

DEVELOPMENT AGREEMENT

by and between

THE CITY OF CULVER CITY

and

The Culver Studios Owner, LLC

dated as of

DEVELOPMENT AGREEMENT

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DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is executed this ____ day of _____, 20____ by and between the CITY OF CULVER CITY, a California municipal corporation (the “City”), and The Culver Studios Owner LLC, a Delaware limited liability company (the “Developer”). (The City and the Developer are sometimes referred to hereinafter, individually, as the “Party” and collectively, as the “Parties.”)

RECITALS

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864 et seq. of the California Government Code (the “Development Agreement Statute”);

WHEREAS, the Development Agreement Statute and the Culver City Municipal Code (“CCMC”) authorize the City to enter into a property development agreement with any person having a legal or equitable interest in real property for the development of such real property in order to establish certain development rights in the real property;

WHEREAS, the City and the Developer recognize that further development of the subject property, as defined below, will create significant opportunities for economic growth in the City, the Southern California region and California generally;

WHEREAS, the Developer wishes to obtain reasonable assurances that the Project, as defined below, may be developed in accordance with the Project Approvals, as defined below, and the terms of this Agreement;

WHEREAS, the Developer will implement public benefits above and beyond the necessary mitigation for the Project including benefits and other consideration as noted in Section 2.3.1 and;

WHEREAS, this Agreement is necessary to assure the Developer that the Project will not be reduced in density, intensity or use or be subjected to new rules, regulations, ordinances or policies unless otherwise allowed by this Agreement;

WHEREAS, by entering into this Agreement, the City is encouraging the development of the Project as set forth in this Agreement in accordance with the goals and objectives of the City, while reserving to the City the legislative powers necessary to remain responsible and accountable to its residents;

WHEREAS, the Developer owns approximately 14 acres of land located at 9336 Washington Boulevard as set forth in Exhibit A (the “Property”). The Developer intends to redevelop portions of the Property with new studio, stage, production office, office, support, and related uses, circulation improvements, and parking facilities to be implemented through The Culver Studios Innovation Plan, which is reflected in Comprehensive Plan Amendment No. 7 (“CPA No. 7” or the “Project”). The Project would demolish some structures and would result in a net increase of approximately 345,007 square feet of floor area.

WHEREAS, the Developer anticipates that the Project will be completely built-out and fully operational by the year 2028; and

WHEREAS, for the foregoing reasons, the Parties desire to enter into a development agreement for the Project pursuant to the Development Agreement Act, as defined below, and the City's charter powers upon the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, and in consideration of the mutual promises and covenants herein contained and other valuable consideration the receipt and adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

1. DEFINITIONS

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

1.1 “Applicable Rules” means the laws, rules, regulations, fees (other than Processing Fees and Linkage Fees, as defined below), ordinances and official policies of the City effective as of the Effective Date (as defined below) of this Agreement governing the use and development of Property, which, among other matters, regulate the permitted uses of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, parking requirements, setbacks, development standards, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction guidelines, standards and specifications applicable to the development of the Property, including but not limited to all specifications, standards and policies regarding the design and construction of any public improvements that may be required in connection with the development of the Property.

1.2 “Assignment Agreement” means an agreement entered into by the Developer or a transferee, as herein permitted, to transfer in whole or in part the rights and obligations of the Developer under this Agreement to a third party transferee. **“CEQA”** means the California Environmental Quality Act (Cal. Public Resources Code Sections 21000 et seq.) and the State CEQA Guidelines (Cal. Code of Regs., Title 14, Sections 15000 et seq.). **“City”** means the City of Culver City, a charter city and municipal corporation. **“City Agency”** means each and every agency, department, board, commission, authority, employee, and/or official acting under the authority of the City, including without limitation the City Council and the Planning Commission. **“City Attorney”** means the legal counsel for the City.

1.7 “City Council” means the City Council of the City and the legislative body of the City pursuant to Section 65867 of the California Government Code (Development Agreement Act).

1.8 “Conditions of Approval” means the regulations and limitations imposed directly or indirectly by the City on the Project, including, but not limited to, all those associated with the

Project Approvals, including, without limitation, those attached hereto as Exhibit B, Conditions of Approval.

1.9 “Days” means calendar days as opposed to working days.

1.10 “Developer” has the meaning as described in the opening paragraph of this Agreement.

1.11 “Development Agreement Act” means Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code.

1.12 “Director” means the Community Development Director of the City or his or her designee.

1.13 “Discretionary Action” means an action which requires the exercise of judgment, deliberation or a decision on the part of the City or any City Agency in the process of approving or disapproving a particular activity, as distinguished from Ministerial Permits and Approvals and any other activity which merely requires the City or any City Agency to determine whether there has been compliance with statutes, ordinances or regulations.

1.14 “Effective Date” has the meaning set forth in Section 7.1 below.

1.15 “General Plan” means the General Plan of the City.

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

1.17 “Mitigation Measures” means the mitigation measures described in the Environmental Impact Report (“EIR”), State Clearinghouse Number SCH No. _____, certified by the City in accordance with the requirements of CEQA, on _____ and set forth in the Mitigation Monitoring Program for the Project adopted by the City on _____ which is attached hereto as Exhibit C, Mitigation Monitoring Program.

1.18 “Parties” means collectively the Developer and the City.

1.19 “Party” means any one of the Developer or the City.

1.20 “Planning Commission” means the Planning Commission of the City.

1.21 “Processing Fees” means all processing fees and charges required by the City or any City Agency, including, but not limited to, fees for land use applications, project permits, building applications, building permits, grading permits, encroachment permits, tract or parcel

maps, lot line adjustments, and certificates of occupancy which are necessary to accomplish the intent and purpose of this Agreement. Expressly exempted from Processing Fees are all linkage fees or exactions, which may be imposed by the City on development projects pursuant to laws enacted after the Effective Date of this Agreement, except as specifically provided for in this Agreement (“Linkage Fees”). The amount of the Processing Fees to be applied in connection with the development of the Project shall be the amount that is in effect on a City-wide basis at the time an application for the City action is made regarding the Project, unless an alternative amount is established by the City in a subsequent agreement.

