ATTACHMENT 2

ORDINANCE – DEVELOPMENT AGREEMENT

ORDINANCE NO. 14-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND METROPOLITAN CRESCENT ASSOCIATES, LLC, FOR DEVELOPMENT AND USE OF THE PROPERTIES AT 155 NORTH CRESCENT DRIVE AND 9355 WILSHIRE BOULEVARD FOR A MIXED USE PROJECT INCLUDING SERVICED RESIDENCES AND RESTAURANT USE

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. The City of Beverly Hills ("City") and Metropolitan Crescent Associates, LLC ("Developer") desire to enter into that certain development agreement (the "Development Agreement" herein), attached to this Ordinance as Exhibit A in connection with the development and use of properties at 155 North Crescent Drive and 9355 Wilshire Boulevard for a mixed use project including serviced residences and restaurant use (the "Project").

Section 2. The Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the City's Local CEQA Guidelines. The City previously prepared and certified an Environmental Impact Report ("EIR") for the Project to analyze the potential impacts on the environment of the mixed use project when initially approved in 2002. Upon review of the proposed changes to the project as approved in 2002, the City Council, for the reasons set forth in the addendum to the Final EIR, which is hereby incorporated herein by reference, finds that: changes to the previously certified EIR are necessary due to the proposed changes in use of the property, but none of the conditions of CEQA Guidelines Section 15162 require preparation of a subsequent EIR. The City Council finds that the proposed changes in

use, subject to the conditions of approval recommended on the project, will ensure that no significant impacts will result, and adopts the addendum. The project remains subject to all applicable mitigation measures identified in the previously certified Final EIR. The documents and other materials that constitute the record on which this recommendation was made are located in the Department of Community Development and are in the custody of the Director of Community Development.

Section 3. On November 21 and December 12, 2013, the Planning Commission conducted a duly noticed public hearing to consider the Development Agreement and the Project. Notices of the time, place and purpose of public hearing were duly provided in accordance with California Government Code Sections 65867, 65090 and 65091. At the conclusion of its consideration, the Planning Commission recommended that the City Council find that the Development Agreement is consistent with the General Plan, and to approve the Development Agreement.

Section 4. On February 4, 2014, the City Council conducted a duly noticed public hearing to consider the Development Agreement and the Project. Notices of the time, place and purpose of the public hearing were duly provided in accordance with California Government Code Sections 65867, 65090 and 65091.

Section 5. The provisions of the Development Agreement are consistent with the City of Beverly Hills General Plan and comply with its objectives and policies, and in particular advances the following General Plan Policies:

- Policy H 2.5 Adaptive Reuse. Support innovative strategies for the adaptive reuse of residential and commercial structures to provide for a wide range of housing types.

- Policy LU 15.1 Economic Vitality and Business Revenue. Sustain a vigorous economy by supporting businesses that contribute revenue, quality services and high-paying jobs.

The Development Agreement implements the terms of the General Plan and City ordinances, a zone text amendment to allow serviced residences and restaurant uses in the Project, and does not allow development except in conformance with the General Plan.

Section 6. The City Council hereby approves the Development Agreement and authorizes the Mayor to execute the Development Agreement on behalf of the City.

Section 7. No later than ten (10) days after the effective date of this Ordinance, the City Clerk shall record with the County Recorder a copy of the Development Agreement and the notice shall describe the land to which such contract applies.

Section 8. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code; shall certify to the adoption of this Ordinance and shall cause this ordinance and this certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

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Section 9. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

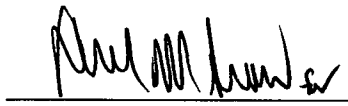
Adopted:
Effective:

_____
JOHN A. MIRISCH
Mayor of the City of Beverly Hills, California

ATTEST:

_____ (SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

_____
JEFFREY C. KOLIN
City Manager

SUSAN HEALY KEENE, AICP
Director of Community Development

EXHIBIT A

DEVELOPMENT AGREEMENT

Development Agreement

CITY OF BEVERLY HILLS

WHEN RECORDED MAIL TO:

City of Beverly Hills
Attention: City Attorney's Office
455 North Rexford Drive
Room 230
Beverly Hills, CA 90210

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made by and between THE CITY OF BEVERLY HILLS, a California municipal corporation (the "City"), and METROPOLITAN CRESCENT ASSOCIATES, LLC, a Delaware Limited Liability Company (the "Developer"). The City and Developer are individually referred to herein as a "Party" and collectively referred to as the "Parties."

RECITALS

This Agreement is made and entered into with regard to the following facts, each of which is acknowledged as true and correct by the Parties to this Agreement.

A. Developer is the [owner of a leasehold interest in that certain real property located in the City of Beverly Hills, California and legally described in Exhibit A attached hereto and incorporated herein by reference (the "Property.").

B. Developer desires to further develop and operate the Project (as hereafter defined) by adding a restaurant and bar to the Project and expanding the current permitted uses to allow the following uses in addition to the currently permitted uses on the Property: (i) serviced residence uses and (2) restaurant and bar uses, including, without limitation, room service to the serviced residence units.

C. Developer has applied to the City for approval of this mutually binding Agreement, pursuant to the provisions of the Development Agreement Act (as hereafter defined) and other applicable laws.

D. Developer has submitted that certain Application for Zone Change, General Plan Amendment, Specific Plan Amendment, dated February 20, 2013 (the "Application") to the City (in its governmental capacity) for certain approvals, entitlements, findings and permits required for the development and operation of the Project, including, without limitation the following (collectively, and together with any and all Subsequent Project Approvals (as hereafter defined) the "Project Approvals"): (1) a zoning code amendment, (2) a planned development permit

amendment, (3) an extended hours permit; and (4) a development agreement for the Project under the Development Agreement Act.

E. The City Council has specifically considered the advantages and impacts of this Project upon the welfare of the City and believes that the Project will benefit the City.

F. This Agreement eliminates uncertainty in planning and provides for the orderly further development of the Project in a manner consistent with the City's Zoning Regulations (as hereafter defined), the Applicable Rules (as hereafter defined) and the General Plan (as hereafter defined).

G. To provide such certainty, the City desires, by this Agreement, to provide Developer with assurance that Developer can proceed with further development and operation of the Project with the uses, density and other land use characteristics specified in the Project Approvals. Developer would not enter into this Agreement without the City's agreement that the Project can be developed and used, during the term of this Agreement, with the uses, density and other land use characteristics and approvals specified in the Project Approvals.

H. The City has determined that, as a result of the further development of the Project in accordance with the Project Approvals and this Agreement, substantial benefits will accrue to the public.

I. On December 12, 2013, pursuant to the requirements of the Development Agreement Act, the Planning Commission of the City of Beverly Hills conducted a hearing on Developer's application for this Agreement.

J. On February 4, 2014, pursuant to the requirements of the Development Agreement Act, the City Council of the City of Beverly Hills (the "City Council") conducted a hearing on Developer's application for this Agreement.

K. The City Council has found and determined that this Agreement is consistent with the City's General Plan and all other plans, policies, rules and regulations applicable to the Project.

L. On [month] [day], 2014, the City Council adopted Ordinance No. 14-O-____ approving this Agreement, and such ordinance became effective on [month] [day], 2014.

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 are hereby acknowledged, the Parties hereto 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:

(a) "AKA Beverly Hills Project" shall mean the serviced residence use permitted to be operated on the Property by the Project Approvals, whether or not operated under the "AKA" name.

(b) "Applicable Rules" means the rules, regulations, ordinances, resolutions, codes, guidelines, and officially adopted procedures and official policies of the City governing the use and development of real property, including the City's Zoning Regulations, adopted as of the Effective Date, all as amended pursuant to the Project Approvals. Among other matters, the Applicable Rules set forth and govern the permitted uses of land, the density or intensity of use, the maximum height and size of the buildings and the provisions for reservation or dedication of land for public purposes applicable to the use and development of the Property.

(c) "Business Day" means any day other than a Saturday, Sunday or California or Federal holiday on which banks in the City are customarily closed.

(d) "CEQA" means the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*), as it now exists or may hereafter be amended.

(e) "Conditions of Approval" shall mean those conditions of approval, if any, which are not set forth in this Agreement and which are otherwise imposed by the City in connection with the City's approval of the Project Approvals.

(f) "Development Agreement" or "Agreement" means this Agreement.

(g) "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 (as the same may be amended and/or re-codified from time to time).

(h) "Discretionary Action(s)" or "Discretionary Approval(s)" means an action that requires the exercise of judgment, deliberation or discretion on the part of the City, including any board, agency, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from a Ministerial Permit or Ministerial Approval (as hereafter defined).

(i) "Effective Date" shall mean the date this Agreement, fully executed, is recorded in the Official Records of the Los Angeles County Recorder.

(j) "Entitlements" means "Entitlements" as defined in Section 6.

(k) "General Plan" means the General Plan of the City, as it exists as of the Effective Date.

(l) "Gross Room Revenue" means consideration received from lessees of dwelling units at the AKA Beverly Hills Project for the occupancy of units and ancillary space in the AKA Beverly Hills Project. Revenue shall be valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property and services of any kind or nature, without any deduction therefrom.

(m) "Ministerial Permit(s)," or "Ministerial Approval(s)" means a permit or approval that requires the City, including any board, agency, commission or department or any officer or employee thereof, to determine whether there has been compliance with applicable rules, statutes, ordinances, conditions of approval, and/or regulations, as distinguished from an activity which is included in the definition of Discretionary Action or Discretionary Approval.

(n) "Mortgage" means any mortgage, deed of trust, encumbrance, sale leaseback or other security interest encumbering all or any portion of the Property, given by Developer for the purpose of securing funds to be used for financing the acquisition of the Property or any portion thereof, the construction of improvements thereon and/or any other expenditures reasonably necessary and appropriate to develop and/or operate the Project, or any refinancing of any of the foregoing.

(o) "Mortgagee" means, collectively, the holder of the beneficial interest under any Mortgage, together with the successful bidder at a foreclosure sale or a transferee by deed in lieu of foreclosure or similar instrument, who comes into possession of the Property or any part thereof pursuant to foreclosure, deed in lieu or otherwise.

(p) "Municipal Surcharge" means the fee paid pursuant to Section 9(d) of this Agreement.

(q) "Processing Fees" means all application, inspection and other fees and charges required by the City that are applied uniformly to all development related activity, including fees for land use applications.

(r) "Project" means the AKA Beverly Hills Project.

(s) "Project Approvals" means Project Approvals as defined in Recital D above..

(t) "Property" means the real property described in Exhibit "A" attached hereto and defined in Recital A.

(u) "Reserved Powers" means the power and authority of the City to enact regulations and/or take Discretionary Action if the same is expressly found by the City to be necessary to protect residents of the City, those employed in the City, or visitors to the City, from a condition that is dangerous to public health or safety or if the same is required to comply with California or federal laws (whether enacted previous or subsequent to the Effective Date of this Agreement). Reserved Powers also include the power and authority of the City to enact regulations that apply generally to hotels and serviced residences or multi-family residential uses and serviced residences within the City, including regulations of hotel, serviced residence, or multi-family residential use operations, provided that such regulations do not impact the permitted uses, density, height or square footage of the Project permitted by the Zoning Regulations.

(v) "Serviced Residence" means a multi family transient use where each dwelling unit includes a full kitchen, laundry facilities and bathroom, no dwelling unit is leased or

occupied by any person for less than seven (7) consecutive days, and each dwelling unit is maintained and offered services at a luxury standard.

By way of illustration, at the time of adoption of this agreement, a "luxury standard" includes a 24-hour resident service team, high-tech fitness center, full-service business center with executive board room and complimentary high-speed Internet access, a lounge, en-suite dining, same-day valet dry-cleaning and laundry service, and full-time, on-site management and maintenance. All dwelling units include fully-accessorized kitchens, contemporary furnishings, well-appointed bathrooms, premium cable television and Wi-Fi access.

All residents shall jointly occupy the entire dwelling unit, under a single written lease.

(w) "Subsequent Land Use Regulations" means any change in or addition to the Applicable Rules adopted after the Effective Date of this Agreement, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building regulation, including, without limitation, any such change by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever by the Mayor, City Council, Planning Commission or any other board, agency, commission or department of 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.

(x) "Subsequent Project Approvals" shall mean all further Discretionary Actions or Discretionary Approvals, Ministerial Permits and Ministerial Approvals required or requested with respect to the Project. Following adoption or approval, a Subsequent Project Approval shall become a Project Approval.

(y) "Zoning Regulations" shall mean the official zoning regulations of the City adopted as of the Effective Date of this Agreement.

2. Recitals of Premises. Purpose and Intent.

(a) 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 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 costs 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 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.

(b) The Project. The Developer intends to develop and operate the Property as described in the Project Approvals, subject to the Applicable Rules, the Project Approvals, and the Conditions of Approval. The Parties hereby agree that, subject to the exercise of the City's Reserved Powers, for the term of this Agreement, the permitted uses, the density and intensity of use, the maximum height and size of the buildings, provisions for reservation or dedication of land for public purposes and the design, improvement and other guidelines, standards and specifications applicable to the development and use of the Property shall be those set forth in the Project Approvals, the Applicable Rules, this Agreement, and the Conditions of Approval. Subject to the exercise of the City's Reserved Powers, any Subsequent Project Approvals shall, at the election of Developer, be subject to the Applicable Rules or the rules, regulations, ordinances, resolutions, codes, guidelines, and officially adopted procedures and official policies of the City at the time of such Subsequent Project Approval.

3. Property Subject to Agreement. This Agreement shall apply to all of the Property.

4. Application of Agreement. This Agreement shall apply to the development and use of the Property. Such development and use shall be in accordance with the Project Approvals and this Agreement.

5. Term of Agreement. The initial term of this Agreement shall commence on the Agreement Effective Date, and shall continue for one (1) year.

Notwithstanding the term set forth above, the obligation to pay the Municipal Surcharge pursuant to Section 9 shall continue indefinitely as provided in Sections 9 and 11.

6. Permitted Uses; Density; Building Heights and Sizes; Required Dedications. The City and Developer hereby agree that the permitted uses of the Property (including, without limitation, as set forth in Recital B hereof), the density and intensity of such uses, and the maximum heights and sizes of the buildings and improvements on the Property, allowed in connection with the development and operation of the Project shall be as set forth in and consistent with prior entitlements as modified by the Project Approvals, and as they may be lawfully amended by Developer from time to time (collectively the "Entitlements"). As set forth in the Project Approvals, the City and Developer agree that Developer shall not reserve or dedicate land for public purposes given the nature of the Project's site and the presence of necessary public improvements in the area of the Project. Developer shall not cause or permit

any use of the Property that is not permitted by the Entitlements, and shall not cause or permit the construction of any building or improvement that exceeds the maximum density, building heights and/or building sizes set forth in or otherwise required by the Entitlements.

7. Developer's Rights. Developer shall have and is hereby vested with the rights, during the term of this Agreement, to develop and operate the Project as set forth in the Entitlements, all of which are hereby incorporated in this Agreement by reference.

8. Changes in Applicable Rules.

(a) Non-Application of Changes in Applicable Rules. The adoption of any Subsequent Land Use Regulations after the Effective Date of this Agreement, or any change in, or addition to, the Applicable Rules (other than changes in Processing Fees as provided in this Agreement), including, without limitation, any changes in the General Plan or the Zoning Regulations adopted after the Effective Date of this Agreement, including, without limitation, any such change by means of ordinance, initiative, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by any board, agency, commission or department of the City, 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 or be more restrictive than the Entitlements, shall not be applied to the Project during the term of this Agreement unless such changes represent an exercise of the City's Reserved Powers.

(b) Changes Mandated by Federal or California Laws or Regulations. Changes in, or additions to, the Applicable Rules adopted or made operative on or after the Effective Date shall apply to the Project if such changes or additions are specifically mandated to be applied to developments such as the Project by applicable California or federal laws or regulations. If the City or Developer believes that such a change or addition required by California or federal law or regulation exists, then that Party shall provide the other Party hereto with a copy of such California or federal law or regulation and a statement of the nature of its conflict with the provisions of the Applicable Rules and/or of this Agreement. For the purposes of this Agreement, the City's determination as to the applicability of California or federal laws to the Project shall be final and conclusive. In the event that any such change or addition shall be required by California or federal law or regulation, the City shall reasonably cooperate with Developer in minimizing the impact of such change upon the Project and the Property.

(c) Changes in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, construction in connection with the Project shall be subject to changes occurring from time to time in the provisions of the City's building standards codes, including the City's building, mechanical, plumbing and electrical regulations that are based on the recommendations of a multi-state professional organizations and become applicable throughout the City, including the California Building Code and other similar or related uniform codes.

(d) Changes in Processing Fees Under Applicable Rules and Applicability of other Fees. The Project shall be subject to any increase in Processing Fees imposed by the City, provided that such a change is applied on a City-wide basis. Except as provided in Section 9, no

fees are imposed on Developer pursuant to this Agreement. Additionally, nothing in this Agreement shall exempt Developer from fees set forth in the Beverly Hills Municipal Code or the City's adopted schedule of rates, fees and charges.

9. Developer's Obligations.

(a) Conditions of Approval. Developer shall comply with the Conditions of Approval.

(b) Reimbursement of Project Approval Costs. No later than the thirty (30) days following the Effective Date, Developer shall reimburse the City for all of its reasonable and customary costs to process the Project Approvals, including reasonable legal processing costs related to the Project Approvals and preparation of this Agreement, if any.

(c) Processing Fees. Developer agrees to pay all Processing Fees applied to the Project at the rate and amount in effect at the time the fee is required to be paid.

(d) Municipal Surcharge. The owner of the AKA Beverly Hills shall pay to the City, in perpetuity, an amount of six percent (6.0%) of the Gross Room Revenue generated by the AKA Beverly Hills Project on all room occupancies of thirty calendar days or less (the "Municipal Surcharge").

(i) *Timing of Payment.* The Municipal Surcharge shall be payable monthly, based on the actual Gross Room Revenue received during the month for which payment is to be made, at the same time and in the same manner as is required for payment of the City's transient occupancy tax imposed pursuant to Title 3, Chapter 1, Article 3 of the Beverly Hills Municipal Code, or its successor.

(ii) *Letter of Credit to Secure Municipal Surcharge.* Developer shall provide the City with a letter of credit, or other form of security reasonably acceptable to the City Manager and City Attorney, in the initial amount of two hundred thousand dollars ($200,000) for the purpose of securing its obligation to pay the Municipal Surcharge. The letter of credit shall be substantially in the form attached hereto as Exhibit B, and shall be in substance and form reasonably satisfactory to the City Attorney, and shall be issued by an issuer reasonably acceptable to the City Manager in good faith. The letter of credit may be drawn by City to pay any monthly installment of the Municipal Surcharge if Developer fails to pay any monthly installment of the Municipal Surcharge within thirty (30) days after its due date (and partial and multiple drawings shall be permitted). The letter of credit may be drawn in full by City if (i) the City receives notice of termination from the issuing bank or if the letter of credit is not extended, renewed or replaced (as shown by delivery to City of a copy of the extension or renewal amendment that is acceptable to the City Attorney, or the original of a replacement letter of credit acceptable to the City Manager and City Attorney from an issuer reasonably acceptable to the City Manager, as applicable, or substitute collateral reasonably acceptable to the City Manager and City Attorney) at least thirty (30) days prior to any fixed expiry date in the letter of credit; or (ii)

if the issuer is no longer creditworthy, as reasonably determined by the City Manager and in good faith, and the letter of credit is not replaced with a similar letter of credit reasonably acceptable in form and substance to the City Attorney or substitute collateral reasonably acceptable to the City Manager and City Attorney within thirty (30) days after written notice from the City Manager to Developer that the issuer is no longer creditworthy. Developer hereby covenants to provide such an extension or renewal amendment or replacement letter of credit or such substitute collateral, within such thirty (30) day period such that the letter of credit (and/or such substitute collateral) is maintained in perpetuity. In the event of a full or partial draw under the letter of credit, Developer shall deliver to the City an amendment to the letter of credit raising the available amount thereof to $200,000 (or additional collateral acceptable to the City Manager and City Attorney) within thirty (30) days.

If the letter of credit has been maintained and not drawn upon in whole or part for a period of two (2) years, the letter of credit may be reduced in amount to one hundred thousand dollars ($100,000). However, if at any time after such reduction, the letter of credit is drawn upon by City in accordance with the terms hereof, or if Developer transfers its interest in the Property or the Agreement, then Developer shall deliver to City an amendment to the letter of credit raising the available amount thereof to $200,000.

(iii) *Acknowledgement.* The parties acknowledge and agree that the Municipal Surcharge is not a tax or a levy by City.

(iv) *Late Charges, Interest.* If Developer fails to pay the Municipal Surcharge within ten (10) days after its due date, Developer shall pay a late charge in the amount equal to the lesser of (i) two thousand dollars ($2,000), increased on the first day of each calendar year by the increase, if any, during the immediately preceding calendar year in the Consumer Price Index - All Urban Consumers for Los Angeles-Riverside-Orange County, California as published by the U.S. Department of Labor, Bureau of Labor Statistics (or any successor thereto); or (b) four percent (4%) of the Municipal Surcharge payment due but not paid. The parties hereto acknowledge and agree that the amount of the costs and expenses that City will incur in the event the Municipal Surcharge is not paid when due is extremely difficult to calculate, and that the late charge set forth in the immediately preceding sentence is a reasonable, good faith estimate of such costs and expenses, but payment of such late charge shall not limit the City's remedies following any default by Developer under this Agreement. If any Municipal Surcharge, including any late charge, is not paid within ten (10) days after the date on which the Surcharge is due, then such Municipal Surcharge (including any late charge) shall bear interest, from the due date until paid, at the rate that is the lesser of (i) eighteen percent (18%), or (ii) the highest rate then permitted by applicable law.

(e) Transient Occupancy Tax. The operator of the AKA Beverly Hills Project, as "operator" is defined in Beverly Hills Municipal Code Section 3-1-302, shall collect, report and

remit the City's transient occupancy tax in accordance with the provisions of the Beverly Hills Municipal Code or their successors.

