ALTERNATIVE PROPOSED DEVELOPMENT AGREEMENT

(Clean and Redline Version Against PC Recommended Version)

DRAFT Development Agreement

CITY OF BEVERLY HILLS

WHEN RECORDED MAIL TO:

City of Beverly Hills
Attention: City Attorney's Office
455 North Rexford Drive
Room 220
Beverly Hills, CA 90210

DEVELOPMENT AGREEMENT
(WITH LIENS SECURING EMS FEES AND MUNICIPAL SURCHARGES)

THIS DEVELOPMENT AGREEMENT (WITH LIENS SECURING EMS FEES AND MUNICIPAL SURCHARGES) (this "Agreement") is made by and between THE CITY OF BEVERLY HILLS, a California municipal corporation (the "City"), and Oasis West Realty 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 fee owner of that certain real property located in the City of Beverly Hills, California and described in Exhibit A attached hereto and incorporated herein by reference.

B. Developer desires to develop the Project (as hereafter defined).

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. In anticipation of the development of the Project, Developer has made or will make application to the City (in its governmental capacity) for certain approvals, entitlements, findings and permits required for the development and construction of the Project, including, without limitation: (1) a general plan amendment, (2) a specific plan, (3) a zoning code amendment, (4) a vesting tentative tract map, and (5) 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 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 development of the Project with the uses, density and other land use characteristics specified in the Project Approvals. Developer would not enter into this Agreement, or agree to provide the public benefits and improvements described herein, without the City's agreement that the Project can be developed, during the term of this Agreement, with the uses, density and other land use characteristics specified in the Project Approvals.

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

I. On ___[DATES]_____ 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 __[DATES]__, 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 ___[DATE]___, 2008, the City Council adopted Ordinance No._____ approving this Agreement, and such ordinance became effective on __[DATE]__, 2008.

M. By Resolution No. _____ adopted by the City Council on __[DATE]__, the City Council reviewed and certified, after making appropriate findings, the EIR (as hereafter defined) that contemplates this Agreement.

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) "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, but not limited to, the City's Zoning Regulations and building regulations, adopted as of the Effective Date. Among other matters, the Applicable Rules set forth and govern the permitted uses of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, parking requirements, setbacks, and development standards, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction guidelines, standards and specifications applicable to the development of the Property.

(b) "Beverly Hills Public Art Ordinance" means the requirements set forth in Title 3, Chapter 1, Article 8 of the Beverly Hills Municipal Code.

(c) "Building Permit" means a permit issued by the City pursuant to Title 9 of the Beverly Hills Municipal Code to authorize construction of a building or other structure. "Building Permit" shall not include a demolition permit or excavation and shoring permit, but shall include a foundation permit.

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

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

(f) "Change of Control" shall refer to a transaction whereby a transferee acquires a beneficial ownership interest in Developer (or in an Existing Owner) such that after such transaction there is a change of identity of the person or entity that has the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of voting securities, by contract or otherwise, but not including a Foreclosure Transaction or an Affiliate Transaction.

(g) "Conditions of Approval" shall mean those conditions of approval imposed by the City in connection with the Project Approvals.

(h) "Developer Fees" shall mean Municipal Surcharges, as defined below, and those fees established and adopted by the City pursuant to Section 66000 et seq., of the Government Code of the State of California to offset the impact of development on the City's capital facilities, including, without limitation, parking impact fees, affordable housing fees, traffic fees, infrastructure fee, linkage fees, exactions, assessments or fair share charges or other similar impact fees imposed on or in connection with new development by the City. Developer Fees do not mean or include Processing Fees.

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

(j) "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).

(k) "Discretionary Action(s)" or "Discretionary Approval(s)" means an action which 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).

(l) "Effective Date" shall mean the date this Agreement, fully executed, is recorded in the official records of the Los Angeles County Recorder.

(m) "EIR" shall mean the final Environmental Impact Report (SCH No. 2006091053) that addresses the Project.

(n) "EMS Fee" means the fee paid pursuant to the provisions of Section 10(e) of this Agreement.

