of heavy equipment to roof levels). The Plan shall identify the activities that would prompt the presence of an on-site monitor.

Streets and equipment shall be cleaned in accordance with established Public Works Department requirements.

Trucks shall only travel on a City-approved construction route. Truck queuing/staging shall not be allowed on Santa Monica streets. Limited queuing may occur on the construction site itself.

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.

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.

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.

**Project Coordination Elements That Shall Be Implemented Prior to Commencement of Construction**

The applicant shall advise the traveling public of impending construction activities (e.g., information signs, portable message signs, media listing/notification, and implementation of an approved Construction Impact Mitigation Plan).

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., MTA, Big Blue Bus, Police Department, Fire Department, Public Works Department, and Planning 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 MTA 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.

• The applicant shall obtain Strategic and Transportation Planning Division approval of any haul routes for earth, concrete, or construction materials and equipment hauling.

13. **MM U-1 Fair Share Contribution.** If a City Sewer Master Plan is completed prior to the issuance of the last building permit for the project, the project applicant shall provide a fair share contribution (based the methodology in the City’s Sewer Master Plan) to the City’s Capital Improvements Program or any Public Infrastructure Financing Program (PIFP) required to upgrade sewer service to the site (i.e., Ocean/Main corridor). A security shall be provided or a payment agreement executed prior to issuance of the last building permit for the project. This mitigation measure MM U-1 does not prejudice Developer’s ability to challenge the methodology in the City’s Sewer Master Plan.
SECTION B – CONDITIONS OF APPROVAL

Project Specific Conditions

1. The project shall provide the Significant Project Features and LUCE Community Benefits as established in Sections 2.7 and 2.8 of this Agreement.

2. The Architectural Review Board shall pay particular attention to the following design elements of the project:
   a. The proposed placement of the building columns on the ground floor along the 5th Street elevation are appropriately located to ensure there is adequate space for pedestrian circulation.
   b. Ensure that the project’s sculptural design elements are continued to the ground floor level, including the building column design.
   c. Ensure there is adequate privacy between north/south facing residential units by use of louvers/screens and/or angled glazing. Pay particular attention to the materiality properties of all louver screens, including durability and ease of use of operable louvers.
   d. Further enhancements to the rear alley elevation at the ground floor level.
   e. The Project’s exterior lighting and how it may affect residents of the Project and neighboring uses.
   f. Ensure that the publicly-accessible open space immediately west of the northern/main residential lobby is useable by the public and contributes to the pedestrian-friendly environment of the surrounding publicly-accessible open space.

3. No permanent physical obstructions shall be installed within the Clear Pedestrian Zones, except as allowed by Section 2.8.2 of this Agreement.

4. No permit for outdoor dining located on public right-of-way shall be issued for the Project.

5. The sliding screen door along the rear alley elevation adjacent to the commercial loading/unloading area, as shown on the project plans, shall remain closed while the loading space is occupied by delivery vehicles, and during commercial loading/unloading operations.

6. The short-term bike parking shown on the Project Plans is shown for conceptual purposes only. Prior to issuance of a building permit, to ensure the appropriate use of the space within the public right-of-way, the precise location and number of short-term bike parking spaces within the public right-of-way shall be reviewed and approved by the City.
The Cross Court connecting 5th Court alley and 5th Street on the southern end of the Project Site shall remain open for public use, including vehicular access, 24 hours a day/7 days per week except to the extent closures are necessary for maintenance and/or repairs. Notwithstanding the foregoing, the Cross Court shall remain a private driveway on private property and Developer may establish reasonable rules and regulations regarding the use of the Cross Court.

CITY PLANNING

Administrative Conditions

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

Conformance with Approved Plans

9. This approval is for those plans dated December 8, 2015, 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 these conditions of approval.

10. 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.

11. 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

12. No building permit shall be issued for the project until the developer complies with the requirements of Part 9.04.10.20 of the Santa Monica Municipal Code, Private Developer Cultural Arts Requirement. If the developer elects to comply with these requirements by providing on-site public art work or cultural facilities, no final City approval shall be granted until such time as the Director of the Community and Cultural Services Department issues a notice of compliance in accordance with Part 9.04.10.20.

Cultural Resources

13. Except as other provided by the Development Agreement, no demolition of buildings or structures built 40 years of age or older shall be permitted until the end
of a 60-day review period by the Landmarks Commission to determine whether an application for landmark designation shall be filed. If an application for landmark designation is filed, no demolition shall be approved until a final determination is made by the Landmarks Commission on the application.

14. If any archaeological, paleontological, or human remains are uncovered during excavation or construction, work in the affected area shall be suspended and a recognized specialist shall be contacted to conduct a survey of the affected area at project owner's expense. A determination shall then be made by the Director of Planning to determine the significance of the survey findings and appropriate actions and requirements, if any, to address such findings.

Project Operations

15. 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.

16. The project shall at all times comply with the provisions of the Noise Ordinance (SMMC Chapter 4.12 or any successor thereto).

Final Design

17. Plans for final design, landscaping, screening, trash enclosures, and signage shall be subject to review and approval by the Architectural Review Board.

18. Landscaping plans shall comply with Subchapter 9.04.10.04 (Landscaping Standards) of the Zoning Ordinance including use of water-conserving landscaping materials, landscape maintenance and other standards contained in the Subchapter.

19. 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. The Architectural Review Board in its review 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 Architectural Review Board, 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.

20. No gas or electric meters shall be located within the required front or street side yard setback areas. The Architectural Review Board in its review shall pay particular attention to the location and screening of such meters.

21. Prior to consideration of the project by the Architectural Review Board, 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. The Architectural Review Board, in its review, shall pay particular attention to the aesthetic, landscaping, and setback impacts of any ramps or other features necessitated by accessibility requirements.

22. As appropriate, the Architectural Review Board shall require the use of anti-graffiti materials on surfaces likely to attract graffiti.

Construction Plan Requirements

23. 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

24. 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.