1.22 “Project” means construction and use of the Property as described in CPA No. 7, including but not limited to the construction of up to approximately 564,500 square feet of new stage, production office, support, and office uses and the proposed demolition of approximately 219,493 square feet of existing production office, stage, and support services, for a total net increase of approximately 345,007 square feet of floor area.

1.23 “Project Approvals” means those Discretionary Actions authorizing the Project which have been approved by the City on or before the Effective Date (irrespective of their respective effective dates) including, but not limited, to: (1) adoption of CPA No. 7, an amendment to the Comprehensive Plan for the Property, superseding all previous amendments; (2) approval of a Certificate of Appropriateness under the City’s Historic Preservation Program; (3) certification of the EIR and adoption of the Mitigation Monitoring Program; and (4) approval of this Agreement.

1.24 “Property” has the meaning in the recitals above and as fully described in the legal description attached as Exhibit “A”.

1.25 “Reserved Powers” means the rights and authority excepted from this Agreement’s restrictions on the City’s police powers and which are instead reserved to the City. The Reserved Powers include the powers of the City Council and City Agencies to enact regulations or take future Discretionary Actions after the Effective Date of this Agreement that may be in conflict with the Applicable Rules and Project Approvals, but: (1) are necessary to protect the public health and safety, and are generally applicable on a City-wide basis (except in the event of natural disasters as found by the City Council such as floods, earthquakes and similar acts of God); (2) are amendments to Title 15, Chapter 15.02 of the Culver City Municipal Code (Buildings, Structures, and Equipment) or Title 9, Chapter 9.02 of the Culver City Municipal Code (Fire Prevention) regarding the construction, engineering and design standards for private and public improvements; or (3) are necessary to comply with state or federal laws and regulations (whether enacted previous or subsequent to the Effective Date of this Agreement) as provided in Section 3.2.2.3.

1.26 “Term” means the period of time for which this Agreement shall be effective in accordance with Section 7.2 hereof.

1.27 “Transferee” means a third party that has entered into an Assignment Agreement with Developer or a successor transferor, as may be permitted pursuant to this Agreement.

2. RECITALS OF PREMISES, PURPOSE AND INTENT

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

“The Legislature finds and declares that:

“(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

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

2.2 City Procedures and Actions.

2.2.1 Planning Commission Action. The Planning Commission held a duly noticed public hearing and recommended approval of this Agreement on _____.

2.2.2 City Council Certification of the EIR. The City Council on _____, after conducting a duly-noticed public hearing, certified the EIR for the Project.

2.2.3 City Council Action. The City Council on _____, after conducting a duly-noticed public hearing, adopted Ordinance No. _____, to become effective on the thirty-first day after its adoption, found that its provisions are consistent with the City’s General Plan and the Culver City Municipal Code, and authorized the execution of this Agreement.

2.3 Purpose of this Agreement.

2.3.1 Public Benefits. This Agreement provides assurances that the public benefits identified below will be achieved and developed in accordance with the Applicable Rules, Project Approvals and with the terms of this Agreement and subject to the City’s Reserved Powers. In addition to such local and regional public benefits as new jobs, increased sales tax and property tax, the Developer shall provide the following public benefits to the City as consideration for this Agreement:

(a) *Mobility Fund Contribution:* Developer shall provide funding in the amount of \$1.00 per square foot of net new development floor area approved under CPA No. 7 (estimated at \$345,000) to support local mobility measures that may include improvements to the first and last mile travel from the Culver City Expo Station and neighborhood traffic management.

(b) *Traffic System Improvements:* Developer shall provide funding in the amount of \$600,000 for traffic system improvements in the area.

(c) *Culver/Main Ramp & Tunnel:* Developer shall provide funding for the Culver Boulevard/Main Street Ramp and Tunnel, as defined in the Shared Use and Access Easement Agreement dated September 12, 2017 between the City of Culver City, The Culver Studios Owner LLC and HC 9300 Culver, LLC.

(d) *Town Plaza Enhancements:* Developer shall provide funding for the following Town Plaza Enhancements described in the Disposition and Development Agreement dated January 31, 2012 between the City of Culver City and Combined/Hudson 9300 Culver, LLC: Special tree well covers, wonder utility covers, special bike racks, special trash receptacles, special lighting, paving, special street furniture, above-ground planters and raised landscaped area above the Culver/Main Ramp and Tunnel.

(e) *Off-peak Hour Parking Access:* Developer shall provide public parking when available at the Rear Lawn Garage identified in CPA No.7.

2.3.2 Developer Objectives. In accordance with the legislative findings set forth in the Development Agreement Act, the Developer wishes to obtain reasonable assurances that the Project may be developed in accordance with the Applicable Rules, Project Approvals and with the terms of this Agreement and subject to the City's Reserved Powers. In the absence of this Agreement, Developer would have no assurance it could complete the Project for the uses and to the density and intensity of development set forth in this Agreement and the Project Approvals. This Agreement, therefore, is necessary to assure the Developer the Project will not be (1) reduced or otherwise modified in density, intensity or use from what is set forth in the Project Approvals, (2) subjected to new rules, regulations, ordinances or official policies or plans which are not adopted or approved pursuant to the City's Reserved Powers or (3) subjected to delays for reasons other than Citywide health and safety enactments related to Citywide emergencies.

