AGENDA REPORT

Meeting Date: January 29, 2008

Item Number: F-11

To: Honorable Mayor & City Council

From: David Lightner, Deputy City Manager

Subject: APPROVAL OF AN EXCLUSIVE NEGOTIATING AGREEMENT WITH INTERNATIONAL CREATIVE MANAGEMENT/BARKER-PACIFIC GROUP/ANGELO GORDON FOR PREPARATION OF A GROUND LEASE PROPOSAL AT 336 FOOTHILL ROAD

Attachments: 1. Proposed Exclusive Negotiating Agreement

INTRODUCTION

The Initial Negotiating Period with the development team selected for the 5.3 acre site at 336 Foothill Road concluded in December, 2007. Development of this City-owned property was the subject of a Request for Qualifications process through which ICM/Barker-Pacific/Angelo Gordon (ICM Team) was selected along with a short list of 6 additional development teams. During the Initial Negotiating Period, staff, City consultants and the ICM Team met regularly to refine the proposed program and to develop the terms and conditions under which a ground lease proposal would be negotiated. Those terms and conditions are set forth in the Exclusive Negotiating Agreement (ENA) described in this report. The draft ENA was discussed with the City Council at the January 8, 2008 Study Session and, pursuant to City Council direction, has been posted on the City website since that time and is presented for final action at the January 29, 2008 meeting.

DISCUSSION

The program proposal includes headquarters office space for ICM; additional entertainment offices, a luxury boutique hotel, a retail fitness center and ancillary retail uses. Subterranean on-site parking would be provided for all proposed uses. Although there was initial consideration of whether to include components of the Community Recreation Center previously evaluated on the site, that concept is no longer part of the proposal. Most of the components of the program laid out for the Recreation Center are now incorporated in the Parks Master Plan proposals for La Cienega and Roxbury Parks. The aquatic components that are not included in those plans were not found to

be compatible with the balance of development proposed and will remain as potential program issues for the City's future recreation facilities.

The proposed ENA provides terms and conditions that protect the City during the negotiation of a ground lease proposal. The ENA requires the developer to reimburse the City for its costs related to the negotiations including legal and other consultant fees. It requires the developer to pay a fair share contribution to the Entertainment Business District EIR, as they plan to fall within the scope of that environmental review. Additionally, it requires the developer to make a $1 million deposit within two days of full execution of the ENA. $100,000 of that amount would be non-refundable from the date of deposit; an additional $150,000 would become non-refundable after the first 120 days of the negotiating period; the remainder would be non-refundable if the developer terminates prior to the end of the term or otherwise breeches the agreement. The major provisions of the ENA are outlined below:

ENA Outline

- Purpose of ENA: Set the parameters for the period of negotiating a ground lease and project agreements to be presented to the City Council with the project and its environmental assessment.
- Term: Six months with a potential six month extension to coincide with completion of the entitlement process.
- Exclusive: ICM Team will not negotiate with other parties; City will not negotiate with others.
- Due Diligence: Developer shall complete its due diligence during this period.
- Reimbursement: The developer shall reimburse City for its costs related to negotiating including appraisals, financial consultants, legal costs, and other experts and studies deemed necessary by City.
- Developer shall reimburse its fair share cost of the Entertainment Business District EIR and all related studies.
- Developer shall reimburse City for 100% of the site-specific analyses required to complete the environmental assessment of the project. Developer shall implement this reimbursement through a $100,000 deposit due upon execution of ENA and to be replenished if and as the balance reaches $50,000.
- Developer shall identify a qualified hotel developer and a list of potential hotel operators within 50 days of ENA date.
- Developer shall identify project cost; equity and debt sources and investment structure within 160 days.
- Developer shall produce a revised development plan within 30 days of ENA date.
- Developer shall provide a project schedule within 30 days of ENA date.
- $1,000,000 deposit shall be submitted within two days of ENA date.
- $100,000 of this deposit shall be non-refundable from the date of deposit.
- An additional $150,000 of this deposit shall become non-refundable after the first 120 days of the ENA period.
- The remaining $750,000 shall be non-refundable if the developer terminates prior to the end of the term or otherwise breeches the agreement.
- If the agreement results in development of a Ground Lease that is ultimately executed, the deposit amount will be applied to the rent.