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

Construction Period

26. 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

27. 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.

28. 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.

29. The property owner shall insure any graffiti on the site is promptly removed through compliance with the City’s graffiti removal program.

Condition Monitoring

30. 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

31. 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

32. 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

33. 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

34. Bicycle parking provided in the Project shall meet the requirements of SMMC Section 9.28.140, and any successor thereto.

BIG BLUE BUS

35. 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.

36. 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

37. 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.

38. Prior to the issuance of a demolition permit all street trees that are adjacent to or will be impacted by the demolition or construction access 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.

39. Replace or plant new street trees in accordance with Urban Forest Master Plan and in consultation with City Arborist.

OFFICE OF SUSTAINABILITY AND THE ENVIRONMENT

40. Developer shall enroll the property in the Savings By Design incentive program where available through Southern California Edison prior to submittal of plans for Architectural Review. Developer shall execute an incentive agreement with Southern California Edison prior to the issuance of a building permit.

41. 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.

RENT CONTROL

42. Pursuant to SMMC Section 4.24.030, prior to receipt of the final permit necessary to demolish, convert, or otherwise remove a controlled rental unit(s) from the
housing market, the owner of the property shall first secure a removal permit under Section 1803(t), an exemption determination, an approval of a vested rights claim from the Rent Control board, or have withdrawn the controlled rental unit(s) pursuant to the provisions of the Ellis Act.

**HOUSING AND ECONOMIC DEVELOPMENT**

43. Pursuant to Chapter 4.36 of the Santa Monica Municipal Code, relocation assistance shall be provided, by the owner, to a tenant whose tenancy is terminated as a result of the removal of a housing units from the rental housing market. The relocation fee is determined according to the size (number of bedrooms) of the unit. The fee is adjusted each July 1st, based on the rent of primary resident component of the CPI-W Index for Los Angeles/Riverside/Orange County area, as published by the United States Department of Labor.

**PUBLIC WORKS**

**General Conditions**

39. 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.

40. Developer shall comply with the Construction Mitigation Obligations set forth in **Exhibit “H”** attached hereto.
41. 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.

42. 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.

43. 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.

44. 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.

45. 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**

46. 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.

47. 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.

48. 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/](http://www.waterboards.ca.gov/losangeles/) and search for Order # R4-2003-0111.
49. 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.

50. 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.

51. 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.

52. 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.

53. All existing sanitary sewer “house connections” to be abandoned, shall be removed and capped at the “Y” connections.

54. The fire services and domestic services 3-inches or greater must be above ground, on the applicant’s site, readily accessible for testing.

55. 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.

56. 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.

57. Unless otherwise required by Section 2.8.4 of this Agreement, plumbing fixtures that meet the standards for 20% water use reduction specified in the California Green Building Standards Code are required on all new development and remodeling where plumbing is to be added.

**Urban Water Runoff Mitigation**

58. 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 Architectural Review Board approval, 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.

59. 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**
60. 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.

61. Unless otherwise approved by the PWD, all sidewalks shall be kept clear and passable during the grading and construction phase of the project.

62. 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.

63. Street and alley sections adjacent to the development shall be replaced as determined by the PWD. This typically requires full reconstruction of the street or alley in accordance with City of Santa Monica standards for the full adjacent length of the property.

Utilities

64. 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. Developer shall install two Telecommunications Vaults in either the street, alley and/or sidewalk locations dedicated solely for City of Santa Monica use. Developer shall provide two unique, telecommunication conduit routes and fiber optic cables from building Telecommunications Room to Telecommunications Vaults in street, alley and/or sidewalk. Developer will be responsible for paying for the connection of each Telecommunications Vault to the existing City of Santa Monica fiber optic network, or the extension of conduit and fiber optic cable for a maximum of 1km terminating in a new Telecommunications Vault for future interconnection with City network. The final telecommunications design plans for the project site shall be submitted to and approved by the City of Santa Monica Information Systems Department prior to approval of project.

a. Project shall comply with City of Santa Monica Telecommunications Guidelines

b. Project shall comply with City of Santa Monica Right-of-Way Management Ordinance No. 2129CCS, Section 3 (part), adopted 7/13/04
65. 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.

66. 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.

67. 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
68. 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. Section 9.21.130 of the SMMC has dimensional requirements for various sizes and types of projects. Developments that place the RR area in subterranean garages must also provide a bin staging area on their property for the bins to be placed for collection.

69. Contact Resource Recovery and Recycling RRR division to obtain dimensions of the refuse recycling enclosure.

70. 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
71. 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.

72. 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.

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
73. 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.

74. 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.

75. 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.

76. 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.

77. 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.
78. Buildings four or more stories in height shall be provided with not less than one standpipe during construction.

79. 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.

80. 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.

81. 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.

82. 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)

83. 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.

84. 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.

85. Show ALL door hardware intended for installation on Exit doors.

86. 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
87. Stairway Identification shall be in compliance with CBC 1022.8

88. Floor-level exit signs are required in Group A, E, I, R-1, R-2 and R-4 occupancies.

89. 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.

90. 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.

91. 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.

92. An approved fire alarm system shall be installed as follows:

93. 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.

94. Group E Occupancies having occupant loads of 50 or more shall be provided with an approved manual fire alarm system.

95. 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.

96. 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

97. 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.

98. 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.

99. 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.

100. 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.
101. 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.

102. 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.
103. 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

104. 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
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)

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

      | Fire Flow | Duration of Flow | Public Hydrant Spacing |
      |-----------|------------------|------------------------|
      | 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)

      | Fire Flow | Duration of Flow | Public Hydrant Spacing |
      |-----------|------------------|------------------------|
      | 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
c. Two family dwellings – VHFHSZ (Less than 5,000 square feet)

<table>
<thead>
<tr>
<th>Fire Flow</th>
<th>Duration of Flow</th>
<th>Public Hydrant Spacing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duplexes</td>
<td>1,500 GPM</td>
<td>2 hrs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>600 ft.</td>
</tr>
</tbody>
</table>

2. Mobile Home Park

a. Recreation Buildings

Refer to Table 1 for fire flow according to building size.

b. Mobile Home Park

<table>
<thead>
<tr>
<th>Fire Flow</th>
<th>Duration of Flow</th>
<th>Public Hydrant Spacing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1,250 GPM</td>
<td>2 hrs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>600 ft.</td>
</tr>
</tbody>
</table>

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 hydrant
      Exception: 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
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.
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.