2.3.3 Mutual Objectives. Development of the Project in accordance with this Agreement will provide for the orderly development of the Property in accordance with the objectives set forth in the General Plan. Moreover, this Agreement for the Project will eliminate uncertainty in planning for and securing orderly development of the Property, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted. The Parties believe such orderly development of the Project will provide public benefits, as described in Section 2.3.1, to the City through the imposition of development standards and requirements under this Agreement, including without limitation: increased tax revenues, installation of on-site and off-site improvements, and creation and retention of jobs, and development of an aesthetically attractive

project. Additionally, although development of the Project in accordance with this Agreement will restrain the City's land use or other relevant police powers, this Agreement provides the City with sufficient reserved powers during the Term to remain responsible and accountable to its residents. In exchange for those and other benefits to the City, the Developer will receive assurance that the Project may be developed during the Term of this Agreement in accordance with the Applicable Rules, Project Approvals and Reserved Powers, subject to the terms and conditions of this Agreement.

2.4 Applicability of the Agreement. This Agreement does not: (1) grant height, density or intensity in excess of that otherwise established in the Applicable Rules and Project Approvals; (2) eliminate future Discretionary Actions relating to the Project if applications requiring such Discretionary Action are initiated and submitted by the owner of the Property after the Effective Date of this Agreement; (3) guarantee the Developer will receive any profits from the Project; (4) prohibit the Project's participation in any benefit assessment district or increased taxes that may be generally applicable to surrounding properties; (5) amend the City's General Plan, or (6) amend the City of Culver City Municipal Code. This Agreement has a fixed Term. Furthermore, in any subsequent actions applicable to the Property, the City may apply such new rules, regulations and official policies as are contained in its Reserved Powers.

3. AGREEMENT AND ASSURANCES

3.1 Agreement and Assurance on the Part of Developer. In consideration for the City entering into this Agreement, and as an inducement for the City to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the promises, purposes and intentions set forth in Section 2.3 of this Agreement, the Developer hereby agrees as follows:

3.1.1 Project Development. The Developer agrees that it will use commercially reasonable efforts, which reasonably take into account market conditions and economic considerations, to undertake development of the Project in accordance with the terms and conditions of this Agreement, including the Applicable Rules and the Project Approvals. Nothing herein shall be construed to require the Developer to proceed with the construction of or any other implementation of the Project or any portion thereof.

3.1.2 Timing of Development. The Parties acknowledge that the Developer cannot at this time predict when or at what rate the Property would be developed. Such decisions depend upon numerous factors which are not all within the control of the Developer, such as market orientation and demand, availability of financing, interest rates and competition. The Developer may therefore construct the Project in either a single phase or multiple phases (lasting any duration of time) within the Term of this Agreement. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), the failure of the parties therein to provide for the timing of development permitted a later adopted initiative restricting the timing of development and controlling the Parties' agreement, the Developer and the City do hereby acknowledge the Developer has the right to develop the Project in an order and at a rate and times as the Developer deems appropriate within the exercise of its sole and subjective business judgment. The City acknowledges that right is consistent with the intent, purpose and understanding of the Parties to this Agreement.

3.2 Agreement and Assurances on the Part of the City. In consideration for the Developer entering into this Agreement, as an inducement for the Developer to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the promises, purposes and intentions set forth in Section 2.3 of this Agreement, the City hereby agrees as follows:

3.2.1 Entitlement to Develop. The Developer has the vested right to develop the Project subject to the terms and conditions of this Agreement, the Applicable Rules, Project Approvals and the Reserved Powers. The Developer's vested rights under this Agreement shall include, without limitation, the following:

3.2.1.1 Right to Modify. The Developer has the right to modify the size (within the limits stated below), location on the Property, configuration, number, design, architectural finishes, or specific uses of the buildings depicted in CPA No. 7, provided, that (1) the modification conforms to the broad development standards listed in CPA No. 7; (2) the total amount of net new building floor area does not exceed 345,007 sq. ft.; (3) parking is provided in accordance with the requirements of the Applicable Rules; (4) the Developer submits any Project changes to CPA No. 7 to the Director as a minor conformance review, which approval will not be unreasonably withheld; provided, such changes, modifications or adjustments are substantially consistent with the Project Approvals and do not constitute Substantial Project Changes as defined in Section 3.2.4 of this Agreement; (5) to the extent required by the Applicable Rules, Project Approvals and Reserved Powers, all applicable ministerial and discretionary approvals are received; and (6) the total amount of traffic generated by the Project does not exceed the total amount of traffic projected for the development in the final EIR for CPA No. 7 on an average daily basis.

3.2.1.2 Right to Rebuild or Replace. Developer has the right to remodel, renovate, rehabilitate, rebuild or replace the Project or any portion thereof throughout the applicable Term for any reason, including, without limitation, in the event of damage, destruction or obsolescence of the Project or any portion thereof, subject to the Applicable Rules, Project Approvals and Reserved Powers. To the extent that all or any portion of the Project is remodeled, renovated, rehabilitated, rebuilt or replaced, Developer may locate that portion of the Project at any other location on the Property, subject to the requirements of the Project Approvals, the Applicable Rules, and the Reserved Powers.

3.2.2 Changes in Applicable Rules.

3.2.2.1 Non-application of Changes in Applicable Rules. Any change in, or addition to, the Applicable Rules, including, without limitation, any change in any applicable General Plan, Comprehensive Plan, zoning or building regulation, adopted or becoming effective after the Effective Date of this Agreement, including, without limitation, any such change by means of ordinance including but not limited to adoption of a specific plan or overlay zone, City Charter amendment, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City, City Council, Planning Commission, or any other Board, Commission, Department or Agency of the City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict with the Applicable Rules, Project

Approvals, or this Agreement, shall not be applied to the Project, unless such changes represent an exercise of the City's Reserved Powers, or are otherwise agreed to in this Agreement. Notwithstanding the foregoing, Developer may, in its sole discretion, give the City written notice of its election to have any subsequent change in the Applicable Rules applied to some portion or all of the Property as it may own, in which case such subsequent changes in the Applicable Rules shall be deemed to be contained within the Applicable Rules insofar as that portion of the Property is concerned.