FISCAL IMPACT

None. The agreement is structured so that the City's costs are reimbursed by the developer. The City needs and retains productive use of the property during the ENA period during which the City's Vehicle Shop and storage functions are located on the site and short-term leases remain permissible.

RECOMMENDATION

Staff recommends that the City Council approve the Exclusive Negotiating Agreement with ICM/Barker-Pacific Group/Angelo Gordon for preparation of a ground lease proposal at 336 Foothill Road.

David Lightner
Approved By

EXCLUSIVE NEGOTIATING AGREEMENT

This EXCLUSIVE NEGOTIATING AGREEMENT (this "Agreement") is dated as of January 29, 2008 (the "Effective Date"), and is entered into by and among the CITY OF BEVERLY HILLS, a municipal corporation (the "City") and BARKER PACIFIC GROUP, INC., a Delaware corporation, INTERNATIONAL CREATIVE MANAGEMENT, INC., a Delaware corporation, and ANGELO GORDON REAL ESTATE, INC., a Delaware Corporation (collectively, the "Developer").

RECITALS

A. The City owns the land in the City of Beverly Hills, State of California described in Attachment No. 1 (the "Site").

B. The City previously asked certain developers to provide their qualifications for the development of the Site with a mixed use project (the "Project").

C. After considering the developers responses, the City has instructed the City's staff to proceed with this Agreement between City and Developer to negotiate on an exclusive basis to establish the terms and conditions of one or more ground leases and related documents between City and either Developer or an affiliate of Developer (collectively, the "Project Agreements") that would result in the development of the Site, with the understanding that the City requires that International Creative Management ("ICM") must be the major long term occupant of the ICM building that is to be constructed as part of the Project and that the City is not obligated to reach agreement on the terms of the Project Agreements.

D. The Developer and the City are willing to enter into this Agreement setting forth, among other things, the terms pursuant to which the City will negotiate with the Developer on an exclusive basis for a limited period regarding the Project Agreements and Project.

E. The staff, consultants and attorneys of the City will devote substantial time and effort in meeting with the Developer and its representatives, reviewing proposals, plans and reports, and negotiating and preparing the Project Agreements.

NOW, THEREFORE, the Parties hereto agree as follows:

1. The term of this Agreement shall commence on the date hereof and shall end on the earliest of: (i) July 29, 2008, subject to extension for up to six (6) calendar months by written agreement of the City Manager (acting on behalf of the City) and the Developer and also subject to an additional automatic extension for up to sixty (60) days as necessary in order to permit the City Council to consider and approve or disapprove the Project Agreements at a scheduled public hearing in the event the Project Agreements are fully negotiated and are executed by Developer during the term of this Agreement; or (ii) the date on which the City terminates this Agreement as provided in Section 2 or 6 below; or (iii) the date on which Developer terminates this Agreement as provided in Section 6 below (the "ENA Period").

2. Subject to Developer's notice and cure rights hereinafter set forth, the City may terminate this Agreement if the Developer fails to comply with or perform any provisions of

this Agreement. The City shall provide written notice to the Developer which specifies any failure of the Developer to perform, and except for a failure by Developer to comply with Section 3 below, the City shall not terminate this Agreement if the Developer cures any monetary deficiency specified by the City within ten (10) business days after such notice is given and any non-monetary deficiency within fifteen (15) business days after such notice is given; however, in no event shall such cure period extend beyond the expiration of the ENA Period. Notwithstanding the foregoing, the City or the Developer may terminate this Agreement at any time upon written notice to the other party, without cause.

3. During the ENA Period: (i) the City shall not negotiate with any person or entity other than the Developer for the sale, lease or development of the Site (except for short term leases that will not interfere with the Project or with inspections, tests and other investigations of the Site by Developer); and (ii) none of the parties comprising the Developer will negotiate with any person or entity for the purchase, lease or sublease of a corporate headquarters for ICM within fifty (50) miles of the City of Beverly Hills, provided that Developer may negotiate or enter into a sublease or lease at its current corporate headquarters (MGM Tower, 10250 Constellation Boulevard), so long as any such lease or sublease (i) is for 50,000 square feet or less, and (ii) has a term that does not extend beyond 2017.