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 *

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

* 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 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)

On file with the City Clerk
EXHIBIT “G-1”

RESTAURANT ALCOHOL CONDITIONS

1. The primary use of the Restaurant premises shall be for sit-down meal service to patrons;

2. If a counter service area is provided in the Restaurant, food service shall be available at all hours the counter is open for patrons, and the counter area shall not function as a separate bar area;

3. Window or other signage visible from the public right-of-way that advertises the Restaurant’s beer or alcohol shall not be permitted;

4. Customers shall be permitted to order meals at all times and at all locations in the Restaurant where alcohol is being served. The Restaurant shall serve food to patrons during all hours the Restaurant is open for customers;

5. The Restaurant shall maintain a kitchen or food-serving area in which a variety of food is prepared in the Restaurant;

6. Take out service from the Restaurant shall be only incidental to the primary sit-down use;

7. No alcoholic beverage shall be sold for consumption beyond the Restaurant premises;

8. Except for special events, alcohol shall not be served by the Restaurant in any disposable containers such as disposable plastic or paper cups;

9. No more than three television screens including video projectors or similar audio/visual devices shall be utilized in the Restaurant. None of these televisions or projection surfaces shall exceed 60 inches measured diagonally;

10. No video or other amusement games shall be permitted in the Restaurant;

11. Entertainment in the Restaurant may only be permitted in the manner set forth in Section 9.31.290, Restaurants with Entertainment;

12. The primary use of any of the Restaurant’s outdoor dining area shall be for seated meal service. Patrons who are standing in the Restaurant’s outdoor seating area shall not be served;

13. The Restaurant operation shall at all times be conducted in a manner not detrimental to surrounding properties by reason of lights, noise, activities or other actions. The Restaurant operator shall control noisy patrons leaving the Restaurant;
14. The Restaurant’s permitted hours of alcoholic beverage service shall be 9:00 a.m. to 12:00 a.m. Sunday through Thursday, and 9:00 a.m. to 1:00 a.m. Friday and Saturday with complete closure and all employees vacated from the Restaurant by 1:00 a.m. Sunday through Thursday, and 2:00 a.m. Friday and Saturday. All alcoholic beverages must be removed from the Restaurant’s outdoor dining area no later than 11:00 p.m. Sunday through Thursday and 12:00 a.m. Friday and Saturday. No after-hours operation is permitted;

15. No more than 35 percent of the Restaurant’s total gross revenues per year shall be from alcohol sales. The Restaurant operator shall maintain records of gross revenue sources, which shall be submitted annually to the Planning Division at the beginning of the calendar year and also available to the City and the California Department of State Alcoholic Beverage Control (ABC) upon request;

16. Bottle service shall mean the service of any full bottle of liquor, wine, or beer of more than 375 ml, along with glass ware, mixers, garnishes, etc., in which Restaurant patrons are able to then make their own drinks or pour their own wine or beer. Liquor bottle service shall be prohibited in the Restaurant. Wine and beer bottle service shall not be available to Restaurant patrons unless full meal service is provided concurrent with the Bottle service. All food items shall be available from the Restaurant’s full service menu;

17. No organized queuing of patrons at the entry or checking of identification to control entry into and within the Restaurant shall be permitted. There shall not be any age limitation imposed restricting access to any portion of the Restaurant;

18. The Restaurant 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 Restaurant;

19. Restaurants with amplified music shall be required to comply with Section 4.12, Noise, of the Santa Monica Municipal Code;

20. Prior to occupancy of the Restaurant, a security plan for the Restaurant shall be submitted to the Chief of Police for review and approval. The plan shall address both physical and operational security issues;

21. Prior to occupancy of the Restaurant, the Restaurant operator shall submit a plan for approval by the Director regarding employee alcohol awareness training programs and policies. The plan shall outline a mandatory alcohol-awareness training program for all Restaurant employees having contact with the public and shall state management’s policies addressing alcohol consumption and inebriation. The program shall require all Restaurant employees having contact with the public to complete an ABC-sponsored alcohol awareness training program within ninety days of the effective date of the exemption determination. In the case of new Restaurant employees, the employee shall attend the alcohol awareness training within ninety days of hiring. In the event the ABC no longer sponsors an alcohol awareness
training program, all Restaurant employees having contact with the public shall complete an alternative program approved by the Director. The Restaurant operator shall provide the City with an annual report regarding compliance with this requirement. The Restaurant operator shall be subject to any future citywide alcohol awareness training program affecting similar establishments;

22. Within 30 days from the date of submission of this written agreement, the Restaurant operator shall provide a copy of the signed agreement to the local office of the State ABC;

23. Prior to occupancy of the Restaurant, the Restaurant operator shall submit a plan describing the establishment's designated driver program, which shall be offered by the operator to the establishment's patrons. The plan shall specify how the operator will inform patrons of the program, such as offering on the menu a free non-alcoholic drink for every party of 2 or more ordering alcoholic beverages;

24. Notices shall be prominently displayed urging Restaurant patrons to leave the Restaurant and neighborhood in a quiet, peaceful, and orderly fashion and to please not litter or block driveways in the neighborhood;

25. Employees of the Restaurant shall walk a 100-foot radius from the Restaurant at some point prior to 30 minutes after closing and shall pick up and dispose of any discarded beverage containers and other trash left by Restaurant patrons; and

26. This agreement shall apply to approved and dated plans, a copy of which shall be maintained in the files of the City Planning Division. Restaurant development shall be consistent with such plans, except as otherwise specified in these conditions of approval. Minor amendments to the Restaurant plans shall be subject to approval by the Director.
Acknowledgement of Restaurant 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-2”

GENERAL MARKET ALCOHOL CONDITIONS

(1) This approval is for Type 21 (Off-Sale general) or Type 20 (Off-Sale Beer and Wine) alcohol license only. Any request to modify the license type shall require either a conditional use permit or a Development Agreement amendment pursuant to Section 2.4.3 (Major Modifications).

