

CPC 2016-4927-DA

**DRAFT DEVELOPMENT
AGREEMENT by and between
THE CITY OF LOS ANGELES
and
CRE-HAR CROSSROADS SPV, LLC
dated as of**

_____, 2016

Draft Submitted to City of Los Angeles
_____, 2016

DEVELOPMENT AGREEMENT

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DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is executed this _____ day of , _____, 2016, by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), and CRE-HAR Crossroads SPV, LLC ("Property Owner"), pursuant to California Government Code Section 65864 et seq., and the implementing procedures of the City, with respect to the following:

RECITALS

WHEREAS, the City and Property Owner recognize that the further development upon Property Owner's property, located at 1540-1552 Highland Avenue; 6700-6760 Selma Avenue; 6663-6675 Selma Avenue; 1543-1553 McCadden Place; 1542-46 McCadden Place; 1501-1573 Las Palmas Avenue; 1500-1570 Las Palmas Avenue; and 1600-1608 Las Palmas Avenue; 6665-6713 ½ Sunset Boulevard (collectively, the "Property"), will contribute significantly to the economy of the City of Los Angeles, the Southern California region and California generally; and

WHEREAS, Property Owner wishes to obtain reasonable assurances that the Property may be developed in accordance with and subject to the terms of this Agreement; and

WHEREAS, Property Owner will implement public benefits above and beyond the necessary mitigation for the project, *including [Work w/ City to Determine]*; and

WHEREAS, *the Property is centrally located in Hollywood and includes hotel rooms serving the influx of tourists to the area, a range of housing options to serve local residents, and a range of ground floor retail uses serving both residents, employees and visitors to the area; and*

WHEREAS, *the Project is well-served by local and regional transit and incorporates the development of a new pedestrian alley which extends diagonally from Sunset Boulevard at the frontage of Crossroads of the World to the corner of Selma Avenue and McCadden Place; and*

WHEREAS, this Agreement is necessary to assure the Property Owner 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; and

WHEREAS, *development of the residential, hotel, and commercial uses within the Property will complete a mixed-use world-class development, providing much-needed housing and hotel rooms to the Hollywood community, jobs, entertainment and mass transit; and*

WHEREAS, *the implementation of the Project approvals and related actions will allow further development of the Project consistent with the Project objectives goals;*

AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, and in consideration of the premises and 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 or unless the context requires:

1.1 "Adoption Date" is the date on which this Agreement is attested by the City Clerk of the City of Los Angeles after execution by the Property Owner and the City Clerk of the City of Los Angeles pursuant to Section 6.1.

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

1.3 "Applicable Rules" means the rules, regulations, ordinances and officially adopted policies of the City in force as of the Effective Date of this Agreement which are generally applicable to all or some properties within the City. Notwithstanding the language of this Section or any other language in this Agreement, all specifications, standards and policies regarding the design and construction of public works facilities, if any, shall be those that are in effect at the time the project plans are being processed for approval and/or under construction

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

1.5 "City" means the City of Los Angeles, a charter city and municipal corporation.

1.6 "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.

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 Conditions of Approval for the Project, including the *Vesting Tentative Tract Map, adopted by the City Council on _____ by Ordinance No. __* and attached hereto as Exhibit __, Conditions of Approval [Exhibit to be included in Final Agreement.]

1.9 "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.

1.10 "Discretionary Action" means an action which requires the exercise of judgment, deliberation or a decision on the part of the City and/or any City Agency, including any board, commission or department or any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity which merely requires the City and/or

any City Agency, including any board, commission or department or any officer or employee thereof, to determine whether there has been compliance with statutes, ordinances or regulations.

1.11 "Effective Date" is the date on which ___ _ _

1.12 "EIR" means the Environmental Impact Report for the Project, adopted by the City in accordance with the requirements of CEQA.

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

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

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

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

1.17 "Mitigation Measures" means the mitigation measures described in the EIR and in the Mitigation Monitoring Program for the Project which is attached hereto as Exhibit __, Mitigation Monitoring Program. [Exhibit to be included in Final Agreement.]

1.19 "Parties" means collectively Property Owner and the City.

1.20 "Party" means any one of Property Owner or the City.

1.21 "Planning Commission" means the City Planning Commission and the planning agency of the City pursuant to Section 65867 of the California Government Code (Development Agreement Act).

1.22 "Planning Director" means the Planning Director for the City.