4. The Developer shall deliver the materials and information identified on Attachment No. 2 attached hereto to the City within the times set forth on Attachment No. 2. Concurrently with the execution of this Agreement, the Developer and the City shall execute and deliver a Right of Entry and Access Agreement in the form attached hereto as Attachment No. 3. At the beginning of each calendar month during the ENA Period, Developer shall provide a written report to the City describing in reasonable detail the Developer's activities with respect to the Project during the preceding calendar month.

5. During the ENA Period, the City shall use good faith efforts to complete (or cause to be completed) the matters set forth in Attachment No. 4 attached hereto. Throughout the ENA Period, the City shall use good faith efforts to make its staff reasonably available to meet with the Developer to discuss the Project and the Project Agreement.

6. Excluding reimbursement for City staff time, Developer shall reimburse City for its actual out-of-pocket costs and expenses incurred prior to the date of this Agreement to obtain two appraisals of the Site and its actual out-of-pocket costs and expenses (including legal fees and costs and consultants' fees and costs) incurred in negotiating and preparing the Project Agreements and fulfilling its obligations under this Agreement, including, but not limited to: (i) a payment of $70,043.10 to reimburse the City for a fair share of the cost of the contract to prepare the Environmental Impact Report for the "Entertainment Business District" (the "EBD EIR") and 31% of any additional environmental reports prepared to complete the CEQA process for the Entertainment Business District; (ii) the cost of negotiating, and preparing the Project Agreement and related documents; and (iii) the costs of reviewing reports and plans relating to the Project (collectively, the "Reimbursable Costs").

If at any time during the term hereof, Developer or City determines in good faith that it is unlikely that the parties will be able to mutually agree to the terms of the Project Agreements, then, upon ten (10) days written notice specifying the reasons for such determination, either party may terminate this Agreement and Developer shall have no responsibility for Reimbursable Costs incurred after the date of termination.

If, more than one hundred and twenty (120) days after the Effective Date (the "Milestone Date"), Developer determines that it is unlikely that the parties will be able to mutually agree to the terms of the Project Agreements, then in lieu of terminating this Agreement, Developer may send a notice to City stating such determination and also stating that Developer does not plan to take any further action under this ENA (the "Impasse Notice"), in which event: (a) Developer shall have no responsibility for Reimbursable Costs incurred after that date the Impasse Notice is received by the City, (b) Developer shall have no obligation to comply with Attachment No. 2 after the date of the Impasse Notice, and (c) City may terminate this Agreement.

Within two (2) business days after City approves and executes this Agreement and delivers a copy to Developer, Developer shall deposit with the City the sum of One Hundred Seventy Thousand Forty-Three and 10/100 Dollars ($170,043.10) (the "Reimbursement Funds"). The Reimbursement Funds shall be used and applied from time to time by the City to pay itself for the Reimbursable Costs. The City shall provide Developer with a monthly accounting of the City's use of any of the Reimbursement Funds within a reasonable time after the end of each calendar month during the term of this Agreement, and shall provide Developer with copies of any Site-specific land surveys or reports concerning the physical condition of the Property paid for the Reimbursement Funds. The Developer shall deposit with the City monies sufficient to replenish the Reimbursement Funds held by the City to One Hundred Thousand Dollars ($100,000.00) within ten (10) days after receipt of written notice from the City that the amount of the Reimbursement Funds has decreased to an amount less than Fifty Thousand Dollars ($50,000.00), together with a reasonable explanation of the intended use of such requested additional funds. Any remaining amount of the Reimbursement Funds shall be delivered to the Developer (along with a final accounting of the City's use of the Reimbursement Funds) within thirty (30) business days after the earlier of: (i) the execution of the Project Agreements, or (ii) the termination of this Agreement. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

7. The City and Developer acknowledge that all applicable requirements of CEQA must be met in order for the City to approve the Project Agreements and that this may require environmental reports and/or other reports or analyses for CEQA purposes in addition to the EBD EIR (collectively, the "ER"). The City has included the Project in the EBD EIR based on the current Project description and it is expected that the EBD EIR will be relied upon as part of the City's review of the Project and that the City will also conduct a Site specific environmental review to address any issues not addressed in the EBD EIR. The Developer will, at its cost, fully cooperate with the City in the City's preparation of the EBD EIR and the ER. To the extent that the City incurs expenses in connection with the preparation of the ER, Developer will reimburse the City for one hundred percent (100%) of its expenses.