(2) The primary use of the General Market premises shall be for a food market.

(3) No on-site consumption of alcoholic beverage, including incidental food service areas, shall be permitted.

(4) The sale of single/individual wine coolers shall be prohibited.

(5) The owner shall prohibit loitering in the parking area and shall control noisy patrons leaving the store.

(6) No alcohol-related advertisement shall be permitted that is visible from the public right-of-way.

(7) All alcohol shall be displayed in a manner not visible from outside the General Market, consistent with the following limitations:
   • Refrigerated wine and beer total display area not to exceed 48 square feet.
   • Wine and spirits total display area not to exceed 560 square feet.
   • Wine and beer total display area not to exceed 172 square feet.

(8) The permitted hours of alcohol sales shall be 8:00 a.m. to 10:00 p.m., seven days a week.

(9) No more than 10% of total gross revenues per year shall be from alcohol sales. The operator shall maintain records of gross revenue sources, which shall be available to the City of Santa Monica and the State Alcoholic Beverage Control Department.

(10) The General Market shall at all times comply with the provisions of the Noise Ordinance (SMMC Chapter 4.12).

(11) Prior to commencement of alcohol sales, a security plan shall be submitted to the Chief of Police for review and approval. The plan shall address both physical and operational security issues.
(12) Prior to commencement of alcohol sales, the 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 operator shall provide the City with an annual report regarding compliance with this condition. The project shall be subject to any future citywide alcohol awareness training program condition affecting similar establishments.

(13) Prior to issuance of a Certificate of Occupancy or business license, the project owner shall submit a recycling plan to the Department of Environmental and Public Works Management for its approval. The recycling plan shall include 1) list of material such as white paper, computer paper, metal cans, and glass to be recycled; 2) location of recycling bins; 3) designated recycling coordinator; 4) nature and extent of internal and external pick-up service; and, 5) pick-up schedule.

(14) The operation shall be conducted in a manner not detrimental to surrounding properties or residents by reasons of lights, noise, activities, parking, or other actions.

(15) Street and/or alley lighting shall be provided on public rights-of-way adjacent to the project if and, as needed per the specifications and with the approval of the Department of Environmental and Public Works.

(16) In the event General Market operator fails to comply with any conditions of approval of this Exhibit, no further permits, licenses, approval or certificates of occupancy for the General Market shall be issued to such applicant until such violation has been fully remedied.

(17) The General Market operator is on notice that all temporary and permanent signage is subject to the restrictions of the City’s sign ordinance included in Exhibit “F”, SMMC Article 9 (Planning and Zoning) to this Agreement.

(18) The General Market operator authorizes reasonable City inspection of the General Market to ensure compliance with the conditions set forth in this Exhibit “G-2” and will bear the reasonable cost of these inspections as established by SMMC Section 2.72.010 and Resolution No. 9905 (CCS) of any successor legislation hereto. These inspections shall be no more intrusive as necessary to ensure compliance with this Exhibit “G-2”.

(19) The Planning Director shall verify that the approved plans for the General Market correspond to the conditions in this Exhibit “G-2”.

G-6
(20) The approved plans shall comply with all other provisions of SMMC Article 9 (Planning and Zoning), and all other pertinent ordinances and General Plan policies of the City of Santa Monica.

(21) Minor amendments to the plans shall be subject to approval by the Planning Director. An increase of more than 10% of the square footage, seating or a significant change in the approved concept shall be subject to Planning Commission Review. Construction shall be in conformance with the plans submitted or as modified by the Planning Commission, Architectural Review Board or Planning Director. No expansion in the number of seats or intensity of operation shall occur without prior approval from the City of Santa Monica and the State Department of Alcoholic Beverage Control.

Acknowledgement of General Market 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 “H”

Recording Requested By:
City of Santa Monica

When Recorded Mail To:
City of Santa Monica
1685 Main Street, Room 310
Santa Monica, CA 90401
Attention: Senior Land Use Attorney

Space Above This Line For Recorders Use
No Recording Fee Required
Government Code Section 27383

THIS AGREEMENT DOES NOT BECOME EFFECTIVE UNLESS AND UNTIL A NOTICE ELECTING TO MAKE IT EFFECTIVE IS RECORDED.

AGREEMENT IMPOSING RESTRICTIONS ON RENTS & OCCUPANCY OF REAL PROPERTY

THIS AGREEMENT IMPOSING RESTRICTIONS ON RENTS & OCCUPANCY OF REAL PROPERTY, entered into this [____] day of [month, 20--], by and between the CITY OF SANTA MONICA, a Municipal Corporation (hereinafter the "City"), and DK Broadway LLC, a Delaware Limited Liability Company (hereinafter the "Developer"), is made with reference to the following:

RE C I T A L S:

A. Developer is the owner of certain real property located at 500 Broadway in the City of Santa Monica, in the County of Los Angeles, California (hereinafter referred to as the "Subject Property"). The Subject Property is more particularly described in Exhibit "A" which is attached hereto and incorporated herein by this reference.