1.23 "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, air right lots, street vacations and certificates of occupancy which are necessary to accomplish the intent and purpose of this Agreement. Expressly exempted from Processing Fees are all Impact Fees which may be imposed by the City on development projects pursuant to laws enacted after the Effective Date of this Agreement, except as specifically provided for in this Agreement. The amount of the Processing Fees to be applied in connection with the development of the project shall be the amount which is in effect on a City-wide basis at the time an application for the City action is made.

1.24 "Project" means development within the City on the Property as described in the Final Environmental Impact Report, including, but not limited to, construction of residential dwelling units, hotel rooms, commercial space, parking facilities, open space and related amenities, as described in the Project Approvals.

1.25 "Project Approvals" means those Discretionary Actions authorizing the Project which have been approved by the City on or before the Effective Date and not rescinded or superseded by City action taken on or before the Effective Date. Project Approvals include, but are not limited to, certification of the EIR, Site Plan Review, Master Conditional Use Permit, Transfer of Floor Area Rights, Vesting Tentative Map and Determination under the City Center Redevelopment Plan, all as adopted by the City and as amended on or before the Effective Date. The Project Approvals are listed in Exhibit ___, Project Approvals. [Exhibit to be included in Final Agreement.] Project approvals also include subsequent discretionary actions which are necessary for implementation of the Project, including but not limited to Plan Approvals, Tract Map Modifications, or other actions.

1.26 "Property" means the real property owned by Property Owner as described in Exhibit ___. [Legal Description included in Application.]

1.27 "Property Owner" means CRE-HAR Crossroads SPV, LLC or successors and assignees as described in Section 6.9.

1.28 "Reserved Powers" means the rights and authority excepted from this Agreement's restrictions on the City's police powers and which are instead reserved to the City. The Reserved Powers include the powers to enact regulations or take future Discretionary Actions after the Effective Date of this Agreement that may be in conflict with the Applicable Rules and Project Approvals, but: (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 Uniform Codes regarding the construction, engineering and design standards for private and public improvements to be constructed on the Property; or (3) are necessary to comply with state or federal laws and regulations (whether enacted previous or subsequent to the Effective Date of this Agreement) as provided in Section 3.2.3.3.

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

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

2. RECITALS OF PREMISES, PURPOSE AND INTENT.

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

"The Legislature finds and declares that:

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

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

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

2.2 City Procedures and Actions.

2.2.1 City Planning Commission Action. The City Planning Commission held duly noticed public hearings on _____ and recommended approval of this Agreement on _____, 201_. [FINDINGS TO BE INSERTED.]

2.2.2 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 publication, approving this Agreement, found that its provisions are consistent with the City's General Plan and _____ Plans, and authorized the execution of this Agreement. [FINDINGS TO BE INSERTED.]

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 and Project Approvals and with the terms of this Agreement and subject to the City's Reserved Powers. The Project will provide local and regional Public Benefits to the City, including without limitation: new jobs, housing in immediate adjacency to employment, hotel rooms centrally located in Hollywood, and commercial space all within close proximity to mass transit.

2.3.2 Property Owner Objectives. In accordance with the legislative findings set forth in the Development Agreement Act, and with full recognition of the City's policy of judicious restraints on its police powers, the Property Owner wishes to obtain reasonable assurances that the Project may be developed in accordance with the Applicable Rules and Project Approvals and with the terms of this Agreement and subject to the City's Reserved Powers. To the extent of Project development, and as provided by Section 3.1.1, Property Owner anticipates making capital expenditures or causing capital expenditures to be made in reliance upon this Agreement. In the absence of this Agreement, Property

Owner would have no assurance that it can complete the Project for the uses and to the density and intensity of development set forth in this Agreement and the Project Approvals. This Agreement, therefore, is necessary to assure Property Owner that the Project will not be (1) reduced or otherwise modified in density, intensity or use from what is set forth in the Project Approvals, (2) subjected to new rules, regulations, ordinances or official policies or plans which are not adopted or approved pursuant to the City's Reserved Powers.

2.3.3 **Mutual Objectives.** Development of the Project in accordance with this Development Agreement will provide for the orderly development of the Property in accordance with the objectives set forth in the General Plan. Moreover, a development agreement for the Project will eliminate uncertainty in planning for and securing orderly development of the Property, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted. The Parties believe that such orderly development of the Project will provide Public Benefits, as described in Section 2.3.1, to the City through the imposition of development standards and requirements under the provisions and conditions of this Agreement, including without limitation: increased tax revenues, installation of on-site and off-site improvements, and creation and retention of jobs. Additionally, although development of the Project in accordance with this Agreement will restrain the City's land use or other relevant police powers, this Agreement provides the City with sufficient reserved powers during the term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to City, the Property Owner will receive assurance that the Project may be developed during the term of this Agreement in accordance with the Applicable Rules, Project Approvals and Reserved Powers, subject to the terms and conditions of this Agreement.