8. The Developer shall also bear all costs and expenses of any and all title, environmental, physical, engineering, financial, and feasibility investigations, reports and analyses and other analyses or activities performed by or for the Developer.

9. Within two (2) business days after the City approves and executes this Agreement and delivers a copy to Developer, Developer shall pay to City a fee (the "Exclusive Negotiating Fee") equal to One Million Dollars ($1,000,000.00). One Hundred Thousand Dollars ($100,000.00) of the Exclusive Negotiating Fee shall be nonrefundable. The remaining Nine Hundred Thousand Dollars ($900,000.00) of the Exclusive Negotiating Fee shall be

returned to Developer in the event that the City or the Developer terminates this Agreement under Section 6 by written notice given on or before the Milestone Date. If neither party terminates this Agreement before the Milestone Date, an additional One Hundred Fifty Thousand Dollars ($150,000) of the Exclusive Negotiating Fee shall become non-refundable. The remaining Seven Hundred and Fifty Thousand Dollars ($750,000) of the Exclusive Negotiating Fee will become non-refundable in the event that: (i) Developer terminates this Agreement after the Milestone Date or (ii) Developer defaults on its obligations under the Agreement and does not cure the default pursuant to Section 2. In the event that the parties are unable to reach agreement upon expiration of the ENA Period and Developer has not defaulted as provided above, the remaining seven hundred fifty thousand dollars ($750,000) shall be refunded to Developer. In the event that the Project Agreements are completed, approved by both Developer and City and become effective, the entire Exclusive Negotiating Fee shall be credited against the first rents payable by Developer to City under the Project Agreements. (As used in the preceding sentence, the term "rents" shall mean monthly rental payments, and shall not include other sums payable by Developer to City described or characterized as "rent" or as a "security deposit" under the Project Agreements.)

10. The Developer and the City understand and agree that neither Party is under any obligation whatsoever to enter into Project Agreements. Additionally, the Developer acknowledges that the City must in good faith review and consider any environmental impacts of the Project before deciding whether to approve the Project. In the event of the expiration or earlier termination of this Agreement, the City shall be free at the City's option to negotiate with any persons or entities with respect to the sale, lease and/or development of the Site.

11. This Agreement may not be assigned by the Developer without the prior express written consent of the City in its sole and absolute discretion.

12. Any notice, request, approval or other communication to be provided by one Party to the other shall be in writing and provided by personal service or a reputable overnight delivery service (such as Federal Express) and addressed as follows:

If to the Developer:

Barker Pacific Group
626 Wilshire Boulevard, Suite 1150
Los Angeles, CA 90017
Attn: Michael Barker, Managing Director

With copies to:

Angelo Gordon Real Estate, Inc.
c/o Angelo, Gordon & Co., L.P.
245 Park Avenue, 26th Floor
New York, New York 10167
Attention: Steve White

Gibson, Dunn & Crutcher LLP
333 S. Grand Avenue, 49th Floor
Los Angeles CA 90071-3101
Attn: Amy Forbes

International Creative Management
10250 Constellation Boulevard
Los Angeles, CA 90067
Attn: Richard B. Levy,
Chief Business Development Officer & General Counsel

International Creative Management
10250 Constellation Boulevard
Los Angeles, CA 90067
Attn: Ben Kohn

If to the City:

City of Beverly Hills
Office of the City Manager
455 North Rexford Drive
Beverly Hills, California 90210
Attn: Rod Wood
City Manager

with copies to:

City of Beverly Hills
Office of the City Manager
455 North Rexford
Beverly Hills, California 90210
Attn: David Lightner,
Deputy City Manager