B. Developer wishes to construct an eighty-four (84) foot mixed use project consisting of 249 residential rental units (hereinafter referred to as the "Project"). The City has approved a Development Agreement for the Project, which requires this AGREEMENT IMPOSING RESTRICTIONS ON RENTS & OCCUPANCY OF REAL PROPERTY ("Agreement") to be fully executed, acknowledged, and recorded concurrently with the Development Agreement. The City approved the Development Agreement subject to the conditions of this Agreement, which are imposed for the benefit of the City, the public and surrounding landowners and without which the Development Agreement would not be approved.
C. The Project is subject to the covenants in the Development Agreement, and the requirements of the City’s Affordable Housing Production Program, Santa Monica Municipal Code Chapter 9.64, and the Administrative Guidelines for Chapter 9.64, as they may be amended from time to time (all collectively, referenced herein as "Affordability Restrictions"). The Developer has agreed to satisfy the Affordability Restrictions by fully complying with this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. RECITALS.

The Recitals stated above, and any agreements between the City and Developer referenced therein, including the Development Agreement, are hereby incorporated by reference into this Agreement and adopted by the parties to this Agreement as true and correct.

2. DEFINITIONS.

2.1 “Affordable Units” means dwelling units within the Project that are available to and occupied by Fifty Percent Income Households and Eighty Percent Income Households at Affordable Rent.

2.2 "Affordable Rent" means:

   (a) For fifty percent income households, the product of thirty percent times fifty percent of the area median income adjusted for household size appropriate for the unit.

   (b) For eighty percent income households whose gross incomes exceed the maximum incomes for fifty percent income households, the product of thirty percent times sixty percent of the area median income adjusted for household size appropriate for the unit.

2.3 “Area Median Income or AMI” means the median family income published from time to time by the United States Department of Housing and Urban Development ("HUD") for the Los Angeles-Long Beach Metropolitan Statistical Area.

2.4 “Eighty Percent Income Household” means a household whose gross income does not exceed the eighty percent income limits applicable to the Los Angeles-Long Beach Primary Metropolitan Statistical Area, adjusted for household size, as published and periodically updated by HUD. Eighty Percent Income Households include Fifty Percent Income Households.

2.5 “Fifty Percent Income Household” means a household whose gross income does not exceed the fifty percent income limits applicable to the Los Angeles-
Long Beach Primary Metropolitan Statistical Area, adjusted for household size, as published and periodically updated by HUD. Fifty percent income households include Thirty Percent Income Households.

2.6 **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.

2.7 "**Rent**" has the same meaning as provided in title 25, section 6918 of the California Code of Regulations, as amended from time to time in accordance with law.

3. **CONTRACT WITH CITY.**

Developer hereby acknowledges that in consideration for the benefits accorded to Developer under the Development Agreement, Developer has entered into this Agreement with the City and agreed on behalf of itself and its successors and assigns to abide by the terms of this Agreement. During the term of this Agreement, Developer shall provide and maintain 57 Affordable Units on the Subject Property for occupancy by qualified households who meet the requirements specified in this Agreement. Developer hereby acknowledges that in approving this Development 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. In exchange for such forms of assistance from the City, which constitute direct financial benefit to the Developer, Developer has entered into this contract with the City and agreed to the other conditions of the Development Agreement, including the requirement to either (a) dedicate or transfer land to a non-profit housing provider and other financial resources to ensure development of a 100% Affordable Housing Project or (b) provide and maintain the on-site affordable units for occupancy by income qualified households. 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.

4. **DEVELOPER TO PROVIDE AND MAINTAIN FIFTY-SEVEN (57) AFFORDABLE UNITS.**

(a) Upon issuance of a Certificate of Occupancy for the Project, Developer shall provide and maintain 57 Affordable Units on the Subject Property, as follows:

Five (5) studio Affordable Units shall be available to and occupied by Fifty Percent Income Households at Affordable Rent.

Twenty-Five (25) one-bedroom Affordable Units shall be available to and occupied by Fifty Percent Income Households at Affordable Rent.
Five (5) two-bedroom Affordable Units shall be available to and occupied by Fifty Percent Income Households at Affordable Rent.

Two (2) three-bedroom Affordable Unit shall be available to and occupied by Fifty Percent Income Households at Affordable Rent.

Twelve (12) one-bedroom Affordable Units shall be available to and occupied by Eighty Percent Income Households at Affordable Rent.

Five (5) two-bedroom Affordable Units shall be available to and occupied by Eighty Percent Income Households at Affordable Rent.

Three (3) three-bedroom Affordable Unit shall be available to and occupied by Eighty Percent Households at Affordable Rent.

Developer shall submit plans to the City's Building Official, identifying the unit numbers and exact locations of all of the Affordable Units. The submittal of these plans with the required identification of Affordable Units shall be a condition precedent to Developer's obtaining a building permit for the Project.

(b) The Affordable Units shall be rental units and the maximum rent shall be calculated pursuant to the formula set forth in Section 5 of this Agreement.

(c) The City shall issue a Certificate of Occupancy for the Project ("Certificate") expressly contingent upon compliance with the terms of this Agreement. A valid Certificate shall be required at all times to continue to use or occupy the Project. A breach of this Agreement shall be grounds for revoking the Certificate. The City shall provide reasonable notice and an opportunity to cure any breach of this Agreement prior to revoking the Certificate.

5. TERMS FOR THE RENTAL OF THE AFFORDABLE UNITS.

The maximum Affordable Rent for the Affordable Units on the Subject Property shall be as follows:

(a) If the household is receiving a rental housing subsidy, the maximum allowable rent shall be the lesser of the Affordable Rent calculated under subparagraph (b) of this Section 5 or the payment standard authorized by the Santa Monica Housing Authority.

(b) If the household is not receiving federal rental assistance as defined above, the maximum allowable rent for the unit shall be calculated as follows:

For Fifty Percent Income Households
Area Median Income x 50% x Bedroom Adjustment Factor x 30% = Maximum Affordable Rent (Annual).

For Eighty Percent Income Households

Area Median Income x 60% x Bedroom Adjustment Factor x 30% = Maximum Affordable Rent (Annual).

The Maximum Allowable Rent figures must be divided by twelve to determine the maximum allowable monthly rent.

The formula for the calculation of rents as of the date of this Agreement is as follows:

(c) Area Median Income - As periodically published by HUD, currently $64,800 (for a family of four).