2.4 **Applicability of the Agreement.** This Agreement does not: (1) grant density or intensity in excess of that otherwise established in the Project Approvals; (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 that Property Owner will receive any profits from the Project; or (4) amend the City's General Plan. 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 Property Owner.** In consideration for the City entering into this Agreement, and as an inducement for the City to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the premises, purposes and intentions set forth in Section 2 of this Agreement, Property Owner hereby agrees as follows:

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

3.1.2 **Timing of Development.** The parties acknowledge that Property Owner 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 Property Owner, such as market orientation and demand, interest rates and competition. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal. 3d 465 (1984), that the failure of the parties therein to provide for the timing of development permitted a later adopted initiative restricting the timing of development and controlling the Parties' agreement, it is the intent of Property Owner and the City to

hereby acknowledge and provide for the right of Property Owner to develop the Project in such order and at such rate and times as Property Owner deems appropriate within the exercise of its sole and subjective business judgment. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement; provided, however, that this Section 3.1.2 does not in any way affect the specific timing or implementation of improvements or other requirements of development to the extent such provisions are set forth in the Project Approvals.

3.1.3 Additional Obligations of Property Owner as Consideration for this Agreement. In addition to the obligations identified in Section 3.1.1, the development assurances provided by this Agreement and the resulting construction of the Project will result in the following:

1. *Create a community-based, livable, walkable and diverse mixed-use development district.*
2. *Strengthen Hollywood's competitive position as a hub for regional commerce, entertainment, and tourism activity by offering an integration of superior services and amenities.*
3. *The creation of short-term and long-term jobs in the City, as a result of the Project construction and operation.*

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

3.2.1 Entitlement to Develop. Property Owner 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. Property Owner's vested rights under this Agreement shall include, without limitation, 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, Property Owner may locate that portion of the Project at any other location of the Property, subject to the requirements of the Project Approvals, the Applicable Rules, and the Reserved Powers.

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

3.2.3 Changes in Applicable Rules.

3.2.3.1 Nonapplication of Changes in Applicable Rules. Any change in, or addition to, the Applicable Rules, including, without limitation, any change in any applicable general or specific plan, zoning or building regulation, adopted or becoming effective after the Effective Date of this Agreement, including, without limitation, any such change by means of ordinance, City Charter amendment, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City, the Mayor, City Council, Planning Commission or

any other Board, Commission, Department or Agency of the City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict in any way 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, Property Owner may, in its sole discretion, consent to the application to the Project of any change in the Applicable Rules.

3.2.3.2 Changes in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes which for an individual action under the Project shall be governed by the Uniform Codes then in effect at the time such action is submitted for review and approval, except as otherwise specifically provided in the Project Approvals.

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

3.2.4 Subsequent Development Review. The City shall not require Property Owner to obtain any approvals or permits for the development of the Project in accordance with this Agreement other than those permits or approvals which are required by the Applicable Rules, the Reserved Powers and/or the Project Approvals. However, any subsequent Discretionary Action initiated by Property Owner which substantially changes the entitlements allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect. Unless amended to provide otherwise, this Agreement shall not apply to any such subsequently approved Discretionary Actions. The Parties agree and acknowledge that the EIR analyzes all reasonably foreseeable environmental consequences of the Project. The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that future Discretionary Actions may require additional environmental review pursuant to CEQA. In the event that additional environmental review is required by CEQA, the City agrees to utilize tiered environmental documents to the fullest extent permitted by law, as determined by the City, and as provided in California Public Resources Code Sections 21093 and 21094.

3.2.4.1 Special Taxes and Assessments. Property Owner shall have the right, to the extent permitted by law, to protest, oppose and vote against any and all special taxes, assessments, levies, charges and/or fees imposed with respect to any assessment districts, Mello-Roos or community facilities districts, maintenance districts or other similar districts, and the City agrees to cooperate fully in their formation.