City of Beverly Hills
Office of the City Attorney
455 North Rexford Drive
Beverly Hills, CA 90210
Attn: Larry Wiener

Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101
Attn: Bruce Galloway

13. For purposes of the negotiations contemplated by this Agreement, the Developer's representatives shall be, collectively, Richard B. Levy (Phone: 310/550-4046, Email: rlevy@icmtalent.com) and Michael Barker (Phone: 213/624-1811; Email: mdb@barkerpacific.com), and the City's representatives shall be Katie Lichtig (Phone: 310/285-1026; Email: Klichtig@beverlyhills.org) and David Lightner (Phone: 310/285-1125; Email: Dlighner@beverlyhills.org).

14. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. There are no other agreements or understandings between the parties with respect to the subject matter hereof or any related subject and no representations by either party to the other have been made as an inducement to enter into this Agreement. All prior negotiations between the parties are superseded by this Agreement.

15. This Agreement may not be altered, amended or modified except by a writing executed by all parties hereto.

16. If any party should bring any legal action or proceeding relating to this agreement or to enforce any provision hereof, or if the parties agree to arbitration or mediation relating to this Agreement, the party in whose favor a judgment or decision is rendered shall be entitled to recover reasonable attorneys' fees and expenses from the other. The parties agree that any legal action or proceeding or agreed-upon arbitration or mediation shall be filed in and shall occur in the County of Los Angeles.

17. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California.

18. Time is of the essence of each and every provision hereof.

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

20. Developer shall execute this Agreement first and shall then deliver the partially executed Agreement to the City for approval and execution by the City.

21. In the event that the City delivers to Developer a copy of any appraisal of the Site performed for the City or otherwise communicates the City's estimate of value of the Site, then except as may otherwise be required by court order, Developer shall not disclose such appraisal or the contents thereof or the City's opinion of value to any person or entity other than its consultants, and may disclose such appraisal or contents thereof to its consultants, prospective hotel developers and prospective lenders (the "Permitted Recipients") only if: (i) such Permitted Recipients have executed a similar nondisclosure agreement that names the City as a third party beneficiary; and (ii) Developer has delivered a copy of the applicable nondisclosure agreement(s) to City.

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

DEVELOPER:

INTERNATIONAL CREATIVE
MANAGEMENT, INC.,
a Delaware corporation

By:_____
Jeffrey S. Berg, CEO

BARKER PACIFIC GROUP, INC.,
a Delaware corporation

By:_____
Michael D. Barker, Managing Director

ANGELO GORDON REAL ESTATE, INC.,
a Delaware Corporation

By:_____
Steve White, Vice President

CITY:

CITY OF BEVERLY HILLS,
a municipal corporation

By:_____
Jimmy Delshad, Mayor

ATTEST:

_____
Byron Pope, City Clerk

APPROVED AS TO FORM:

_____
Laurence S. Wiener, City Attorney

APPROVED AS TO CONTENT:

_____
Roderick J. Wood, City Manager

ATTACHMENT NO. 1

DESCRIPTION OF SITE

(Attached.)

ATTACHMENT NO. 2

MATERIALS TO BE DELIVERED BY DEVELOPER TO THE CITY

1. Within fifty (50) days after the date of this Agreement, the Developer shall notify City in writing of the name and qualifications of the hotel developer for the luxury boutique hotel tentatively proposed for the Project.

2. Within thirty (30) days after the date of this Agreement, the Developer shall deliver to City a revised site plan and revised architectural concept drawings identifying the location and uses of buildings and the proposed design characteristics of the Project that include all of the following information:

    - The locations and uses of buildings and structures on the Site; building footprints shall clearly describe the sizes of proposed buildings. Plans shall indicate scale and shall display a graphic scale. Property boundary shall be shown by a heavy-broken line and clearly labeled. Any proposed subdivision of the Site shall be indicated.