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

(p) "Gross Room Revenue" means revenue that is or would be subject to the transient occupancy tax imposed by the City pursuant to Title 3, Chapter 1, Article 3 of the Beverly Hills Municipal Code as that Article exists on the Effective Date plus any revenue that is exempt from the transient occupancy tax solely by virtue of the use of a United States State Department Tax Exempt Card.

(q) "Ministerial Permit(s)," or "Ministerial Approval(s)" means a permit or approval, including, but not limited to, Building Permits, grading permits, shoring and excavation permits, demolition permits, zone clearances, and certificates of occupancy, which 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.

(r) "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.

(s) "Mortgagee" means the holder of the beneficial interest under any Mortgage.

(t) "Municipal Surcharge" means the fee paid pursuant to Section 10(g) of this Agreement.

(u) "Processing Fees" means all processing fees and charges required by the City that are applied uniformly to all construction or development related activity including, but not limited to, fees for land use applications, Building Permit applications, Building Permits, grading permits, shoring and excavation permits, hauling permits, encroachment permits, demolition

permits, subdivision or parcel maps, lot line adjustments, street vacations, inspections, certificates of occupancy and plan check. Processing Fees shall not mean or include Developer Fees.

(v) "Project" means the development project as described in the final EIR, as modified by the Project Approvals.

(w) "Project Approvals" shall include, collectively, a General Plan Amendment, specific plan, zone change, zoning code amendment, and vesting tentative tract map approved by the City with respect to the Project and shall include any Subsequent Project Approvals (as hereafter defined).

(x) "Property" means the real property described in Exhibit "A" attached hereto.

(y) "Public Benefit Contribution" means the payment from the Developer to the City pursuant to Section 10(d) of this Agreement.

(z) "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 condominiums within the City, including without limitation, regulations of hotel operations and regulations concerning condominiums that receive services from hotels, provided that such regulations do not impact the permitted density, height, or square footage of the Project permitted by the Beverly Hilton Revitalization Specific Plan.

(aa) "Sales Transaction" means any transaction evidenced by the recording of a conveyance document that conveys the Property, or any subdivided portion of the Property, and which conveyance would be subject to, and not exempt from, the Los Angeles County Documentary Transfer Tax (Los Angeles County Code, Chapter 4.60) or the City of Los Angeles Real Estate Transfer Tax (Los Angeles City Municipal Code, Chapter 2, Article 1.9) as those taxes existed on the Effective Date of this Agreement. A transaction whereby the possession of all or a portion of the Property is transferred but the seller retains the title as security for the payment of the price shall be deemed a Sales Transaction. Notwithstanding the foregoing: (i) a transfer of all or a portion of the Property as a result of a judicial or non-judicial foreclosure, or by deed in lieu of foreclosure, initiated by a Mortgagee, shall not be deemed a Sales Transaction (a "Foreclosure Transaction") and (ii) a conveyance of the Property between affiliated entities where the same person or entity possesses, directly or indirectly, more than fifty percent (50%) of the beneficial ownership interest in both entities and the power, directly or indirectly, to direct or cause the direction of the management and policies of both entities, shall not be deemed a Sales Transaction (an "Affiliate Transaction") for the purposes of triggering the EMS Fee. For the purposes of triggering the EMS Fee only, a Sales Transaction shall include (i) any sale, assignment, or transfer, directly or indirectly, of fifty percent (50%) or more of the beneficial ownership interest in Developer, whether in one transaction or a series of transactions, provided however, that any transfers of ownership interests among the owners (or the beneficial owners of

such owners) of any successor Developer hereunder (each an "Existing Owner"), shall not be deemed a Sales Transaction so long as the EMS Fee shall have been paid in connection with the acquisition of the Property by such successor Developer and the transferee was an Existing Owner at the time of such acquisition, or (ii) any Change of Control.

(bb) "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.

(cc) "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, including, without limitation, any tentative subdivision map, whether vesting or non-vesting. Following adoption or approval, a Subsequent Project Approval shall become a Project Approval.

(dd) "Waldorf=Astoria Hotel" shall mean the hotel permitted to be constructed by the Project Approvals, and identified on the site plan set forth on Exhibit E, whether or not operated under the "Waldorf=Astoria" name.

(ee) "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 a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.
>
> "(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval

will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development."