3.2.5 Environmental Equivalency. To the extent permitted by law, to the extent Property Owner cannot complete a Mitigation Measure or Condition of Approval as required in the Project Approvals, or otherwise, then, provided that (i) the City elects not to undertake such actions as would enable Property Owner to complete the mitigation or Condition of Approval (such as, acquiring a right-of-way) or to require Property Owner to complete such Mitigation Measure or Condition of Approval, and (ii) that such Mitigation Measure or Condition of Approval is not required for the Project to operate, Property Owner shall be allowed to complete the Project without performing such infeasible Mitigation Measure and/or Condition of Approval so long as Property Owner pays to the City the mutually-agreed-upon cost that Property Owner would have paid to complete such Mitigation Measure or

Condition of Approval, unless the City specifies another substituted measure which (A) accomplishes environmentally equivalent goals, (B) has a nexus to the Project impacts, and (C) does not exceed the cost agreed to by the parties for the replaced Mitigation Measure or Condition of Approval, in which case Property Owner shall complete or cause to be completed such substituted Mitigation Measure and/or Condition of Approval.

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

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

3.2.8 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 relates directly or indirectly to the Project or to the rate, amount, timing, sequencing, or phasing of the development or construction of the Project on all or any part of the Property or the implementation of the Mitigation Measures adopted in connection with approval of the Project, City agrees that such ordinance, resolution or other measure shall not apply to the Property or this Agreement, unless such changes are adopted pursuant to the Reserved Powers or other applicable provisions of this Agreement.

3.2.9 Infrastructure Financing. If Property Owner undertakes infra-structure financing, such as Mello-Roos or community facilities districts, the City will cooperate fully in such endeavors and will process any related applications as expeditiously as possible.

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

3.2.11 Processing Fees. Property Owner shall pay all Processing Fees for Ministerial Permits and Approvals. Processing Fees shall be limited to Processing Fees in effect on the Effective Date.

3.2.12 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 Property Owner to establish time frames for processing and reviewing such Ministerial Permits and Approvals and to comply with timeframes established in the Project Approvals.

Furthermore, the City shall expedite all requests by Property Owner for Discretionary Actions requested for the Project, if any.

4. ANNUAL REVIEW.

4.1 Annual Review. During the Term of this Agreement, the City shall review annually Property Owner's good faith compliance with this Agreement. Such periodic review shall be limited in scope to good faith compliance with the provisions of this Agreement as provided in the Development Agreement Act and Property Owner shall have the burden of demonstrating such good faith compliance.

4.2 Pre-Determination Procedure. Property Owner's submission of compliance with this Agreement, in a form which the Director of Planning may reasonably establish, shall be made in writing and transmitted to the Director of Planning not later than thirty (30) days prior to the yearly anniversary of the Effective Date.

4.3 Director's Determination. On or before the yearly anniversary of the Effective Date of the Agreement, the Director of Planning shall make a determination regarding whether or not Property Owner has complied in good faith with the provisions and conditions of this Agreement. This determination shall be made in writing with reasonable specificity, and a copy of the determination shall be provided to Property Owner in the manner prescribed in Section 6.15.

4.4 Appeal By Property Owner. In the event the Director of Planning makes a finding and determination of non-compliance, Property Owner shall be entitled to appeal that determination to the Planning Commission. After a public hearing on the appeal, the Planning Commission shall make written findings and determinations, on the basis of substantial evidence, whether or not Property Owner has complied in good faith with the provisions and conditions of this Agreement. In the event of a finding and determination of compliance, there shall be no appeal by any person or entity.

4.5 Period To Cure Non-Compliance. If, as a result of this Annual Review procedure, it is found and determined by the Planning Director or the Planning Commission, on appeal, that Property Owner has not complied in good faith with the provisions and conditions of this Agreement, the City, after denial of any appeal or, where no appeal is taken, after the expiration of the appeal period described in Section 6.3, shall submit to Property Owner, by registered or certified mail, return receipt requested, a written notice of non-compliance in the manner prescribed in Section 6.15, stating with specificity those obligations of Property Owner which have not been performed. Upon receipt of the notice of non-compliance, Property Owner 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 one hundred and twenty (120) 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 Property Owner shall continuously and diligently pursue such remedy at all times until such item of non-compliance is cured.

4.6 Failure To Cure Non-Compliance Procedure. If the Director of Planning finds and determines that Property Owner, or its successors, transferees, and/or assignees, as the case may be, has not cured or commenced to cure an item of non-compliance pursuant to this Section, and that the City intends to terminate or modify this Agreement or those transferred or assigned rights and obligations, as the case may be, the Director of Planning shall make a report to the Planning Commission. The Director of Planning shall then set a date for a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after such public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Property Owner, or its successors, transferees, and/or assignees, as the case may be, has not brought the

Project into compliance pursuant to this Section, and that the City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the finding and determination shall be appealable to the City Council in accordance with Section 6.3 hereof. In the event of a finding and determination of compliance, there shall be no appeal by any person or entity. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245 (City Council's review of Commission and Council actions).