    - Parking / Loading: Number of spaces and location (if subterranean, also indicate number of levels); type proposed parking spaces (indicate compact or standard), number required by Zoning Code, and loading areas and access driveway(s)

    - Setbacks (from property lines), landscape and hardscape areas, open space areas and other key features

    - Dimensions: Dimensions shall be provided for all important measurements, including:

        - Yards, setbacks, building or structure height, building footprints, other key features

        - Area Calculations: Square-footage calculations for all notable areas and land uses landscape area, common and private open space.

        - Elevations: Dimensioned exterior elevations of each proposed building as measured from grade. Floor levels should be shown, although fully developed detailed architectural plans identifying fenestration, articulation and façade details are not required at this stage.

3. Within fifty (50) days after the date of this Agreement, the Developer shall (subject to the terms of the Right of Entry and Access Agreement executed by City and Developer pursuant to this Agreement) investigate the physical condition of the Site and submit to

the City in writing any and all objections Developer may have to the physical condition of the Site together with a detailed written explanation of the reasons for each objection.

4. Within fifty (50) days after the date of this Agreement, Developer shall; (i) obtain a title report for the Site and copies of the title exceptions described therein; (ii) submit to City an ALTA survey of the Site certified to Developer and its title company based on the title report; and (iii) submit to City Developer's written objections to any matter revealed by such survey or title report and a detailed written explanation of the reason for such objections.

5. Within one hundred sixty (160) days after the Effective Date, Developer shall submit to Agency: (i) a list of the sources of equity required for the Project and the proposed structure for investment of the equity, a list of the contemplated sources of debt financing for the Project, and the projected costs of development of the Project; (ii) a financial proforma for the Project reflecting all projected Project revenues with a comparison to anticipated operating costs (including a breakdown by Project phase or component); and (iii) a financial analysis of the Project setting forth the Developer's projected return on its equity investment in the Project.

6. Within thirty (30) days after the date of this Agreement, Developer shall submit to City a schedule of development setting forth the proposed timetable for the commencement, substantial completion and final completion of each component of the Project (the "Development Schedule"). Developer shall thereafter update the schedule on a monthly basis and provide a copy of the updated schedule to City.

7. Within fifty (50) days after the date of this Agreement, Developer shall submit to City a list of potential hotel operators for the boutique hotel tentatively proposed for the Project that is acceptable to the City, in its good faith discretion (unless City and Developer have theretofore agreed that a hotel will not be included in the Project).

8. Prior to execution of the Project Agreements, the Developer shall submit to the City for its review and approval all organizational documents for the entity signing the Project Agreements (and, to the extent requested by City, information, certifications and/or documents relating to the ownership, control and signing authority of the direct and indirect owners of each such entity and persons and entities controlling such owners).

ATTACHMENT NO. 3

FORM OF RIGHT OF ENTRY AND ACCESS AGREEMENT

(Attached.)

RIGHT OF ENTRY AND ACCESS AGREEMENT

THIS RIGHT OF ENTRY AND ACCESS AGREEMENT (herein called this "Agreement") is made and entered into as of _____, 2008, by the CITY OF BEVERLY HILLS, a municipal corporation ("City"), and INTERNATIONAL CREATIVE MANAGEMENT, INC., a Delaware corporation and BARKER PACIFIC GROUP, INC., a Delaware corporation (collectively, the "Developer")

W I T N E S S E T H:

WHEREAS, the City is the owner of the real property more particularly described on Exhibit "A", attached hereto and the improvements thereon (herein called the "Site");

WHEREAS, the City and the Developer have entered into an Exclusive Negotiating Agreement with respect to the Site (the "ENA");

WHEREAS, City personnel currently occupy and use a portion of the Site, and the City may enter into one or more short-term leases of the Site pending completion of the negotiations under the ENA;

WHEREAS, the Developer needs the right of entry upon and access to the Site for the purpose of undertaking tests, inspections and other due diligence activities (herein called the "Due Diligence Activities") in connection with the proposed leasing and development of the Site by Developer;

WHEREAS, the City has agreed to give Developer a non-exclusive license to enter upon the Site to perform the Due Diligence Activities subject to and in accordance with the terms and provisions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Developer hereby covenant and agree as follows:

1. Access. Subject to Developer's compliance with the terms and provisions of this Agreement, Developer and Developer's employees, agents and consultants designated in writing by Developer (herein collectively called "Developer's Designees") shall have the right to enter upon the Site for the purpose of conducting the Due Diligence Activities, until the earliest to occur of: (i) the expiration or earlier termination of the ENA; (ii) the termination of this Agreement; or (iii) the execution of the Project Agreements contemplated by the ENA.