(d) Bedroom Adjustment Factors

<table>
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<th></th>
<th>0 Bedroom</th>
<th>1 Bedroom</th>
<th>2 Bedroom</th>
<th>3 Bedrooms</th>
<th>4 Bedrooms</th>
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</thead>
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<td>.8</td>
<td>.90</td>
<td>1.00</td>
<td>1.08</td>
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</table>

(e) Affordable Rents 2015, to be updated annually

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<th>1-BR</th>
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</thead>
<tbody>
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<td>Fifty Percent Income Household</td>
<td>$567</td>
<td>$648</td>
<td>$729</td>
<td>$810</td>
</tr>
<tr>
<td>Eighty Percent Income Household</td>
<td>$778</td>
<td>$875</td>
<td>$972</td>
<td></td>
</tr>
</tbody>
</table>

(f) In the event the standards for establishing the monthly rental rate of the Affordable Units set forth in Section 5 cease to exist, the parties shall substitute a similar standard established by HUD or its successor governmental agency. If the parties are unable to agree upon a substitute standard, the parties shall refer the choice of the substitute standard to binding arbitration in accordance with the rules of the American Arbitration Association.

1 These numbers include the utility allowance adopted by the City's Housing Authority for 2015, and is adjusted annually thereafter.
(g) Minimum Occupancy Requirements

<table>
<thead>
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<th>Bedrooms</th>
<th>Occupants</th>
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</thead>
<tbody>
<tr>
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<td>4</td>
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<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

6. HOUSSEHOLD ADJUSTMENT FACTORS.

The Household Adjustment Factors are as follows:

- 1 person: 0.7
- 2 persons: 0.8
- 3 persons: 0.9
- 4 persons: 1.0
- 5 persons: 1.08
- 6 persons: 1.16
- 7 persons: 1.24
- 8 persons: 1.32

Developer agrees to make reasonable efforts to rent vacant Affordable Units within sixty days.

7. TENANT SELECTION.

Developer shall select households from the City-developed list of income qualified households.

8. CITY APPROVAL OF DOCUMENTS.

The Conditions, Covenants and Restrictions (C,C & R's), if any, for the Subject Property shall include reference to all applicable obligations and duties of the parties created by this Agreement. The City Attorney of the City of Santa Monica shall approve as to form the C,C & R's prior to recordation of the final subdivision or parcel map for the Subject Property.

Developer shall rent the Affordable Units pursuant to the terms and conditions of a lease or rental agreement approved by the City. At least ninety days prior to the expected completion date, Developer shall submit to the City Housing Division for review a copy of the lease agreement to be used and a brief marketing plan and description of the tenant selection process to be used. In addition to any other provision required by the City to ensure compliance with Chapter 9.64 and the Administrative Guidelines for
Chapter 9.64, as they may be amended from time to time, said lease or rental agreement shall contain a provision prohibiting subleasing of the Affordable Units or revising the composition of the household without Developer's permission. Developer shall not approve any change that renders the Affordable Units in noncompliance with the household income requirements of this Agreement. The addition to the household of a minor child or children shall not be deemed a change in the household requiring Developer's prior approval pursuant to this Section.

Developer shall lease the Affordable Units concurrently with all other units in the Project so as to avoid prolonged vacancy of the Affordable Units during lease-up of the Project.

9. ATTORNEYS' FEES AND COSTS.

In the event of any controversy, claim or dispute between the parties hereto, arising out of or relating to this Agreement or breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees and costs.

10. APPOINTMENT OF OTHER AGENCIES.

The City may designate, appoint or contract with any other public agency to perform City's obligations under this Agreement.

11. SEVERABILITY.

In the event any limitation, condition, restriction, covenant or provision contained in this Agreement is held to be invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Agreement shall, nevertheless, be and remain in full force and effect.

12. NOTICES.

All notices required under this Agreement shall be sent by certified mail, return receipt requested, to the following addresses:

TO THE CITY OF SANTA MONICA: City of Santa Monica
Planning and Community Development Department
1685 Main Street, Room 212
Santa Monica, California 90401
Attention: Director, Planning and Community Development Department
TO THE DEVELOPER: DK BROADWAY LLC
c/o KRE Capital LLC
315 S. Beverly Boulevard, #201
Beverly Hills, CA  90069
Attn: Matthew Khoury and Kevin Becker
Fax: (310) 733-5683

Any party may change the address to which notices are to be sent by notifying the other parties of the new address, in the manner set forth above.

13. HOLD HARMLESS.

As between the City and the Developer, the Developer is deemed to assume responsibility and liability for, and the Developer shall indemnify and hold harmless the City and its City Council, boards and commissions, officers, agents, servants or employees from and against any and all claims, loss, damage, charge or expense, whether direct or indirect, to which the City or its City Council, boards and commissions, officers, agents, servants or employees may be put or subjected, by reason of any damage, loss or injury of any kind or nature whatever to persons or property caused by or resulting from or in connection with any act or action, or any neglect, omission or failure to act when under a duty to act, on the part of the Developer or any of Developer's officers, agents, servants, employees or subcontractors in his or their performance hereunder.

14. BURDEN TO RUN WITH PROPERTY.

The covenants and conditions herein contained shall apply to and bind the heirs, successors and assigns of all the parties hereto and shall run with and burden the Subject Property for the benefit of the City, the public and surrounding landowners, until terminated in accordance with the provisions hereof. Developer shall expressly make the conditions and covenants contained in this Agreement a part of any deed or other instrument conveying any interest in the Subject Property.

15. SALE OR CONVERSION OF PROPERTY.

In the event of sale or conversion of the subject property, any Conditions, Covenants and Restrictions (CC & R's) for the property, shall incorporate by reference all obligations and duties of the parties created by this Agreement. Reporting obligations set forth in Section 24 below, shall be set forth in the CC & R's if any, for the project.