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City 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 the Property as described in the Project Approvals and the final plans submitted to the City, 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 proposed buildings, parking requirements, setbacks, and development standards, provisions for reservation or dedication of land for public purposes and location of public improvements, and the design, improvement, construction 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 and this Agreement, including 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 five (5) years. If a vesting tentative subdivision map is approved in connection with the Project, then, upon approval of such map, the term of this Agreement shall be extended until expiration of the tentative map or approval of a final subdivision map for the Project, whichever is earlier. If a final subdivision map is approved in connection with the Project, then the term of this Agreement shall be extended until the expiration of the vested rights that accompany the vesting tentative tract map for the Project. In addition to the above, at any time, the term may be extended for one year or more provided that the total extension period does not exceed five (5) years. An extension pursuant to the prior sentence shall be effective upon written request of Developer provided to the City at least ten (10) days before the expiration of the term (including any previous extension) and a concurrent payment to the City of the following amounts: for the first and second years of extension, Developer shall pay two hundred fifty thousand dollars ($250,000), for the third year of extension, Developer shall pay five hundred thousand dollars ($500,000) and for the fourth and fifth years of extension, Developer shall pay seven hundred fifty thousand dollars ($750,000).

Notwithstanding the term set forth above, the obligation to pay the EMS Fee and the Municipal Surcharge pursuant to Section 10 shall continue indefinitely as provided in Sections 10 and 13.

6. Timing of Development. The Parties acknowledge that Developer cannot at this time predict when or if the Property will be developed. Such decisions depend upon numerous factors that are not within the control of Developer. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, (the Pardee Case) that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that, except as provided below, Developer shall have the right to develop the Property consistent with the Project Approvals and the Conditions of Approval in such order and at such rate and at such times as Developer deems appropriate within the exercise of its sole and subjective business judgment during the term of this Agreement. This provision shall be broadly construed to provide Developer the greatest amount of time and flexibility (in light of the Pardee Case and/or any other similar or distinguishing cases) as necessary or appropriate to permit Developer to complete the development of the Project irrespective of later adopted rules, regulations or initiatives which would otherwise restrict the Developer's time to complete the Project.

Notwithstanding the above, provided that the Developer elects to proceed with the Project, Developer shall obtain a Building Permit for the Waldorf=Astoria Hotel either before or contemporaneously with obtaining a Building Permit for the first of the two condominium buildings permitted by the Project Approvals and shown on the site plan set forth in Exhibit E. Additionally, if Developer does not obtain a certificate of occupancy (or temporary certificate of occupancy) for the Waldorf=Astoria Hotel before occupancy of the first condominium building, then, upon request by the City, Developer shall provide security, reasonably satisfactory to the City, to ensure completion of the Waldorf=Astoria Hotel.

7. Permitted Uses; Density; Building Heights and Sizes; Required Dedications. The City and Developer hereby agree that the permitted uses of the Property, the density and intensity of such uses, the maximum heights and sizes of the buildings and improvements to be constructed on the Property, and the reservation and dedication of land for public purposes, if any, required in connection with the development of the Property shall be as set forth in and consistent with the Project Approvals, as they may be lawfully amended by Developer from time to time. Developer shall not cause or permit any use of the Property that is not permitted by the Project Approvals, 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 Project Approvals, as they may be lawfully amended by Developer from time to time. In addition, Developer shall not permit the use of the Property for an Adult Entertainment Business or Sexual Encounter Center as defined in the zoning regulations of the City of Beverly Hills.

8. Developer's Rights. Developer shall have and is hereby vested with the rights, during the term of this Agreement, including any extensions, to develop the Project as set forth in the Project Approvals, as they may be lawfully amended by Developer from time to time, all of which are hereby incorporated in this Agreement by reference. Developer shall not be obligated

to pay any Developer Fees in connection with the Project, as all Developer Fees are included within the Public Benefit Contribution.

9. 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 (including any regulation relating to the timing, sequencing, or phasing of the Project or construction of all or any part of the Project), 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 Applicable Rules or Developer's entitlements under the Project Approvals, 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 in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time in the provisions of the City's building, mechanical, plumbing and electrical regulations which are based on the recommendations of a multi-state professional organization and become applicable throughout the City, including, but not limited to, the California Building Code, and other similar or related uniform codes.

(c) 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.

(d) Changes in Processing Fees Under Applicable Rules. The Project shall be subject to any increase in Processing Fees imposed by the City, provided that such a change is applied on a Citywide basis.

10. 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 costs to process the Project Approvals, including legal and environmental processing costs related to the Project Approvals and preparation of this Agreement, if any.

(c) Processing Fees. Developer agrees to pay all Processing Fees, including City plan check fees, building inspection fees, and permit fees, at the rate and amount in effect at the time the fee is required to be paid.

(d) Beverly Hilton Revitalization Contribution and Public Benefit Contribution. Developer shall pay to the City a Beverly Hilton Revitalization Contribution of seven million seven hundred fifty thousand dollars ($7,750,000) and a Public Benefit Contribution of fifteen million dollars ($15,000,000) for a total cash contribution of twenty two million seven hundred fifty thousand dollars ($22,750,000) together with the Municipal Surcharge as required by Section 10(g).

(i) *Timing of Payment*. Developer shall pay eleven million five hundred thousand dollars ($11,500,000) of the total cash contribution prior to or concurrent with issuance of the Building Permit to construct the Waldorf=Astoria Hotel. Developer shall pay eleven million two hundred fifty thousand dollars ($11,250,000) of the Public Benefit Contribution prior to or concurrent with issuance of the Building Permit for the condominium building designated on Exhibit E as Residence B.

(ii) *Affordable Housing Contribution.* The City Council shall place a portion of the Public Benefit Contribution into an affordable housing fund that shall be used by the City for the purpose of promoting the provision of affordable housing in the City of Beverly Hills, or as otherwise may be permitted by State law. The amount to be placed in the affordable housing fund shall be one million five-hundred thousand dollars ($1,500,000).

(e) Environmental Mitigation and Sustainability Fee.

(i) *Amount of Fee*. Concurrent with the close of each Sales Transaction, the seller shall pay or cause to be paid to City an Environmental Mitigation and Sustainability Fee ("EMS Fee"). The amount of the EMS Fee shall be equal to $4.50 for each $1,000 of the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale). The EMS Fee shall be paid from the escrow account set up for the Sales Transaction. The EMS fee shall be paid upon each Sales Transaction by the then current owner.

(ii) *Adjustment of EMS Fee.* If, after the Effective Date of this Agreement, the City adopts or increases a real estate transfer tax or documentary transfer tax for Beverly Hills, so that the combined total of the City's taxes and the County of Los Angeles Documentary Transfer Tax exceeds the current $1.10 per $1000 of City and County documentary transfer taxes, then the EMS Fee

imposed upon all subsequent Sales Transactions shall be reduced by the amount of the combined taxes that exceeds $1.10 per $1000. For example, if City adopts a real estate transfer tax of $2.20 per $1000, thus increasing the combined City and County real estate transfer taxes and documentary transfer taxes to $3.30 per $1,000 of sales price, then the EMS Fee on all subsequent Sales Transactions would be $2.30 per $1000 of sales price ($4.50-$2.20= $2.30). If the City increases the documentary transfer tax or adopts a real estate transfer tax so that the combined taxes exceed $5.60 per $1000 of sales price, then no further EMS Fee shall be due or payable.