3.2.2.2 Changes in Building and Fire Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes which may occur from time to time in the California Building Code and other uniform construction codes. In addition, development of the Project shall be subject to any changes adopted by City Council from time to time to Title 15, Chapter 15.02 of the Culver City Municipal Code (Buildings, Structures, and Equipment) or Title 9, Chapter 9.02 of the Culver City Municipal Code (Fire Prevention) regarding the construction, engineering and design standards for both public and private improvements.

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

3.2.3 Subsequent Development Review. Subject to Section 3.2.4, the City shall not require the Developer to obtain any approvals or permits for the development of the Project in accordance with this Agreement other than those permits or approvals that are required by the Reserved Powers and/or the Project Approvals. Any subsequent Discretionary Action initiated by the Developer, which changes the entitlements approved pursuant to the Project Approvals, shall be subject to rules, regulations, ordinances and official policies of the City then in effect ("Project Changes"). The Parties agree this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that future Discretionary Actions may require additional environmental review pursuant to CEQA. In the event that additional environmental review is required by CEQA, the City agrees to utilize tiered environmental documents to the fullest extent permitted by law, as determined by the City, and as provided in California Public Resources Code Sections 21093 and 21094.

3.2.4 Administrative Changes and Modifications. The Project may demonstrate that refinements and changes are appropriate with respect to the details of the Project development and performance of the Parties under this Agreement. The Parties desire to retain a certain degree of flexibility with respect to the details of the Project development and with respect to those items covered in general terms under this Agreement and Project Approvals. If and when the Parties find that "Substantially Conforming Changes," as herein defined, are necessary or appropriate, then they shall, unless otherwise required by law, effectuate such changes or adjustments through administrative modifications approved by the Parties. As used herein,

“Substantially Conforming Changes” are changes, modifications or adjustments that are substantially consistent with the Project Approvals, and do not constitute Project Changes as defined in Section 3.2.3 of this Agreement. Such Substantially Conforming Changes would not be considered Discretionary Actions, and would therefore not require a public hearing or further environmental review under CEQA, except to the extent required by the Project Approvals.

3.2.5 Effective Development Standards. The City agrees that it is bound to permit the uses, intensity of use and density on this Property which are permitted by this Agreement and the Project Approvals, insofar as this Agreement and the Project Approvals so provide or as otherwise set forth in the Applicable Rules or the Reserved Powers.

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

3.2.7 Special Taxes and Assessments. The Developer shall have the right, to the extent permitted by law to protest, oppose and vote against any and all special taxes, assessments, levies, charges and/or fees imposed with respect to any assessment districts, infrastructure financing, Mello Roos or community facilities districts, community taxing districts, maintenance districts or other similar districts.

3.2.8 Moratoria or Interim Control Ordinances. In the event an ordinance, resolution, policy, or other measure is enacted, whether by action of the City, by initiative, or otherwise, which prevents the Project from being developed as provided in the Project Approvals, or to the rate, amount, timing, sequencing, or phasing of the development or construction of the Project on all or any part of the Property, City agrees that such ordinance, resolution or other measure shall not apply to the Property or this Agreement, unless such changes: (1) are found by the City Council to be necessary to the public health and safety of the residents of the City; or (2) are necessary to comply with state or federal laws and regulations (whether enacted previous or subsequent to the Effective Date of this Agreement) as provided in Section 3.2.2.3.

3.2.9 Time Period of Project Approvals. The City acknowledges that the construction of the Project may be subject to unavoidable delays due to the factors outside the Developer’s control. The City further agrees that the duration of the Project Approvals shall automatically be extended for the Term of this Agreement.

3.2.10 Processing Fees. Developer shall pay all Processing Fees for Ministerial Permits and Approvals in the amount in effect when such Ministerial Permits and Approvals are sought.

3.2.11 Timeframes and Staffing for Processing and Review. The City agrees that expeditious processing of Ministerial Permits and Approvals and Discretionary Actions, if any, and any other approvals or actions required for the Project are critical to the implementation of the Project. In recognition of the importance of timely processing and review

of Ministerial Permits and Approvals, the City agrees to work with Developer to establish time frames for processing and reviewing such Ministerial Permits and Approvals and to comply with timeframes established in the Project Approvals. The City agrees to expedite all Ministerial Permits and Approvals and Discretionary Actions requested by the Developer, if any, to the extent practicable. The Developer agrees to pay the fee reasonably determined necessary by the City for expedited review and processing time.

3.2.12 Other Governmental Approvals. The Developer may apply for such other permits and approvals as may be required for development of the Project in accordance with the provisions of 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.

4. ANNUAL REVIEW

4.1 Annual Review. During the Term of this Agreement, the City shall review annually the Developer's good faith compliance with this Agreement by the Developer and any Transferee. That annual review shall be limited in scope to good faith compliance with the provisions of this Agreement as provided in the Development Agreement Act. The Developer and any Transferee shall have the burden of demonstrating such good faith compliance relating solely to such parties' portion of the Property and any development located thereon. The annual review shall be in the form of a written annual report consistent with Section 4.2 of this Agreement and prepared and submitted by the Developer or Transferee for review by the Director. The report shall include: the number, type and square footage of and the status of the Project; the total number of parking spaces developed; and summary of performance of Developer's obligations. The Developer or Transferee, shall be responsible for all the City's costs associated with review of and conducting the annual review.

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

4.2.1 Special Review. The City may order a special review of compliance with this Agreement upon reasonable evidence of material non-compliance with the terms of this Agreement.

4.3 Director's Determination. On or before the yearly anniversary of the Effective Date of the Agreement, the Director shall make a determination regarding whether or not the Developer and any Transferee has complied in good faith with the provisions and conditions of this Agreement. That determination shall be made in writing with reasonable specificity, and a copy of the determination shall be provided to the Developer and/or Transferee in the manner prescribed in Section 7.11.