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

4.8 Reimbursement Of Costs. Property Owner shall reimburse the City for its actual costs, reasonably and necessarily incurred, to accomplish the required annual review.

5. DEFAULT PROVISIONS.

5.1 Default By Property Owner.

5.1.1 Default. In the event Property Owner does not perform its obligations under this Agreement in a timely manner, the City shall have all rights and remedies provided by this Agreement which shall include compelling the specific performance of the obligations of Property Owner under this Agreement, or modification or termination of this Agreement, provided that the City has first complied with the procedure in Section 5.1.2 hereof.

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

5.1.3 Failure to Cure Default Procedures. If after the cure period has elapsed, the Director of Planning finds and determines that Property Owner, or its successors, transferees and/or assignees, as the case may be, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Director shall make a report to the Planning Commission and then set a public hearing before the Commission in accordance with the notice and hearing requirements of Government Code Sections 64867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Property Owner, or its successors, transferees and/or assigns, as the case may be, Property Owner and its successors, transferees and/or assigns, shall be entitled to appeal that finding and determination to the City Council in accordance with Section 6.3. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245 (City Council review of Commission and Board actions).

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

5.2 **Default By The City.**

5.2.1 **Default.** In the event the City does not accept, process, or render a decision on necessary development permits, entitlements, or other land use or building approvals for use as provided in this Agreement upon compliance with the requirements thereof, or as otherwise agreed to by the Parties, or the City otherwise defaults under the provisions of this Agreement, Property Owner 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. 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.** Property Owner 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 one hundred and twenty (120) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City shall continuously and diligently pursue such remedy at all times until such default(s) is cured. In the case of a dispute as to whether the City has cured the default, the Parties shall submit the matter to dispute resolution pursuant to Section 6.5 of this Agreement.

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

6. **GENERAL PROVISIONS.**

6.1 **Effective Date.** This Agreement shall be effective upon such date on which

_____.

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

6.3 Appeals To City Council. Where an appeal by Property Owner to the City Council from a finding and/or determination of the Planning Commission is created by this Agreement, such appeal shall be taken, if at all, within twenty (20) days after the mailing of such finding and/or determination to Property Owner, or its successors, transferees, and/or assignees, as the case may be. The City Council shall act upon the finding and/or determination of the Planning Commission within eighty (80) days after such mailing, or within such additional period as may be agreed upon by the Property Owner and the City Council. The failure of the City Council to act within eighty (80) days shall be deemed to be an approval of the appeal.

6.4 Enforced Delay; Extension Of Time Of Performance. In addition to specific provisions of this Agreement, whenever a period of time, including a reasonable period of time, is designated within which either Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which such Party is actually prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of causes beyond the reasonable control of the Party to be excused, including: 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 is 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 Property Owner or, if not dismissed within ninety (90) days, by any third parties against Property Owner. If written notice of such delay is given to either party within thirty (30) days of the commencement of such delay, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

6.5 Dispute Resolution.

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

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

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

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

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

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

6.8 Amendments. This Agreement may be amended from time to time by mutual consent in writing of the parties to this Agreement in accordance with Government Code Section Any amendment to this Agreement which relates to the Term, permitted uses, density or intensity of use, height, or size of buildings, provisions for reservation and dedication of land, conditions, restrictions, and requirements relating to subsequent discretionary action or any conditions or covenants relating to the use of the Property, which are not provided for under the Project Approvals, shall require notice and public hearing before the parties may execute an amendment thereto.

6.9 Assignment. The Property, as well as the rights and obligations of Property Owner under this Agreement, may be transferred or assigned in whole or in part by Property Owner without the consent of the City, and upon such assignment the assignor shall be released from the obligations so assigned. The failure of any successor-in-interest to perform the obligations assigned to it may result, at the City's option, in a declaration that this Agreement has been breached with regards to that specific successor-in-interest, and an election to terminate this Agreement as provided for in Section 5.1 hereof, as it relates to that successor-in-interest's holding. This partial termination is severable from the entire Agreement, and shall not affect the remaining entirety of the Agreement.