16. PROHIBITION AGAINST DISCRIMINATION.

Developer agrees not to discriminate against any actual or potential occupant of the subject property on the basis of sex, race, color, religion, ancestry, national origin, sexual orientation, age, pregnancy, marital status, handicap, HIV, family composition, or the potential or actual occupancy of minor children. Developer further agrees to take affirmative action to ensure that no such person is discriminated against for any of the aforementioned reasons.
17. STANDING TO ENFORCE AGREEMENT.

Violation of this Agreement may be enjoined, abated or remedied by appropriate legal proceeding in a court of competent jurisdiction by any aggrieved party, including but not limited to, the parties hereto, or their respective successors, heirs and assigns.

The right to specific performance of this Agreement shall be an appropriate remedy for a breach of this Agreement because of the uniqueness of the Property and the inherent difficulty in calculating adequate damages.

18. INTEGRATED AGREEMENT.

This Agreement constitutes the entire agreement between the parties and no modification hereof shall be binding unless reduced to writing and signed by the parties hereto.

19. APPLICABLE LAW.

All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of California applicable to contracts made to and to be performed within the State.

20. CITY AUTHORITY TO ENFORCE LAW

The obligation of the Owner pursuant to this Agreement are in addition to, and in no way limit, the authority of the City to enforce all laws and regulation applicable to the Subject Property. Nothing in this Agreement shall limit the authority of the City to take appropriate action to enforce the terms of any permit issued by the City relating to the Subject Property.

21. DURATION OF AGREEMENT.

(a) Notwithstanding recordation of this Agreement under Section 23 below, this Agreement shall not become effective unless and until Developer records a Notice of Election in the form attached hereto as Exhibit “B” (the “Election Notice”) in the Official Records of the County of Los Angeles.

(b) If an Election Notice is recorded pursuant to Section 21(a) above, this Agreement shall immediately become effective and shall remain in effect for the Life of the Project whether or not the Development Agreement is terminated.

(c) If a Certificate of Occupancy is issued for the Project without Developer having recorded an Election Notice, this Agreement shall never become effective and the City shall execute and record a notice in the form attached hereto as Exhibit “C.”
22. **AMENDMENT OF AGREEMENT.**

This Agreement, and any Section, subsection, or covenant contained herein, may be terminated or amended only upon the written consent of all parties hereto.

23. **RECORDING OF AGREEMENT.**

The parties hereto shall cause this Agreement to be recorded concurrently with the Development Agreement in the Official Records of the County of Los Angeles.

24. **YEARLY REPORT.**

Developer shall issue a written report to City on an annual basis commencing one year from the date of recordation of the Election Notice and continuing thereafter throughout the term of the Agreement. The report shall state the rent level then being charged for the Affordable Units, whether the occupants are assisted by a rental housing subsidy program, the number of occupants in the household, whether there have been any changes in the composition of the household, whether any vacancies have occurred during the reporting year, any changes in income of the residents of the affordable units, and such other information as may be required by City staff.

25. **COMPLIANCE MONITORING**

Pursuant to City of Santa Monica Resolution 10635 (CCS) and Santa Monica Municipal Code Sections 9.64.060, Developer shall pay the reasonable regulatory costs of ensuring compliance with this Agreement through a Compliance Monitoring Fee adopted and approved on November 22, 2011 and administratively revised on an annual basis.

26. **INTERPRETATION**

In the event of any conflict between the provisions of this Agreement and the Development Agreement, the most stringent interpretation favoring the City shall prevail.
27. **AUTHORITY TO EXECUTE.**

The undersigned declare they have full authority to execute this Agreement on behalf of Developer, and bind Developer to all the terms and conditions contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

**ATTEST:**

```
“CITY”
CITY OF SANTA MONICA
a Municipal Corporation
```

DENISE ANDERSON-WARREN
City Clerk

BY:
RICK COLE
City Manager

**APPROVED AS TO FORM:**
SANTA MONICA CITY ATTORNEY

MARSHA JONES MOUTRIE
City Attorney

```
“DEVELOPER”
DK BROADWAY LLC,
a Delaware limited liability company
```

BY _______________________

[name, and title, i.e. Manager, trustee, owner etc]
EXHIBIT A


APN: 4291-024-028, 029
EXHIBIT “B”

FORM OF NOTICE OF RECORDABLE ELECTION

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:


NOTICE OF ELECTION TO PROVIDE
ON-SITE AFFORDABLE UNITS

THIS NOTICE OF ELECTION TO PROVIDE AFFORDABLE UNITS ON-SITE (the “Notice of Election”) is executed on ____________, 2___, by DK Broadway LLC, a Delaware limited liability company (“Developer”), with reference to the following facts:

A. 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”), entered into that certain Development Agreement dated ____________, 2016 (the “Development Agreement”). The Development Agreement vests in Developer the right to build certain improvements described therein (the “Project”) subject to satisfaction of certain conditions, obligations and restrictions set forth therein. The Development Agreement was recorded in the Official Records of the County of Los Angeles, State of California on ____________, 2016, as Instrument No. ____________.

B. Section 2.8.1 of the Development Agreement requires Developer to provide certain affordable housing units as a community benefit of the Project either at a specified off-site location or on-site as a part of the Project. Because Developer retained the right to elect to include the affordable housing units on-site as a part of the Project, the Development Agreement required Developer to record, concurrently with the Development Agreement, that certain Agreement Imposing Restrictions on Rents & Occupancy of Real Property entered into by and between Developer and the City on ____________, 2016 (the “Deed Restriction”). The Deed Restriction was recorded in the
Official Records of the County of Los Angeles, State of California on _____________, 2016, as Instrument No. ________________.

C. Section 2.8.1(c) of the Development Agreement requires Developer, if it elects to provide the affordable housing units required by the Development Agreement on-site as a part of the Project, to (1) record this Notice of Election in the Official Records of the County of Los Angeles, State of California and (2) provide the City with a conformed copy of this Notice of Election within two (2) business days of its recordation.