10. Audit. Developer shall maintain full and accurate records with respect to the Municipal Surcharge. . For the purpose of determining whether the Municipal Surcharge has been properly calculated and paid to the City, City shall have access one time annually, without charge and upon reasonable notice, during normal business hours, to such records, and the right to examine and audit the same and to make copies and transcripts therefrom, and to inspect all program data, documents, proceedings and activities related to the Municipal Surcharge. Such examination and audit shall be at the City's expense unless the examination and audit reveals that Developer has underpaid the Municipal Surcharge by at least ten percent (10%) in any one month. If the examination and audit reveals that Developer has underpaid the Municipal Surcharge by at least ten percent (10%) in any one month, then Developer shall reimburse the City for the cost of the examination and audit and the City shall be entitled to conduct another audit during that year,

11. Default. Failure by City or Developer to perform any term or provision of this Agreement for a period of thirty (30) days from the receipt of written notice thereof from the other, or failure of Developer to timely provide a letter of credit extension, renewal amendment, replacement letter of credit, letter of credit amendment or substitute collateral as required by Section 9(d)(ii), shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Any such default notice shall specify in detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) day period (if applicable), the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

Upon a default by City or Developer, after notice and expiration of the thirty (30) day period (if applicable) without cure, the other party, at its option, shall have all rights and remedies provided by law and/or may give notice of intent to terminate this Agreement pursuant to Government Code Section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days in the manner set forth in Government Code Sections 65867 and 65868. Following consideration of the evidence presented in said review before the City Council and a determination that a default exists, the Party alleging the default by the other Party may give written notice of termination of this Agreement to the other Party. Upon any such termination, the respective rights, duties and obligations of the Parties hereto shall without further action cease as of the date of such termination (except as to duties and obligations that arose prior to the date of such termination). In no event shall monetary damages be available against the City for any alleged default or breach by the City. In no event shall consequential damages be available against Developer or any seller of any portion of the Property for any alleged default or breach of this Agreement.

12. Termination and Expiration. Upon the expiration of the term or termination of this Agreement, and except as provided below, the vested rights provided by this Agreement shall terminate and be of no further force or effect. However, such expiration or termination shall not affect Developer's obligations under Section 9(d) and Section 10, nor the obligation to pay any

claim of any Party hereto arising out of the provisions of this Agreement prior to the effective date of such termination. Additionally, for a period of four years after expiration or termination of this Agreement, such expiration or termination shall not affect Developer's vested right pursuant to Section 7 to construct a restaurant as permitted by the Entitlements. The obligations under Section 9(d), and the obligation to pay any claim arising before the effective date of expiration or termination, shall continue after expiration or termination in perpetuity or until completed.

13. Transfers of Interests in Property or Agreement. In the event of a proposed transfer of interest in the Property or in this Agreement by Developer to a transferee, Developer agrees to make commercially reasonable efforts to provide the City at least thirty (30) days written notice of such proposed transfer and shall provide satisfactory evidence that the transferee will assume in writing through an assignment and assumption agreement all remaining obligations of Developer under this Agreement. The assignment and assumption agreement shall be in a form reasonably satisfactory to the City Attorney. However, Developer has no obligation to obtain the consent of the City to assign this Agreement to a transferee. Notwithstanding the foregoing: (i) the terms, covenants and conditions of this Agreement shall be binding upon any transferee whether or not such an assignment and assumption agreement is signed by the assignee upon acquiring the Property; and (ii) no such transfer shall relieve Developer (transferor) of any obligations under this Agreement during the one year term hereof unless: (A) at least thirty (30) days before any transfer, Developer has submitted to City the name of the proposed transferee and financial information regarding the transferee reasonably satisfactory to the City's Chief Financial Officer, and the City determines, prior to transfer, that the proposed transferee is able to satisfactorily fulfill the obligations of this Agreement, and (B) the transferee accepts, in writing, the obligations of Developer under this Agreement. Upon any transfer after the one year term hereof, Developer shall be relieved of all liability and obligations hereunder (without regard to whether any of the same shall survive the termination or expiration hereof). Such writing shall be in form and content reasonably satisfactory to the City Attorney.

14. Mortgagee Protection.

(a) *In General.* The provisions of this Agreement shall not prevent or limit Developer's right to encumber the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to such portion. The City acknowledges that Mortgagees may require certain interpretations and modifications of this Agreement and agrees upon request, from time to time, to meet with Developer and representatives of such Mortgagees to negotiate in good faith any such request for interpretation or modification. The City shall not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement and does not, in the City's sole determination, diminish the City's benefits from this Agreement or the security for those benefits. Any Mortgagee shall be entitled to the rights and privileges set forth in this Section.

(b) *Notice of Default to Mortgagee.* If a Mortgagee has submitted a request in writing to City in the manner specified herein for giving notices, the City shall exercise its best efforts to provide to such Mortgagee written notification from the City of any failure or default by Developer in the performance of Developer's obligations under this Agreement, which

notification shall be provided to such Mortgagee at such time as such notification is delivered to Developer.

(c) *Right of Mortgagee to Cure*. Any Mortgagee shall have the right, but not the obligation, to cure any failure or default by Developer during the cure period allowed Developer under this Agreement, plus an additional sixty (60) days if, in order to cure such failure or default, it is necessary for the Mortgagee to obtain possession of the property such as by seeking the appointment of a receiver or other legal process. Any Mortgagee that undertakes to cure or attempt to cure any such failure or default shall provide written notice to the City that it is undertaking efforts of such a nature; provided that no initiation of any such efforts by a Mortgagee shall obligate such Mortgagee to complete or succeed in any such curative efforts.

(d) *Liability for Past Defaults or Obligations*. Subject to the foregoing, any Mortgagee shall take such property subject to the terms of this Agreement and in no event shall any such property be released from any obligations associated with its use and development under the provisions of this Agreement. Nothing in this Section 13 shall prevent City from exercising any remedy it may have for a default under this Agreement (subject to the cure periods set forth in Section 13(c) above), provided, however, that in no event shall such Mortgagee personally be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of such property by such Mortgagee.