4.4 Appeal by Developer. In the event the Director makes a finding and determination of non-compliance, Developer, and/or any Transferee, as the case may be, shall be entitled to appeal that determination to the Planning Commission within twenty five (25) days after the receipt of the Director's decision. After a duly noticed public hearing on the appeal, the Planning Commission, no later than the next regular meeting of the Planning Commission, shall make written findings and determinations, on the basis of substantial evidence, whether or not the Developer, and/or any Transferee, as the case may be, has complied in good faith with the provisions and conditions of this Agreement. A finding and determination of compliance by the Planning Commission shall be final and effective.

4.5 Period to Cure Non-Compliance. If, as a result of this annual review procedure, it is found and determined by the Director or the Planning Commission on appeal, the Developer and/or any Transferee, as the case may be, has not complied in good faith with the provisions and conditions of this Agreement, then the City, after denial of any appeal or, where no appeal is taken, after the expiration of the appeal period described in Section 4.4, shall submit to Developer and/or any Transferee, as the case may be, by registered or certified mail, return receipt requested, a written notice of non-compliance in the manner prescribed in Section 7.11, stating those obligations of Developer and/or Transferee which have not been performed. Upon receipt of the notice of non-compliance, Developer and/or any Transferee, as the case may be, shall promptly commence to cure the identified items of non-compliance at the earliest reasonable time after receipt of the notice of non-compliance and shall complete the cure of such items of non-compliance not later than sixty (60) days after receipt of the notice of non-compliance, or such longer period as is reasonably necessary to remedy such items of non-compliance, provided, that Developer shall continuously and diligently pursue the remedy at all times until the item of non-compliance is cured.

4.6 Failure to Cure Non-Compliance Procedure. If the Director finds and determines the Developer or a Transferee has not cured or commenced to cure an item of non-compliance pursuant to this Section, and the City intends to terminate this Agreement, then the Director shall make a report to the City Council. The Director shall then set a date for a public hearing before the City Council for the City Council to determine whether the Developer or a Transferee has failed to cure the non-compliance.

4.7 Reimbursement of Costs. The Developer and any Transferee shall reimburse the City for its actual costs, based on City's personnel costs and for outside consultants, including attorneys, reasonably and necessarily incurred, to accomplish the required annual review, including all costs related to any necessary public hearing.

4.8 City's Rights and Remedies Against Developer. The City's rights in Section 4 of this Agreement relating to compliance with this Agreement by the Developer and any Transferee shall be limited to only those rights and obligations assumed by the Developer under this Agreement and as expressly set forth in any applicable Assignment Agreement authorized by Section 7.7 of this Agreement.

5. DEFAULT PROVISIONS

5.1 Default by Developer.

5.1.1 Default. In the event Developer or a Transferee fails to perform its obligations under this Agreement applicable to its portion of the Property as specified in the applicable Assignment Agreement, in a timely manner and in compliance pursuant to Section 4 of this Agreement, the City shall have all rights and remedies provided for in this Agreement, including without limitation, modifying or terminating this Agreement; provided, that the City has first complied with all applicable notice and opportunity to cure provisions in Section 5.1.2 and given notice as provided in Section 7.11 hereof, and provided further that Developer may appeal such declaration in the manner provided in, and subject to all terms and provisions of, Sections 4.4 and 4.5.

5.1.2 Notice of Default. The City through the Director shall submit to the Developer or Transferee, as applicable, by registered or certified mail, return receipt requested, a written notice of default in the manner prescribed in Section 7.11, identifying those obligation(s) of Developer or Transferee, as applicable, which have not been performed. Upon receipt of the notice of default, the Developer or Transferee shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of the default(s) not later than sixty (60) days after receipt of the notice of default, or such longer period as agreed to by the City; provided, that the Developer or Transferee, as applicable, shall continuously and diligently pursue the remedy at all times until the default(s) is cured.

5.1.3 Failure to Cure Default Procedures. If after the cure period set forth herein has elapsed, the Director determines the Developer or Transferee, as the case may be, remains in default and the City intends to terminate or modify this Agreement, then the Director shall make a report to the City Council and then set a public hearing before the City Council.

5.1.4 Termination or Modification of Agreement. The City may terminate this Agreement after the determination by the City Council of the Developer's or Transferee's failure to timely cure a default.

5.2 Default by the City.

5.2.1 Default. In the event the City defaults under the provisions of this Agreement, the Developer and Transferee shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement; provided, that the Developer or Transferee, as the case may be, has first complied with the procedures in Section 5.2.2. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses the City may otherwise have with respect to claims for monetary damages.

5.2.2 Notice of Default. The Developer or Transferee, as the case may be, shall first submit to the City a written notice of default stating with specificity those obligations which have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than sixty (60) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s); provided, that the City shall continuously and diligently pursue the remedy at all times until such default(s) is cured.

5.3 No Monetary Damages. It is acknowledged by the Parties that the City and Developer would not have entered into this Agreement if it were liable in monetary damages under or with respect to this Agreement or the application thereof. The Parties agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages which would adequately compensate Developer for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify the exposure. Therefore, the Parties agree that each of the Parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that the Parties shall not be liable in monetary damages and the Parties covenant not to sue for or claim any monetary damages for the breach of any provision of this Agreement.

6. MORTGAGEE RIGHTS

6.1 Encumbrances on the Property. The Parties hereto agree that this Agreement shall not prevent or limit the Developer, from encumbering the Property or any estate or interest therein, portion thereof, or any improvement thereon, in any manner whatsoever by one or more mortgages, deeds of trust, sale and leaseback, or other form of secured financing (“Mortgage”) with respect to the construction, development, use or operation of the Property, the Project, and parts thereof. The City acknowledges that the lender(s) providing such Mortgages may require certain Agreement interpretations and modifications and agrees, upon request, from time to time, to meet with the Developer and representatives of such lender(s) to negotiate in good faith any such request for interpretation or modification. The City will not unreasonably withhold, delay or condition its consent to any such requested interpretation or modification, provided such interpretation or modification is consistent with the intent and purposes of this Agreement.