D. Section 21(a) of the Deed Restriction provides that the Deed Restriction is not effective unless and until this Notice of Election is recorded in the Official Records of the County of Los Angeles, State of California.

E. Developer has elected to provide the affordable housing units required by the Development Agreement on-site as a part of the Project and intends to provide the City with a conformed copy of this Notice of Election.

NOW, THEREFORE, Developer has executed and is recording this Notice of Election in order to provide constructive notice that it has made the election permitted under Section 2.8.1(c) of the Development Agreement and the Deed Restriction to include the required affordable housing units on-site as a part of the Project and shall provide the City with a conformed copy of this Notice of Election within two (2) business days of its recordation. Developer agrees that, pursuant to Section 21(b) of the Deed Restriction, the Deed Restriction is effective as of the date of recordation of this Notice, is binding on the Project and shall remain effective for the Life of the Project, as defined in the Development Agreement whether or not the Development Agreement is terminated.

Dated: _____________, 2___

DK BROADWAY, LLC, a Delaware limited liability company

By: _______________________
Name: ____________________
Title: ____________________

500 Broadway Draft DA
February 24, 2016
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

On _________________, 2___, before me, _______________________, Notary Public, personally appeared ____________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____________________ (Seal)
EXHIBIT “C”

FORM OF NOTICE OF TERMINATION

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

__________________________________________
__________________________________________
__________________________________________
__________________________________________

NOTICE OF TERMINATION OF
RECORDED DEED RESTRICTION

THIS NOTICE OF TERMINATION OF RECORDED DEED RESTRICTION (this “Notice”) is executed on ________________, 2___, by 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:

A. DK Broadway LLC, a Delaware limited liability company (“Developer”), and the City entered into that certain Development Agreement dated ____________, 2016 (the “Development Agreement”). The Development Agreement vests in Developer the right to build certain improvements described therein (the “Project”) subject to satisfaction of certain conditions, obligations and restrictions set forth therein. The Development Agreement was recorded in the Official Records of the County of Los Angeles, State of California on ________________, 2016, as Instrument No. ____________.

B. Section 2.8.1 of the Development Agreement requires Developer to provide certain affordable housing units as a community benefit of the Project either at a specified off-site location or on-site as a part of the Project. Because Developer retained the right to elect to include the affordable housing units on-site as a part of the Project, the Development Agreement required Developer to record, concurrently with the Development Agreement, that certain Agreement Imposing Restrictions on Rents & Occupancy of Real Property entered into by and between Developer and the City on ____________, 2016 (the “Deed Restriction”). The Deed Restriction was recorded in the
C. Section 2.8.1(c) of the Development Agreement provides that if the 100% Affordable Housing Project contemplated by Section 2.8.1(a) of the Development Agreement has been issued a certificate of occupancy by City and has offered residential units for rent, the Deed Restriction shall never become effective and the City shall execute and record this Notice.

D. The 100% Affordable Housing Project contemplated by Section 2.8.1(a) of the Development Agreement has been issued a certificate of occupancy by City and has offered residential units for rent.

NOW, THEREFORE, the City has executed and is recording this Notice in order to provide constructive notice that Developer’s right to elect to provide the affordable housing units required by the Development Agreement on-site as a part of the Project has terminated and the Deed Restriction shall never become effective with respect to the Project.

Dated: _____________, 2___

ATTEST:

________________________
________________________
City Clerk

________________________
City Manager

CITY OF SANTA MONICA, a municipal corporation

By: _______________________
Name: _____________________

APPROVED AS TO FORM:

________________________
________________________
City Attorney
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _________________, 2___, before me, _________________________, Notary Public, personally appeared ____________________________________, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____________________ (Seal)
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

STATE OF __________________

COUNTY OF __________________

On __________________ before me, __________________, a Notary Public,

(insert name and title of the officer)

personally appeared __________________

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of __________________ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature __________________ (Seal)
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. Absentee parents and unsupervised youth can result in increased problems for families, communities and the City as a whole, including, but not limited to, increased crime, more frequent and serious injuries, poor homework accomplishments, failing grades and increased high school dropout rates.

   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;

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.
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 two 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.

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 PROGRAM FOR PERMANENT EMPLOYMENT

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. Absentee parents and unsupervised youth can result in increased problems for families, communities and the City as a whole, including, but not limited to, increased crime, more frequent and serious injuries, poor homework accomplishments, failing grades and increased high school dropout rates.
   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;
   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 two 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
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 OBLIGATIONS

Construction Period Mitigation

1. A construction period mitigation plan shall be prepared by the applicant 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. As applicable, 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. Limited queuing may occur on the construction site itself.

   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. At a minimum, this would include wetting down such areas in the later morning and after work is completed for the day and whenever wind exceeds 15 miles per hour.

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 20 mph measured as instantaneous wind gusts) so as to prevent excessive amounts of dust. 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 or on the subject site during periods of peak parking demand. 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 the approval of the Architectural Review Board.
ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made and entered into by and between ___________________________, a California limited liability company ("Assignor"), and ________________________, a ______________ ("Assignee").

RECITALS

A. The City of Santa Monica ("City") and Assignor entered into that certain Development Agreement dated _______________, 201_ (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 “Project Site”).

B. Assignor has obtained from the City certain development approvals and permits with respect to the development of the Project Site, including without limitation, approval of the Development Agreement for the Project Site (collectively, the “Project Approvals”).

C. Assignor intends to sell, and Assignee intends to purchase, the Project Site.

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 Project Site. 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 Project Site.

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 Project Site. 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 Project Site.

3. **Effective Date.** The execution by City of the attached receipt for this Agreement shall be considered as conclusive proof of delivery of this Agreement and of the assignment and assumption contained herein. 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 Project Site.

    IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth next to their signatures below.

    “ASSIGNOR”

    [Signature]
    a California limited liability company

    “ASSIGNEE”

    [Signature]
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: ______________________________
   Planning Director
EXHIBIT “L”

PUBLICLY ACCESSIBLE OPEN SPACE