6.10 Covenants. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property for the benefit thereof, and the burdens and benefits hereof shall bind and inure to the benefit of all assignees, transferees, and successors to the Parties hereto.

6.11 Cooperation And Implementation.

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

6.11.2 **Other Governmental Permits.** Property Owner 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 Property Owner in its endeavors to obtain such permits and approvals and shall, from time to time at the request of Property Owner, attempt with due diligence and in good faith to enter into binding agreements with any such entity to ensure the availability of such permits and approvals, or services, provided such agreements are reasonable and not detrimental to the City. These agreements may include, but are not limited to, joint powers agreements under the provisions of the Joint Exercise of Powers Act (Government Code Section 6500, et seq.), Mello-Roos or community facilities districts, or the provisions of other laws to create legally binding, enforceable agreements between such parties. To the extent allowed by law, Property Owner shall be a party to any such agreement, or a third party beneficiary thereof, entitled to enforce for its own benefit on behalf of the City, or in its own name, the rights of the City or Property Owner thereunder or the duties and obligations of the parties thereto. Property Owner shall reimburse the City for all costs and expenses incurred in connection with seeking and entering into any such agreement provided that Property Owner has requested such agreement.

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

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

6.13 **Hold Harmless and Insurance.**

6.13.1 **Hold Harmless.** Property Owner hereby agrees to and shall indemnify, save, hold harmless and, if requested by the City, defend the City in any action brought by a third party (i) challenging the validity of this Agreement or (ii) seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this Agreement. Nothing in this Section shall be construed to mean that Property Owner shall hold the City harmless and/or defend it from any claims arising from, or alleged to arise from, the negligent acts, negligent failure to act, or intentional acts on the part of the City. City agrees that it shall fully cooperate with Property Owner in the defense of any matter in which Property Owner is defending and/or holding the City harmless. City may make all reasonable decisions with respect to its representation in any legal proceeding.

6.13.2 **Insurance.** Without limiting its obligation to hold the City harmless, Property Owner shall provide and maintain at its own expense, during the Term of this Agreement, a mutually agreed-upon program of insurance concerning its operations hereunder.

6.14 **Tentative Maps.** Pursuant to California Government Code Section 66452.6(a), the duration of tentative maps approved in relationship to this Project, including the Tentative Tract Map, shall automatically be extended for the Term of this Agreement.

6.15 **Notices.** Any notice or communication required hereunder between the City or Property Owner 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:

with copies to

If to Property Owner:

with copies to

CRE-HAR Crossroads SPV, LLC
6363 Wilshire Blvd, Ste 600
Los Angeles, CA 90031
Attn: Bill Myers

Liner LLP
Attention: Kyndra Casper
633 West Fifth Street, 32nd Floor
Los Angeles, CA 90071

6.16 **Recordation.** As provided in Government Code Section 65868.5, the City Clerk of Los Angeles shall record a copy of this Agreement with the Registrar-Recorder of the City of Los Angeles within ten (10) days following the effective date. Property Owner shall provide the City Clerk with the fees for such recording prior to or at the time of such recording.

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

6.18 **Successors And Assignees.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties, any subsequent owner of all or any portion of the Property and their respective successors and assignees.

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

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

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

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

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

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

6.25 Discretion to Encumber. This Agreement shall not prevent or limit Property Owner in any manner, at its sole discretion, from encumbering the Property or any portion of the Property or any improvement on the Property by any mortgage, deed of trust or other security device securing financing with respect to the Property or its improvements.

6.26 Expedited Processing. Property Owner and the City agree to cooperate in the expedited processing of any legal action seeking specific performance, declaratory relief or injunctive relief, to set court dates at the earliest practicable date(s) and not cause delay in the prosecution/defense of the action, provided such cooperation shall not require any Party to waive any rights.

6.27 Entitlement to Written Notice of Default. The mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Property, or any part thereof, and their successors and assigns shall, upon written request to the City, be entitled to receive from the City written notification of any default by Property Owner of the performance of Property Owner's obligations under this Agreement which has not been cured within sixty (60) days following the date of default. Property Owner shall reimburse the City for its actual costs, reasonably and necessarily incurred, to prepare this notice of default.

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

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

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

APPROVED AS TO FORM:

By: _____

By: _____

DATE:

DATE:

ATTEST:
[City Clerk]

By: _____

DATE:

CRE-HAR Crossroads SPV, LLC

APPROVED AS TO FORM:

By: _____

Name:

Title:

By: _____

By: _____

Name:

Title: