

**AGREEMENT FOR FUNDING OF TRANSPORTATION
ENHANCEMENT PROJECTS**

This Agreement for Funding of Transportation Enhancement Projects (“Agreement”) is made by and between Culver City and CP V Cumulus, LLC “Cumulus”) (collectively, the “Parties”).

I.

RECITALS

A. On May 25, 2016, the City Council for the City of Los Angeles (“LA”) approved the following land use entitlements for the development project described in Section I-B below: a Vesting Tentative Tract Map, a General Plan Amendment changing the applicable land use designations, a zone and height district change, and Site Plan Review (collectively, the “Project Entitlements”).

B. As authorized by the Project Entitlements, Cumulus seeks to develop a mixed-use project on an 11.19-acre site located at 3321, 3351 S. La Cienega Blvd. and 5707, 5717, 5727, 5733, 5735 Jefferson Blvd. (collectively, the “Project Site”). As described in the Project Entitlements, the project would consist of demolition and removal of all existing structures from the Project Site and development of an approximately 1,900,000 square-foot, mixed-use project, which could include up to 1,210 multi-family residential units and 300,000 square feet of commercial uses (the “Project”).

C. On or about July 23, 2015, LA, acting as the lead agency for the environmental review of the Project, released for public review the Draft Environmental Impact Report for the Project (“Draft EIR”), which included the Traffic Study for the Jefferson & La Cienega Mixed-Use Development Project (“EIR Traffic Study”). On or

about September 6, 2015, Culver City submitted a letter to LA that provided comments on the Draft EIR (the “Culver City Comment Letter”). On or about December 21, 2015, LA released for public review the Final Environmental Impact Report for the Project (“FEIR”), which included written responses to the Culver City Comment Letter. As part of its approval of the Project Entitlements, LA certified the Final EIR.

D. Culver City and Cumulus seek to address issues arising from the analysis in the Final EIR of the Project’s potential impacts on traffic and transportation in the general vicinity of the Project Site, including within the City of Culver City. Accordingly, the Parties enter into this Agreement.

II.

TERMS OF THE AGREEMENT

For good cause and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree to the following:

A. Transportation Enhancement Projects.

1. Upon issuance by LA of a building permit for the Project (the “First Building Permit”), Cumulus shall pay, by wire transfer, to Culver City the amount of \$1,150,000 (the “Settlement Funds”). Except as provided in Section II.A.9, below, the Settlement Funds shall be used by Culver City to first fund its permitting, design and construction of the transportation enhancement projects listed as Items 16, 18, 21, 37 and 38 on Exhibit A to this Agreement. If any portion of the Settlement Funds remain after (a) accounting for the cost of permitting, designing and constructing those five transportation projects, and (b) setting aside design funds for the bicycle project described in Section II.A.9, below, then Culver City may use those funds to permit, design or build any of the

other transportation projects listed on Exhibit A hereto or other transportation enhancement projects located within the City of Culver City. It is acknowledged that Culver City may choose to fund the above five projects with other funding sources, including grant funding sources that it may acquire. Once the five projects are completed using whatever funding sources Culver City deems appropriate, the Settlement Funds can then be used for other purposes as specified in this Agreement.

2. Cumulus shall have no obligation to pay the Settlement Funds until the First Building Permit is issued. Culver City expressly acknowledges that a variety of factors may delay or preclude the issuance of the First Building Permit, including but not limited to, litigation filed by a third party against the Project and changes to the economic or financial conditions relevant to development of the Project.

3. Upon payment of the Settlement Funds to Culver City, (a) Cumulus shall have no liability or responsibility for the cost of the permitting, design or construction of any of the transportation projects listed on Exhibit A to this Agreement (collectively, the "Transportation Projects and (b) Culver City shall not seek from either Cumulus or LA any contribution, monetary or otherwise, toward the cost of permitting, design or construction of any of the Transportation Projects.

4. Promptly after the Effective Date of this Agreement, but no later than the issuance of the first grading permit by LA for the Project, Culver City shall use its reasonable best efforts to enter into the necessary agreement or memorandum of agreement with LA concerning (a) Culver's design and construction of Transportation Project Nos. 18 and 21. , and (b) LA's design and construction of TSM measures at the intersection of Fairfax Avenue and Washington Boulevard.

5. Culver City shall be solely responsible for obtaining all of the permits and approvals from public agencies and private parties that are necessary to construct the Transportation Projects (collectively, the “Necessary Approvals”). Cumulus shall cooperate with Culver City concerning the Necessary Approvals. If Culver City’s request or application for a Necessary Approval for any Transportation Project is denied, then the amount of the Settlement Funds that would have been spent on the design and construction of that Transportation Project shall be used by Culver City to fund other transportation enhancement projects located within the City of Culver City, which projects may be selected by Culver City in its sole discretion.

6. Culver City shall be solely responsible for the design and construction of the Transportation Projects. Cumulus shall cooperate with Culver City with respect to the design and construction of the Transportation Projects.

7. Culver City shall exercise best efforts to complete the permitting, design and construction of Transportation Projects Nos. 16, 18, 21, 37 and 38 within a reasonable period of time after receiving the Necessary Approvals.

8. Upon written request from Cumulus, Culver City shall provide Cumulus with (a) a written report on the status of the permitting, design and construction of Transportation Projects Nos. 16, 18, 21, 37 and 38; and (b) an accounting of Culver City’s use of the Settlement Funds to fund Transportation Projects Nos. 16, 18, 21, 37 and 38.

9. The Parties agree that \$85,000 of the Settlement Funds shall be allocated for the design, permitting and construction of a public bicycle library, bicycle share program or bicycle share station (“Bicycle Project”) serving the Project Site that will

be compatible with Culver City's future bike share program. Such Bicycle Project shall be located on a site in Culver City (for example in the Hayden Tract). The Bicycle Project must be at all times available for use by the general public. At either Party's request, the Parties shall negotiate in good faith an alternative use of the \$85,000 in Settlement Funds for the Bicycle Project if, for any reason, the Bicycle Project becomes infeasible to develop. Culver City will be solely responsible for any cost of the installation in excess of the allotted \$85,000. If Culver City constructs the Bicycle Project, any unused funds will be retained by Culver City for its use on other bicycle and pedestrian related projects in Culver City.

B. Non-Opposition To The Project.

1. Upon the payment of the Settlement Funds, Culver City shall not submit additional conditions upon, oppose, otherwise criticize or advocate against the Project, the Project Entitlements, the Final EIR, the EIR Traffic Study or any permit or approval subsequently issued by LA pursuant to the Project Entitlements (the "Future Project Approvals"), on the basis of the California Environmental Quality Act (CEQA) or other bases that were the subject of the Culver City Comment Letter, either orally or in writing, before LA, any agency with jurisdiction over the Project.

C. Covenant Not to Sue.

1. Upon the payment of the Settlement Funds, Culver City shall not file or join any lawsuit or any other judicial proceeding, or bring any administrative challenge or appeal under any federal, state, or local law challenging the approval by LA of any of the Project Entitlements, the Final EIR, the EIR Traffic Study or any Future

Project Approvals, on the basis of CEQA or other bases that were the subject of the Culver City Comment Letter.

D. Reservation of Rights.

1. For purposes of Sections II.B and II.C, above, Future Project Approvals shall only apply to the Project and FEIR as they exist at the time of the execution of this Agreement and shall not include any modifications or amendments to the Project that are not specifically described in the FEIR, including, but not limited to, any addendum to the FEIR, or subsequent or supplemental EIR. Further, Culver City reserves all rights to pursue any available remedies at law or in equity, which are not expressly waived under this Agreement.

E. Specific Performance and Injunctive Relief.

1. Each of the Parties agree that any breach of any of the obligations set forth in Sections II.B and C of this Agreement is not susceptible to a full or adequate remedy by an event of monetary damages. Therefore, the Party claiming breach of any of the foregoing obligations shall be entitled to seek an order for specific performance and injunctive relief as a remedy against the Party causing said breach.

F. Additional Provisions.

1. Execution of Additional Documents. Each of the Parties agrees to promptly do such acts and execute such additional documents as might be necessary to carry out the provisions and effectuate the purposes of this Agreement.

2. Authority. Each person executing this Agreement on behalf of a corporation or other entity represents that he or she has the full legal right, power, and

authority to execute and deliver this Agreement and to bind the Party for whom such individual is signing, and to cause such Party to perform its obligations hereunder.

3. Exclusive Remedy. By executing this Agreement, each of the Parties acknowledges and agrees that the rights and remedies provided in this Agreement shall be the sole and exclusive rights and remedies surviving as between and among the Parties hereto relating to the subject matter of this Agreement.

4. No Reliance on Others. No representations, oral or otherwise, expressed or implied, other than those contained herein, have been made by any Party, or any officer, director, shareholder, partner, associate, agent, affiliate, insurer, attorney or employee thereof. By executing this Agreement, each of the Parties warrants and represents that this Agreement is made and entered into without reliance upon any statements or representations of any other Party, or in reliance upon any statements or representations made by any officers, directors, shareholders, partners, associates, agents, affiliates, insurer, attorneys or employees of any other Party.

5. Independent Investigation. Each of the Parties warrants and represents that he/she or it has made its own independent investigation, in the manner deemed necessary and appropriate by them, of the facts and circumstances surrounding this Agreement and the settlement contained herein, and that through such independent investigation, each Party has satisfied itself that the execution of this Agreement and entry into the settlement contained herein is in his/her or its best interest. Also, each of the Parties warrants and represents that his/her or its independent investigation has included, but not been limited to, receipt of independent advice by legal counsel on the availability of entering into this Agreement and making the settlement contained therein.

6. Compromise of Disputed Claims. Each of the Parties acknowledges and agrees that this Agreement is the compromise of a disputed claim, and that nothing contained in this Agreement shall be construed as admissions of liability on the part of any Party. Neither this Agreement nor any of its terms shall be offered or received as evidence in any proceeding in any forum as an admission of any liability or wrongdoing on the part of any of the Parties.

7. Construction of Agreement. Each of the Parties has cooperated in the drafting and preparation of this Agreement and, therefore, any construction of the intent of the Parties or language hereof to be made by a court or arbitrator shall not be construed against any of the Parties.

8. Comprehension of Terms. Each of the Parties warrants and represents that he/she and it has read this Agreement in full, fully understands each and every provision hereof, and agrees to be bound by all of the terms and provisions set forth herein.

9. Successors and Assigns. This Agreement shall be binding on, and inure to the benefit of, each Party's respective successors and assigns, including purchasers of the Project Site. Cumulus may assign this Agreement to a third party upon providing 20 days written notice to Culver City.

10. Governing Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties hereunder shall be governed by, construed and enforced in accordance with the laws of the State of California.

11. Severability. Any portion of this Agreement found to be invalid, void, or unenforceable shall be deemed severable from the remainder of this Agreement and shall not invalidate the remainder of the Section in which it is located or the remainder of this Agreement.

12. Merger and Integration. This Agreement contains the full and entire agreement between and among the Parties with respect to the entire subject matter hereof and supersedes any and all prior or contemporaneous agreements and discussions, whether written or oral. Any and all prior or contemporaneous discussions, negotiations, writings, commitments and/or undertakings related hereto are merged herein.

13. Amendment. This Agreement may be amended only by written agreement signed by all Parties.

14. Counterparts. This Agreement may be executed and delivered by facsimile or emailed .PDF and in any number of counterparts, each of which shall be deemed an original; however, all such counterparts shall constitute but one and the same instrument signed as of the Effective Date.

15. Attorneys' Fees. In the event of litigation or arbitration relating to this Agreement, the prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees and costs from the losing Party or Parties in connection with such litigation or arbitration.

16. Notice. Any notice required or permitted to be given under the terms of this Agreement shall be in writing and delivered by overnight mail and by facsimile or electronic transmission, unless another mean of delivery is expressly authorized or required in this Agreement for a particular notice. Notices shall be sent to the following persons:

To: Culver City City of Culver City Attention: Charles Herbertson, Public Works Director/City Engineer 9770 Culver Boulevard Culver City, CA 90232 Telephone: 310-253-5630 E-Mail: charles.herbertson@culvercity.org	With a copy to: Carol Schwab City Attorney City of Culver City 9770 Culver Boulevard Culver City, CA 90232 Telephone: (310) 253-5660 E-mail: carol.schwab@culvercity.org
To: CP V Cumulus, LLC CP V Cumulus, LLC Attention: Neils Cotter 530 Wilshire Boulevard, Suite 203 Santa Monica, CA 90401 Telephone: (949) 355-5659 E-mail: ncotter@carmelpartners.com	With a copy to: Edward J. Casey, Esq. Alston & Bird LLP 333 South Hope Street, 16th Floor Los Angeles, CA 90071 Telephone: (213) 576-1000 E-mail: ed.casey@alston.com

Notice shall be deemed given as of the date of transmission of the notice. Any Party may change its addressee(s) for notice by providing written notice of such change in accordance with the requirements of this Section of the Agreement.

17. Effective Date. This Agreement shall become effective on the date that the last Party executes this Agreement (the “Effective Date”).

June ____, 2017

Culver City

By: John Nachbar, City Manager

June ____, 2017

CP V Cumulus, LLC

By:
Title:

APPROVED AS TO FORM ONLY:

June _____, 2017

By: Carol Schwab
Culver City, City Attorney

June _____, 2017

Alston & Bird LLP

By: Edward J. Casey
Counsel to CP V Cumulus, LLC