15. Binding Effect. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors (by merger, reorganization, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors and assigns. All of the provisions of this Agreement shall constitute covenants running with and appurtenant to the land and the covenants made and benefits granted and established, and the rights and restrictions contained herein, are intended to, and shall, inure to the benefit of and be binding upon the Developer..

16. Indemnification.

(a) Developer agrees to and shall indemnify, hold harmless, and defend, the City and its respective officers, officials, members, agents, employees, and representatives, from liability or claims for death or personal injury and claims for property damage which may arise from the acts, errors, and/or omissions of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf in relation to the Project and/or in any manner arising from this Agreement. The foregoing indemnity applies to all deaths, injuries, and damages, and claims therefor, suffered or alleged to have been suffered by reason of the acts, errors, and/or omissions referred to in this Section 15, regardless of whether or not the City prepared, supplied, or approved plans or specifications, or both. In the event of litigation, the City agrees, at no cost to the City, to cooperate with Developer. This indemnification, hold harmless and defense requirement shall survive the termination or expiration of this Agreement. The City reserves the right, in cases subject to this indemnity, to reasonably approve the attorney selected by Developer to defend Developer and the City in any such action.

(b) In the event of any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals, or the CEQA determination for the Project, Developer may defend at its own expense, the action or proceeding. In addition, Developer shall reimburse the City for the City's costs in defending any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals, or the CEQA determination for the Project, and Developer shall also pay any award of costs, expenses and fees that the court having jurisdiction over such challenge makes in favor of any challenger and against the City. Developer shall cooperate with the City in any such defense as the City may reasonably request and may not resolve such challenge without the prior written consent of the City. In the event Developer fails or refuses to reimburse the City for its cost to defend any challenge to this Agreement, any of the Project Approvals, or the CEQA determination for the Project, the City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 10 above. In all events, the City shall have the right to resolve any such challenge in any manner, in its sole discretion, provided, however, Developer's consent shall be required (and may be granted or withheld in Developer's discretion) if the City is reimbursed for its defense by Developer and the resolution of the challenge shall require a payment by Developer or limit Developer's rights under this Agreement. Additionally, in the event of any litigation or referendum initiated by third parties to attack, set aside, modify, void or annul this Agreement, any of the Project Approvals, or the CEQA determination for the Project, (each, a "Challenge"), the term of this Agreement shall be tolled for the period during which such Challenge is proceeding until fully and finally resolved.

In order to ensure compliance with this Section 15(b), within twenty (20) days after notification by the City of the filing of any claim, action or proceeding to attack, set aside, void or annul this Agreement, any of the Project Approvals, or the CEQA determination for the Project,, Developer shall deposit with the City cash or other security in the amount of one hundred thousand dollars ($100,000), satisfactory in form to the City Attorney, guaranteeing indemnification or reimbursement to the City of all costs related to any action triggering the obligations of this Section 15. If the City is required to draw on that cash or security to indemnify or reimburse itself for such costs, Developer shall restore the deposit to its original amount within fifteen (15) days after notice from the City. Additionally, if at any time the City Attorney determines that an additional deposit or additional security up to an additional fifty thousand dollars ($50,000) is necessary to secure the obligations of this Section; Developer shall provide such additional security within fifteen (15) days of notice from the City Attorney. The City shall promptly notify Developer of any claim, action or proceeding within the scope of this Section 15.

17. Relationship of the Parties. The Parties acknowledge and agree that Developer is not acting as an agent, joint venturer or partner of the City, but each is, in fact, an independent contractual party and not in any way under the control or direction of the City except as is expressly provided to the contrary in this Agreement.

18. Recordation. As provided in Government Code Section 65868.5, the City Clerk shall record a copy of this Agreement with the Registrar-Recorder of the County of Los Angeles within ten (10) days following its execution by both Parties. Developer shall reimburse the City for all costs of such recording, if any.

19. No Third Party Beneficiaries. The only signatories to this Agreement are the City and Developer. 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 other than the successors in interest of the signatories.

20. Advice; Neutral Interpretation. Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. This Agreement has been drafted through a joint effort of the Parties and their counsel and therefore shall not be construed against either of the Parties in its capacity as draftsperson, but in accordance with its fair meaning.

21. Certificate of Compliance. At any time during the term of this Agreement, any Mortgagee or other party may request any Party to this Agreement to confirm that (i) this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications) and that (ii) to the best of such Party's knowledge, no defaults exist under this Agreement or if defaults do exist, to describe the nature of such defaults and (iii) any other information reasonably requested. Each Party hereby agrees to provide a certificate to such lender or other party within ten (10) Business Days of receipt of the written request therefor.

22. Consideration. The City and Developer acknowledge and agree that there is good, sufficient and valuable consideration flowing to the City and to Developer pursuant to this Agreement as more particularly set forth in the Recitals and Section 2 of this Agreement. The Parties further acknowledge and agree that the exchanged consideration hereunder is fair, just and reasonable.

23. Periodic Reviews.

(a) Special Reviews. The City Council of the City may order a special periodic review of Developer's compliance with this Agreement at any time. The cost of such special reviews shall be borne by the City, unless such a special review demonstrates that Developer is not acting in good faith compliance with the provisions of this Agreement. In such cases, Developer shall reimburse the City for all costs, direct and indirect, incurred in conjunction with such a special review.

(b) Procedure for Review. The City's Director of Community Development (the "Community Development Director") shall conduct the review contemplated by this Section 22 to ascertain whether Developer has complied in good faith with the terms and conditions of this Agreement during the period for which the review is conducted. The Community Development Director shall give Developer written notice that any such review has been commenced, and shall give Developer at least twenty (20) days after Developer's receipt of such notice to provide to the Community Development Director such information as Developer deems relevant to such review. In addition, upon the written request of the Community Development Director, Developer shall furnish such documents or other information as requested by the Community Development Director.