6.2 Mortgagee Protection. To the extent legally permissible, this Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by the holder of a Mortgage (a “Mortgagee”), pursuant to foreclosure, trustee’s sale, deed in lieu of foreclosure, lease or sublease termination or otherwise, shall be subject to all of the terms and conditions of this Agreement except that any such Mortgagee, including its affiliate, who takes title to the Property or any portion thereof shall be entitled to the benefits arising under this Agreement.

6.3 Mortgagee Not Obligated. Notwithstanding the provisions of this Section 6, Mortgagee will not have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of the Developer or other affirmative covenants of the Developer hereunder, or to guarantee such performance, except that the Mortgagee and its successor shall have no vested right to develop the Project without fully complying with the terms of this Agreement and executing and delivering to the City, in a form and with terms reasonably acceptable to the City, an assumption agreement of the Developer’s obligations hereunder.

6.4 Request for Notice to Mortgage. The Mortgagee of any Mortgage or deed of trust encumbering the Property, or any part or interest thereof, who has submitted a request in writing

to the City in the manner specified herein for giving notices shall be entitled to receive written notification from the City of any notice of non-compliance or default by Developer in the performance of the Developer's obligations under this Agreement.

6.5 Mortgagee's Time to Cure. If the City timely receives a written request from a Mortgagee requesting a copy of any notice of non-compliance or default given to the Developer under the terms of this Agreement, then the City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice to the Developer. The Mortgagee shall have the right, but not the obligation, to cure the non-compliance or default for a period of 120 days after the Mortgagee receives written notice of non-compliance or default, or any longer period as is reasonably necessary, not to exceed 180 days, to remedy such items of non-compliance, by mutual consent of the City and the Mortgagee provided that Mortgagee shall continuously and diligently pursue the remedy at all times until the item of non-compliance is cured.

6.6 Disaffirmation. If this Agreement is terminated as to any portion of the Property by reason of (i) any default or (ii) as a result of a bankruptcy proceeding, or if this Agreement is disaffirmed by a receiver, liquidator, or trustee for the Developer or Transferee or its property, the City, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new development agreement for the Project as to such portion of the Property for which the Agreement is terminated with the most senior Mortgagee requesting such new agreement. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this Section.

7. GENERAL PROVISIONS

7.1 Effective Date. This Agreement shall be effective, and the obligations of the Parties hereunder shall be effective on _____, 20____, which is the date that Ordinance No. _____ took effect.

7.2 Term. The Term of this Agreement shall commence on the Effective Date and shall extend for a period of ten (10) years after the Effective Date, unless said Term is otherwise terminated, modified or extended by mutual consent of the Parties hereto. Following the expiration of this Term, this Agreement shall terminate and be of no further force and effect; provided, however, that this termination shall not affect any right or duty arising from entitlements or approvals, including the Project Approvals on the Property, approved concurrently with, or subsequent to, the Effective Date of this Agreement. The Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from any enactments pursuant to the Reserved Powers or moratoria, or from legal actions or appeals which enjoin performance under this Agreement or act to stay performance under this Agreement (other than bankruptcy or similar procedures), or from any litigation related to the Project or Project Approvals, this Agreement or the Property. Further, the Parties specifically acknowledge and agree that Developer's obligations under Section 2.3.1 herein, shall be stayed during any actual delay resulting from any enactments pursuant to the Reserved Powers or moratoria, or from legal actions or appeals which enjoin performance under this Agreement or act to stay performance under this Agreement (other than bankruptcy or similar procedures), or from any litigation related to the Project or Project Approvals, this Agreement or the Property.

7.3 Appeals to City Council. Where an appeal by the Developer or any Transferee, as the case may be, to the City Council from a finding and/or determination of the Director is created by this Agreement, such appeal shall be taken, if at all, within fourteen (14) days after the mailing of such finding and/or determination to the Developer or Transferee, as the case may be. The City Council shall act upon the finding and/or determination of the Director eighty (80) days after the filing on the appeal or within such additional period as may be agreed upon by the Developer or Transferee, as the case may be, and the City Council. The failure of the City Council to act shall not be deemed to be a denial or approval of the appeal, which shall remain pending until final City Council action.

7.4 Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, whenever a period of time, including a reasonable period of time, is designated within which either Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which such Party is actually prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of causes beyond the reasonable control of the Party to be excused, including: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; litigation and administrative proceedings against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs (such as the annual review)); any approval required by the City (not including any period of time normally expected for the processing of such approvals in the ordinary course of affairs); restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; the exercise of the City's Reserved Powers; or similar bases for excused performance which are not within the reasonable control of the party to be excused (financial inability excepted). This Section shall not be applicable to any proceedings with respect to bankruptcy or receivership initiated by or on behalf of Developer or, if not dismissed within ninety (90) days, by any third parties against Developer. If written notice of such delay is given to either party within thirty (30) days of the commencement of such delay, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

7.5 Dispute Resolution.

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

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

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

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

7.5.4 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, and the venue for any legal actions brought by any party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions.

7.6 Amendments. This Agreement may be amended from time to time by mutual consent in writing of the parties to this Agreement, and any Transferee, in accordance with Government Code Section 65868. Any amendment to this Agreement which relates to the Term, permitted uses, substantial increase in the density or intensity of use, and is not considered a Substantially Conforming Change (as defined in Section of this Agreement), shall require notice and public hearing before the parties may execute an amendment thereto. The City hereby agrees to grant priority processing status to any Developer initiated request(s) to amend this Agreement, if the Developer pays for the additional costs incurred by the City for that priority. The City will use all reasonable and good faith efforts to schedule any noticed public hearings required to amend this Agreement before the Planning Commission and/or City Council as soon as practicable. The Developer, or a Transferee, as applicable, shall reimburse the City for its actual costs, reasonably and necessarily incurred, to review any amendments requested by the Developer or a Transferee, including the cost of any public hearings.