Developer expressly agrees as follows: (i) any activities by or on behalf of Developer, including, without limitation, the entry by Developer or Developer's Designees onto the Site in connection with the Due Diligence Activities shall not damage the Site in any manner whatsoever except for minor damage normally resulting from typical site investigation activities such as soil and groundwater tests; (ii) Developer and Developer's Designees shall not disturb any tenants or other occupants of the Site; (iii) in the event the Site is altered or disturbed in any manner in connection with the Due Diligence Activities, Developer shall immediately return the

Site to the condition existing prior to the Due Diligence Activities (unless otherwise agreed in writing by the City Manager of the City), and (iv) Developer shall indemnify, defend and hold the City and its officers, employees and contractors harmless from and against any and all claims, liens, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, attorneys' fees and expenses and court costs) suffered, incurred or sustained by any of them or the Site as a result of, by reason of, or in connection with the Due Diligence Activities or the entry by Developer or Developer's Designees onto the Site, except to the extent they are caused by the gross negligence or willful misconduct of the indemnified party.

2. Insurance. Developer shall procure or maintain, and shall cause all of Developer's Designees performing the Due Diligence Activities to procure or maintain, a policy of commercial general liability insurance issued by an insurer reasonably satisfactory to City covering each of the Due Diligence Activities with a single limit of liability (per occurrence and aggregate) of not less than $1,000,000.00 and worker's compensation insurance required by applicable law. Prior to entering the Site (or permitting any Developer Designee to enter the Site), Developer shall deliver to City a certificate of insurance evidencing that all such insurance is in force and effect, and evidencing that the City has been named as an additional insured under the liability insurance with respect to the Due Diligence Activities. Such insurance shall be maintained in force throughout the term of this Agreement. If Developer's contractors used for Due Diligence Activities are unable to meet these insurance requirements on their own, Developer may provide such coverage on their behalf.

3. Limitations; No Recording. This Agreement does not convey to Developer any right, title or interest in or to the Property, but merely grants the specific and limited contractual rights set forth herein. In no event shall this Agreement or any memorandum hereof be recorded, and any such recordation or attempted recordation shall constitute a breach of this Agreement by the party responsible for such recordation or attempted recordation.

4. Notices. Whenever any notice, demand, or request is required or permitted under this Agreement, such notice, demand, or request shall be in writing and shall be addressed and delivered as provided in the notices provision of the ENA.

5. Assignment. This Agreement may not be assigned by Developer, in whole or in part, without the prior express written consent of the City in its sole and absolute discretion.

6. Governing Law. This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of California.

7. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same agreement.

IN WITNESS WHEREOF, Grantor and Grantee have caused this Agreement to be executed and sealed, all the day and year first written above.

DEVELOPER:

INTERNATIONAL CREATIVE
MANAGEMENT, INC.,
a Delaware corporation

By:_____
Jeffrey S. Berg, CEO

BARKER PACIFIC GROUP, INC.,
a Delaware corporation

By:_____
Michael D. Barker, Managing Director

CITY:

CITY OF BEVERLY HILLS,
a municipal corporation

By:_____
Jimmy Delshad, Mayor

ATTEST:

_____
Byron Pope, City Clerk

APPROVED AS TO FORM:

_____
Laurence S. Wiener, City Attorney

APPROVED AS TO CONTENT:

_____
Roderick J. Wood, City Manager

EXHIBIT A
to
Right of Entry and Access Agreement

Description Of The Site

ATTACHMENT NO. 4

CITY TASKS

1. Provide to Developer all studies and other written information regarding the physical condition of the Site that is in the possession of the City (to the extent they are material to the Project and have not previously been delivered to Developer).

2. Review the Developer's submissions.

3. Revise and prepare drafts of the Project Agreements to the extent reasonably permitted by the negotiations.