(c) Result of Review. If, following such a review, the Community Development Director finds good faith compliance by Developer with the terms and conditions of this Agreement, the Community Development Director shall issue to Developer an executed certificate of compliance, certifying Developer's good faith compliance with the terms and conditions of this Agreement through the period of such review. Such certificate shall be in recordable form, and shall contain such information as may be necessary to impart constructive record notice of the finding of good faith compliance hereunder. Developer shall have the right to record such certificate of compliance in the Official Records of the County of Los Angeles.

If, following such a review, the Community Development Director finds that Developer has not complied in good faith with the terms and conditions of this Agreement, the Community Development Director shall specify in writing the respects in which Developer has failed to so comply. The Community Development Director shall provide Developer with written notice of such noncompliance as provided in Section 10 and the City may follow the default procedures as set forth in Section 10.

(d) Effect on Default Procedures. Nothing in this Section 22 shall be interpreted to prevent the City from providing Developer with a notice of default hereunder at any time, including any time other than during a periodic review under this Section 22, or from terminating this Agreement pursuant to the provisions of Section 10 following any event of default by Developer.

24. Future Litigation Expenses.

(a) Payment of Prevailing Party. If the City or Developer brings an action or proceeding (including, without limitation, any motion, order to show cause, cross-complaint, counterclaim, third-party claim or arbitration proceeding) by reason of default, breach, tortious act, or act or omission, arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit including, reasonable attorneys' fees and expert witness fees.

(b) Scope of Fees. Attorneys' fees under this Section 23 shall include attorneys' fees on any appeal and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

25. Headings. The section headings used in this Agreement are for convenient reference only and shall not be used in construing this Agreement. The words "include," "including" or other words of like import are intended as words of illustration and not limitation and shall be construed to mean "including, without limitation."

26. Amendment. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest, as follows:

(i) City and Developer, by mutual agreement, may terminate or amend the terms of this Agreement, and the amendment or termination shall be accomplished in the manner provided under California law for the enactment of development agreement amendments.

(ii) Except as may be otherwise agreed to by the Parties, no amendment of this Agreement shall be required in connection with the issuance of any Subsequent Project Approval. Any Subsequent Project Approval issued after the Effective Date of this Agreement automatically shall be incorporated into this Agreement and vested hereby.

27. Alterations. No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Agreement, and made in the manner required by the Development Agreement Act.

28. Waiver. The failure of either Party hereto to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, or to exercise any election or option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by any Party hereto of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official or officer on behalf of such Party.

29. Severability. If any article, section, subsection, term or provision of this Agreement, or the application thereof to any party or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of the article, section, subsection, term or provision of this Agreement, or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, except that if any provision of Section 9 is held invalid or unenforceable, then this entire Agreement shall be void and unenforceable and of no further force and effect.

30. Force Majeure. Performance by any Party of its obligations hereunder (other than for payment of money) shall be excused during any period of "Permitted Delay," which Permitted Delay shall mean and include delay caused by an event beyond the reasonable control of the Party claiming the delay (and despite the good faith efforts of such Party) that prevents the Party from fulfilling the obligations for which it seeks excuse including, without limitation, all of the following to the extent that they prevent the Party claiming delay from fulfilling the obligation from which it seeks to be excused: acts of God; civil commotion; riots; strikes; picketing or other labor disputes; shortages of materials or supplies; damage to work in progress by reason of fire, floods, earthquake or other casualties; failure, delay or inability of the other Party to act; terrorism; and litigation brought by a third party attacking the validity of this Agreement, any of the Project Approvals or the CEQA determination for the Project.

31. Notices. All notices, disclosures, demands, acknowledgments, statements, requests, responses and other communications (each, a "Communication") to be given under this

Agreement shall be in writing, signed by a signatory hereto (or an officer, agent or attorney of such party) giving such Communication, and shall be deemed effective (i) upon receipt if hand delivered or sent by overnight courier service; or (ii) upon delivery or the date of refusal if sent by the United States mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To Developer:	Metropolitan Crescent Associates, LLC c/o Korman Communities 220 West Germantown Pike, Suite 250 Plymouth Meeting, Pennsylvania 19462 Attn: Robert S. Grossman
With Copy to:	Seyfarth Shaw, LLP] 333 S. Hope St. Suite 3900] Los Angeles, CA 90071 Attn: Richard C. Mendelson, Esq.
To City:	City Manager City of Beverly Hills 455 North Rexford Drive Fourth Floor Beverly Hills, California 90210
With Copy to:	City Attorney City of Beverly Hills 455 North Rexford Drive Room 220 Beverly Hills, California 90210

Any signatory hereto may from time to time, by notice given to the other signatories hereto pursuant to the terms of this Section 30 change the addresses to which communications to such signatory are to be sent or designate one or more additional persons or entities to which communications are to be sent.

32. Applicable Law. This Agreement shall be governed in all respects by the laws of the State of California.

33. Time is of the Essence. Time is of the essence of this Agreement and every term or performance hereunder.

34. Entire Agreement. This Agreement supersedes any prior understanding or written or oral agreements between the Parties hereto respecting the within subject matter and contains the entire understanding between the Parties with respect thereto.

35. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

37. Compliance With Law. Notwithstanding any provision of this Agreement, the Parties agree to comply with all federal, state and local laws and to act in good faith and reasonably in carrying out the terms of this Agreement.

38. Authorization. Each person executing this Agreement represents and warrants that he or she is authorized and has the legal capacity to execute and deliver this Agreement on behalf of the Party for which execution has been made.

[Signatures on next page]

Development Agreement

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the ____ day of _____, 2014.