7.7 Assignment. The Developer shall have the right to sell, assign or transfer fee, leasehold or other interests in the Property without the consent or approval of City, but not the Developer's rights or obligations related to this Agreement except in compliance with this Section. The rights and obligations of the Developer under this Agreement may not be transferred or assigned in whole or in part by the Developer to a transferee without the prior consent of the City, which consent shall not be unreasonably withheld, subject to the conditions set forth below in Sections 7.7.1.1 and 7.7.1.2. Upon such assignment the assignor shall be released from the obligations so assigned. Notwithstanding the foregoing, the assignment of this Agreement to an affiliate of an owner of Developer shall be permitted and not require the prior consent of the City; provided, that (1) there is not a change of more than fifty percent (50%) of the direct or indirect

ownership interest in Developer, and (2) Developer shall provide notice of such permitted assignment to the City within thirty (30) days prior to the effective date of that assignment.

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

7.7.1.1 Written Notice of Assignment Required. Developer, or any successor transferor, must give prior written notice to the City of its intention to assign or transfer any of its interests, rights and obligations under this Agreement and a complete disclosure of the identity of the assignee or Transferee, including copies of the Articles of Incorporation in the case of corporations and the names of individual general partners in the case of partnerships. Any failure by the Developer or any successor transferor to provide the notice shall be curable in accordance with the provisions in Section 5.1.

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

7.7.2 Liability Upon Assignment. Each Transferee of any portion of the Property shall be liable for performance of all the obligations of this Agreement. Upon the assignment or transfer, the Transferee shall assume all obligations established by this Agreement as a condition precedent to any rights that may flow from this Agreement, as of the date of such transfer, assignment or conveyance of the Property. The failure of a Transferee to perform such the Developer's obligations set forth in the Assignment Agreement may result, at the City's option, in a declaration that this Agreement has been breached and the City may, but shall not be obligated to, exercise its rights and remedies under this Agreement as provided for in Section 5.1 hereof, subject to such defaulting Transferee's right to notice and opportunity to cure the default in accordance with provisions of Section 5.1 hereof.

7.7.3 Release of Developer. With respect to a transfer and assignment of the Developer's interest in the Property and the related rights and obligations hereunder, upon the effective date of any such transfer and assignment, as evidenced by the execution of an Assignment Agreement pursuant to and in complete accordance with this Section 7 between Developer and the Transferee and delivery of such Assignment Agreement to the City, the Developer shall automatically be released from any further obligations to the City under this Agreement with respect to the Property so transferred.

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

7.9 Cooperation and Implementation.

7.9.1 Processing. Upon satisfactory completion by the Developer of all required preliminary actions and payment of appropriate Processing Fees, including the fee for processing this Agreement, the City's Community Development Department ("Department") shall

commence and process all required steps necessary for the implementation of this Agreement and development of the Property in accordance with State law and the terms of this Agreement. The Developer shall, in a timely manner, provide the Department with all documents, plans, fees and other information necessary for the Department to carry out its processing obligations pursuant to this Agreement.

7.9.2 Other Governmental Permits. The Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to the Project. The City shall cooperate with the Developer in its endeavors to obtain such permits and approvals. Any fees, assessments, or other amounts (“Other Amounts”) incurred by the City pursuant to this Section shall be borne by the Developer or Transferee; provided, that the City need not comply with this Section if the Developer or Transferee fails to pay the Other Amounts; and provided, further, the Developer and Transferee will not be obligated to pay the Other Amounts if prior to incurring the Other Amounts the Developer or Transferee has provided the City written notice of its decision not to pursue those other governmental or quasi-governmental agencies approvals.

7.9.3 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to affirmatively cooperate in defending said action. The Developer and the City agree to cooperate in any legal action seeking specific performance, declaratory relief or injunctive relief, to set court dates at the earliest practicable date(s) and not to cause delay in the prosecution/defense of the action, provided such cooperation shall not require any Party to waive any rights.

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

7.9.5 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 Applicable Rules may be appropriate with respect to the details of performance of the City and Developer. If and when, from time to time, during the terms of this Agreement, the City and Developer agree and such clarification is 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 the Developer. Operating memoranda are not intended to and cannot constitute an amendment to this Agreement or allow a subsequent Discretionary Action to the Project but are mere ministerial clarifications, therefore public notices and hearings shall not be required. The City Attorney shall be authorized, upon consultation with, and approval of, the Developer, to determine whether a requested clarification may be effectuated pursuant to this

Section or whether the requested clarification is of such character to constitute an amendment hereof which requires compliance with the provisions of Section 7.6 above. The authority to enter into such operating memoranda is hereby delegated to the Director (or his or her designee) who is hereby authorized to execute any operating memoranda hereunder without further City action.

7.9.6 Certificate of Performance. Upon the completion of the Project, or upon performance of this Agreement or its earlier revocation and termination, the City shall provide the Developer, upon the Developer's request, with a statement ("Certificate of Performance") evidencing said completion or revocation and the release of the Developer from further obligations hereunder, except for any ongoing obligations hereunder. The Certificate of Performance shall be signed by the appropriate agents of the Developer and the City and shall be recorded in the official records of Los Angeles County, California. Such Certificate of Performance is not a notice of completion as referred to in California Civil Code Section 8182.

7.10 Indemnification; Release.

7.10.1 Obligation to Defend, Indemnify, and Hold Harmless. The Developer hereby agrees to defend, indemnify, and hold harmless the City and its agents, officers, and employees, from any claim, action, or proceeding ("Proceeding") against the City or any of its agents, officers, or employees (i) to set aside, void, or annul, all or any part of the Agreement or any Project Approval, or (ii) for any award, liability, costs (including court costs and reasonable attorneys' fees), claims, judgments, damages, personal injury or death, which may arise, directly or indirectly, from this Agreement. In the event that the City, upon being served with a lawsuit or other legal process to set aside, void or annul all or part of any Project Approval, fails to promptly notify the Developer in writing of the Proceeding, or fails to cooperate fully in the defense of the Proceeding, the Developer shall thereafter be relieved of the obligations imposed in this Section 7.10. However, if the Developer has actual written notice of the Proceeding, it shall not be relieved of the obligations imposed hereunder, notwithstanding the failure of the City to provide prompt written notice of the Proceeding. The City shall be considered to have failed to give prompt written notification of a Proceeding if the City, after being served with a lawsuit or other legal process challenging the Approvals, unreasonably delays in providing written notice thereof to the Developer. As used herein, "unreasonably delays" shall mean any delay that materially adversely impacts the Developer's ability to defend the Proceeding. The obligations imposed in this Section 7.10 shall apply notwithstanding any allegation or determination in the Proceedings that the City acted contrary to applicable laws. Nothing in this Section shall be construed to mean the Developer shall hold harmless and/or defend the City from any claims arising from its intentional misconduct or gross negligence in the performance of this Agreement.