(f) Liens for EMS Fee Payable Upon Sale. Developer hereby grants to the City, with power of sale, a lien on the Property, and each lot or parcel created by any tentative tract map for the Project, including without limitation, following the creation thereof, each condominium unit in the Project, to secure the payment of the EMS Fee payable upon each Sales Transaction. In the event that the EMS Fee secured by such lien is not paid concurrently with and as a condition to the closing of a Sales Transaction, then the City may enforce such lien by sale of the portion of the Property subject to the Sales Transaction (and only such portion) by the City, its attorney or any other person or entity authorized by the City Manager to conduct the sale. Any such sale shall be conducted in accordance with California Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h, or in any other manner permitted or provided by law. The City, through its agent authorized by the City Manager, shall have the power to bid on the encumbered property at the sale, using as a credit bid the amounts secured by such lien, its own funds, or funds borrowed for such purpose and to acquire the lot or parcel. The City is hereby granted, in trust, the applicable lot or parcel and is appointed as trustee for purposes of noticing and effecting any sale pursuant to the provisions of this Section and is hereby expressly granted a "power of sale" in connection therewith. Developer, or any subsequent owner of the Property or any portion thereof, shall provide notice to City, in a form satisfactory to City, upon any opening of escrow that will result in a Sales Transaction or any other conveyance of the Property or portion thereof. The notice shall include a declaration stating the amount of the EMS Fee due upon closing of any Sales Transaction, or in the case of a conveyance that is not a Sales Transaction, the reason that such conveyance is not a Sales Transaction and therefore not subject to the EMS Fee. Upon receipt of the full amount of the EMS Fee payable with respect to a Sales Transaction, the City shall execute and deliver such documentation, in recordable form, as Developer, the buyer or the title company may reasonably request to evidence the payment of the EMS Fee and extinguishment of the City's lien rights with respect to such Sales Transaction (a "Lien Release"). Such Lien Release shall also indicate that payment of the EMS Fee shall not extinguish the City's lien rights with respect to subsequent Sales Transactions. In the event that the City determines that a conveyance is not a Sales Transaction, the City shall execute and deliver to the seller, buyer or title company documentation that the City has determined that the conveyance is not a Sales Transaction and not subject to the EMS Fee.

(g) Municipal Surcharge. The owner of the Waldorf=Astoria Hotel, shall pay to the City, in perpetuity, five percent (5.0%) of the Gross Room Revenue generated by the Waldorf=Astoria Hotel (the "Municipal Surcharge").

(i) *Timing of Payment.* The Municipal Surcharge shall by 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) *Lien to Secure Municipal Surcharge.* Developer hereby grants to the City, with power of sale, a lien on the Property, or if the Property is subdivided, a lien solely on the lot or parcel that includes the Waldorf=Astoria Hotel, to secure the payment of the Municipal Surcharge and any other sums payable under clause g(iv) below. In the event that the Municipal Surcharge or any other sums payable under clause g(iv) below is not timely paid, then the City may enforce such lien by sale of the property subject to the Municipal Surcharge by the City, its attorney or any other person or entity authorized by the City Manager to conduct the sale. Any such sale shall be conducted in accordance with California Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h, or in any other manner permitted or provided by law. The City, through its agent authorized by the City Manager, shall have the power to bid on the encumbered property at the sale, using as a credit bid the amounts secured by such lien, its own funds, or funds borrowed for such purpose. The City is hereby granted in trust, the Property, or if the Property is subdivided the lot or parcel that includes the Waldorf=Astoria Hotel, and is appointed as trustee for purposes of noticing and effecting any sale pursuant to the provisions of this Section and is hereby expressly granted a "power of sale" in connection therewith. The Municipal Surcharge shall not apply to the Beverly Hilton Hotel.

(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) $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 and one-half percent (18.5%), or (ii) the highest rate then permitted by applicable law.

(h) Gateway. Prior to issuance of a certificate of occupancy (or temporary certificate of occupancy) for the Waldorf =Astoria Hotel, Developer shall construct or install (or provide a guarantee of the construction or installation in form and content satisfactory to the City Attorney and the Director of Community Development) a significant "gateway statement" to enhance the significance of the entry to Beverly Hills. The gateway statement shall be located on the Property near the intersection of Wilshire Boulevard and Santa Monica Boulevard. The gateway statement shall be located in an area that is clearly visible to the general public traveling along Wilshire Boulevard and Santa Monica Boulevard. The gateway statement may take the form of public art, landscaping, architectural features such as fountains, or other features satisfactory to the City as hereafter provided.