CITY OF BEVERLY HILLS,
a Municipal Corporation

_____
JOHN A. MIRISCH
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

METROPOLITAN CRESCENT
ASSOCIATES, LLC,
a Delaware limited liability company

By: KCI BLACKROCK VENTURE V, LLC,
a Delaware limited liability company,
its Sole Member
KCI Crescent Associates, LLC,
a Delaware limited liability company,
its Manager

By: _____

Name: _____
Title: _____

APPROVED AS TO FORM:

_____
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

_____
JEFFREY KOLIN
City Manager

Development Agreement

STATE OF _____ }

} ss.

COUNTY OF _____ }

On _____, 2014, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

_____ (seal)

Records.

Development Agreement

EXHIBIT A

The Property situated in the State of California, County of Los Angeles, City of Beverly Hills described as follows:

PARCEL 1:

Lots 8, 9 and 10 in Block 13 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per Map recorded in Book 11 Page 94 of Maps in the Office of the County Recorder of said County.

PARCEL 2:

Lots 11, 12, 13, 14, 15 and 16 in Block 13 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per Map recorded in Book 11, Page 94 of Maps, in the Office of the County Recorder of said County.

Except therefrom all oil, gas and other hydrocarbon substances in and under the following described real property in the County of Los Angeles, excepting therefrom however, the right to enter upon the surface or subsurface thereof to a depth of 500 feet below the surface of the ground, as granted to Jacqueline Block Leisure and Sharlot Carpenter as tenants in common, by deed recorded August 20, 1964 as Instrument No. 4516, in Book D2598 Page 9, of Official Records.

Development Agreement

EXHIBIT B

FORM OF LETTER OF CREDIT

(Attached.)

DRAFT

IRREVOCABLE LETTER OF CREDIT

Irrevocable Letter of Credit No. _____

City of Beverly Hills
455 Rexford Drive
Beverly Hills, CA 90210
Attn: City Manager

1. At the request and on the instructions of Metropolitan Crescent Associates, LLC, a Delaware limited liability company ("MCA"), _____ hereby establishes in favor of the City of Beverly Hills this Irrevocable Letter of Credit in the original amount of Two Hundred Thousand and 0/100ths UNITED STATES DOLLARS (U.S.$200,000.00) (the "***Stated Amount***").

2. Funds under this Letter of Credit in an aggregate amount not to exceed the Stated Amount will be made available to the City in accordance with the provisions of this Letter of Credit against receipt by us of your written certificate of demand for payment hereunder in the form of Annex I hereto appropriately completed and purported to be signed by one of your Authorized Officers. Partial and multiple drawings shall be permitted under this Letter of Credit.

3. This Letter of Credit shall be effective immediately and shall not expire except on thirty (30) days written notice to the City delivered to the address set forth above by hand or by overnight courier service.

4. Presentation of any certificate of demand for payment hereunder shall be made in person, including by way of a recognized overnight delivery service or certified mail, postage prepaid, at our office located at **[OFFICE IN OR NEAR BEVERLY HILLS]**, Attention: _____, or by authenticated electronic mail sent to _____ _____. Demand for payment may be made under this Letter of Credit at any time during our business hours at our aforesaid address on a Business Day on or prior to the Expiry Date. If your demand for payment is received by us on such a Business Day, and such demand for payment conforms to the terms and conditions hereof, payment shall be made of the amount demanded, in immediately available funds, not later than the third Business Day following such demand. If your demand for payment does not conform to the provisions of this Letter of Credit, we shall give you notice (before the close of business on the Business Day after our receipt of such demand) that such demand for payment was not effected in accordance with the provisions of this Letter of Credit and shall state the reasons therefor. Prior to the Expiry Date you may attempt to correct such nonconforming demand for payment.

5. The aggregate amount available under this Letter of Credit shall reduce immediately after our making any payment hereunder in an amount equal to the amount of such payment.

6. As used herein (a) "***your Authorized Officers***" shall mean the City Manager and City Attorney of the City of Beverly Hills, or such other officers as you shall from time to time designated as such in a writing provided to us, and (b) "***Business Day***" shall mean

any day on which we are open for the purpose of conducting a commercial banking business at the office at which the demand for payment may be made under this Letter of Credit.

7. Notice and other communications with respect to this Letter of Credit shall be in writing, shall specifically refer to this Letter of Credit by number and date, and shall be delivered in person including by way of a recognized overnight delivery service or certified mail, postage prepaid, at the respective addresses set forth above, or at such other address as the addressee shall have specified by written notice actually received by the addressor.

8. This Letter of Credit may not be transferred or assigned, either in whole or in part; provided, however, that you may designate one or more designees or accounts to which payment is to be made in accordance with the terms hereof.

9. This Letter of Credit sets forth in full our undertaking, and shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein or in which this Letter of Credit is referred to or to which this Letter of Credit relate, except for the certificate in the form of Annex I hereto, the notices and the ISP (as defined below); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificate, the notices and the ISP and _____.

10. This Letter of Credit shall be subject to, governed by, and construed in accordance with, International Standby Practices 1998, International Chamber of Commerce Publication 590 ("ISP"), which is incorporated into the text of this Letter of Credit by this reference.

Very truly yours,

By:_____
Print Name: _____
Title: _____

DRAFT

Annex I

[Drawing Request]

_____, 20__

Irrevocable Letter of Credit No. _____

_____
_____
_____

Ladies and Gentlemen:

We hereby demand a drawing under the above-referenced Letter of Credit in an amount equal to $_____, and request that payment of such drawing be made to the City of Beverly Hills by _____ at _____[supply relevant wire transfer information, or address for a check].

By our signature below, we hereby certify that: (i) the amount of this drawing, together with all previous drawings, does not exceed the Stated Amount, and (ii) this drawing is permitted by the terms of that certain Development Agreement dated _____, between the City Beverly Hills and Metropolitan Crescent Associates, LLC.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this drawing notice on the date first above written.

City of Beverly Hills

By:_____
Print Name: _____
Title: _____