7.10.2 Defending the Project Approvals. The Developer shall have the obligation to timely retain legal counsel to defend against any proceeding to set aside, void, or annul, all or any part of any Project Approval including without limitation a lawsuit to challenge the approval of the Project or this Agreement in violation of CEQA. The City shall have the right if it so chooses, to defend the Proceeding utilizing in-house legal staff, or to retain outside legal counsel. Whether the City utilizes in-house staff, or outside legal counsel, the Developer shall be liable for all legal costs, fees and expenses reasonably incurred by the City in defending a challenge to the Project Approvals. If the Developer is not in breach of the terms of this Section, then the City shall not enter into any settlement of the Proceeding, which involves modification to any

Project Approval or otherwise results in the Developer incurring liabilities or other obligations, without the consent of the Developer.

7.10.3 Breach of Obligations. Actions constituting a breach of the obligations imposed in this Section 7.10 shall include, but not be limited to: (i) the failure to timely retain qualified legal counsel to defend against the Proceedings; (ii) the failure to promptly pay the City for any reasonable attorneys' fees or other legal costs for which the City is liable pursuant to a judgment or settlement agreement in the Proceeding seeking to set aside, void or annul all or part of any Project Approval; or (iii) the breach of any other obligation imposed in this Section 7.10, in each case after written notice from the City and a reasonable period of time in which to cure the breach, not to exceed thirty-days. For purposes of this Section 7.10, the Developer shall be considered to have failed to timely retain qualified legal counsel if such counsel is not retained within thirty (30) days following the City's provision of the notice of Proceedings to Developer required hereunder. In the event the Developer breaches the obligations imposed in this Section 7.10, the City shall have no obligation to defend against the Proceedings, and by not defending against the Proceedings, the City shall not be considered to have waived any rights in this Section 7.10.

7.10.4 Release. The Developer on behalf of itself and all its affiliates, assigns, Transferees and successors-in-interest, hereby agrees to release the City and each of its officers, employees and agents from any and all awards, liability, costs (including court costs and reasonable attorneys' fees), claims, judgments, damages ("Damages"), which may arise, directly or indirectly, from this Agreement or the Project or the Project Approvals, except to the extent Damages are actually caused by the City's breach of this Agreement.

7.10.5 Waiver of Right to Challenge. The Developer hereby waives the right to challenge the validity of the obligations imposed by the Project Approvals and this Agreement.

7.10.6 Survival. The obligations imposed in this Section 7.10 shall survive any judicial decision invalidating the Project Approvals.

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

If to the City:

City of Culver City
Attention: Community Development Director
City of Culver City

9770 Culver Boulevard
Culver City, CA 90232

with copies to:

City of Culver City
Attention: City Attorney
City of Culver City
9770 Culver Boulevard
Culver City, CA 90232

If to Developer:

The Culver Studios Owner LLC
c/o Hackman Capital Partners
11111 Santa Monica Blvd., Suite 1100
Los Angeles, CA 90025
Attn: Brent Ilouljian, Esq.

With copies to:

Elkins Kalt Weintraub Reuben Gartside LLP
Attn: John M. Bowman
2049 Century Park East, Suite 2700
Los Angeles, CA 90067

7.12 Recordation. As provided in Government Code Section 65868.5, this Agreement shall be recorded with the Register-Recorder of the County of Los Angeles within ten (10) days following its execution by all Parties. The Developer shall pay for the City's costs for that recordation.

7.13 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title, interest in or to any portion of the Property, is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

7.14 Successors and Assignees. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties, any subsequent owner of the Property and their respective transferees, successors and assignees.

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

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

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

respect to any occurrence or event shall be deemed a waiver of any right or remedy with respect to any other occurrence or event.

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

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

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

7.21 Estoppel Certificate. From time to time Developer may request that the City confirm that to its knowledge (i) the Agreement is in full force and effect and a binding obligation of the Parties, (ii) the Agreement has not been amended or, if amended, the identity of each amendment, and (iii) the Developer is not in breach of this Agreement or, if in breach, a description of such breach (an “Estoppel Certificate”). The Director is authorized, on behalf of the City, to execute any Estoppel Certificate requested by Developer pursuant to this Section.

7.22 Duplicate Originals. This Agreement is executed in duplicate originals, each of which is deemed to be an original, but all of which together shall constitute one instrument. This Agreement, not counting the Cover Page, Table of Contents or Index, consists of ____ pages and ____ Exhibits which constitute the entire understanding and agreement of the Parties.

(signatures on following page)

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

CITY OF CULVER CITY, a municipal
corporation of the State of California

APPROVED AS TO FORM:
City Attorney

By: _____
Name:
Title:

DATE:

By: _____
Name:
Title:

DATE:

APPROVED AS TO CONTENT:
Community Development Director

By: _____
Name:
Title:

DATE:

ATTEST:

By: _____
Deputy

DATE:

THE CULVER STUDIOS OWNER, LLC

APPROVED AS TO FORM:

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

DRAFT

EXHIBIT "B"

CONDITIONS OF APPROVAL

DRAFT

EXHIBIT "C"

MITIGATION MONITORING PROGRAM

DRAFT