(i) *Design.* Prior to issuance of a Building Permit for the Waldorf=Astoria Hotel, Developer shall provide to the Director of Community Development conceptual drawings, satisfactory to the Director, depicting the gateway statement and its location or Developer shall provide a one million dollar guarantee of the construction or installation in form and content satisfactory to the City Attorney and the Director of Community Development. The gateway statement shall be reviewed and approved by the City's Architectural Commission prior to construction or installation. The aggregate cost of constructing, or purchasing and installing, the gateway statements shall not be required to exceed one million dollars ($1,000,000). If the gateway statement includes public art, the City's Fine Arts Commission shall review and approve the public art prior to its installation. Decisions of the Architectural Commission and Fine Arts Commission shall be appealable to the Planning Commission, and decisions of the Planning Commission shall be appealable to the City Council pursuant to the procedures set forth in the Beverly Hills Municipal Code. Any appeals shall be filed within ten (10) days of the final decision that is the subject of the appeal. The gateway statement shall be constructed or installed in substantial compliance with the approvals of the Architectural and Fine Arts Commissions.

(ii) *Public Art Requirement.* The gateway statement, combined with a payment of five hundred thousand dollars ($500,000) into the fund established pursuant to Beverly Hills Municipal Code Section 3-1-808 shall satisfy Developer's obligations under the Beverly Hills Public Art Ordinance.

(iii) *Maintenance.* Developer shall own the gateway statement and maintain the gateway statement in good condition and repair. In the event that Developer transfers ownership of the Waldorf=Astoria Hotel, the gateway statement shall also be transferred to the owner of the Waldorf=Astoria Hotel and shall be maintained by the Waldorf=Astoria Hotel owner. Additionally, the Developer, initially, and thereafter the Waldorf=Astoria Hotel owner, shall maintain insurance satisfactory to the City's Risk Manager and City Attorney and in an amount equal to the value of the gateway statement, which insures the gateway statement against any loss or damage, including vandalism. Upon

damage, the party obligated to maintain the gateway statement shall timely repair or replace the gateway statement, as appropriate, to the reasonable satisfaction of the City's Director of Community Development.

(i) Bus Turnouts. Prior to issuance of a Building Permit for the Waldorf=Astoria Hotel, Developer shall dedicate to the City of Beverly Hills right of way easements along the Project's Wilshire Boulevard frontage and Santa Monica Boulevard frontage sufficient to provide reasonable sidewalk area behind bus turnouts in locations as shown on Exhibit B. The dedication shall be in form and substance satisfactory to the City Attorney and substantially in the form set forth in Exhibit B.

(j) Access for City Shuttle. Prior to issuance of a Building Permit for the Waldorf=Astoria Hotel, Developer shall dedicate to the City a non-exclusive easement to allow any City sponsored, financed or operated shuttle service vehicle to access the Property for the purpose of picking up or dropping off residents and visitors to the Property. The easement shall be in form and substance satisfactory to the City Attorney and substantially in the form set forth in Exhibit C.

(k) Subway Portal. Prior to obtaining a Building Permit for the Waldorf=Astoria Hotel, Developer shall dedicate an easement to the City substantially in the form set forth in Exhibit D. The easement shall be for the purpose of providing a portal for a subway station under Wilshire Boulevard or Santa Monica Boulevard and shall be assignable to the Metropolitan Transportation Authority or any other governmental entity responsible for constructing or maintaining a subway line. The easement shall provide that the surface area of the portion of the portal on the Property at ground level shall be no more than 300 square feet. The easement shall automatically terminate unless each of the following conditions are met: (i) the City must accept the easement within twenty (20) years from the Effective Date of this Agreement; and (ii) the Metropolitan Transportation Authority, or other appropriate governmental entity, must have secured funding for construction of the station within twenty years from the Effective Date of this Agreement. The easement shall limit the portal so that it does not materially interfere with or limit access to the Project, materially interfere with the structural integrity of the Property or buildings or structures on the Property, or materially interfere with the operations of the Property or the businesses located on the Property.

(l) School Benefit Fee. Prior to the issuance of a Building Permit for the Project, Developer shall pay to the Beverly Hills Unified School District a school benefit fee in the amount of $_____.

11. Issuance of Building Permit. The City shall be under no obligation to issue a Building Permit for any portion of the Project until: (i) all the fees and other obligations set forth in Section 10 and due prior to or concurrent with issuance of the Building Permit have been fully paid or otherwise fulfilled or satisfied; and (ii) any lender whose lien is prior and superior to any lien created by this Agreement or any conveyance or covenant required by this Agreement shall have agreed to subordinate its lien to the liens, conveyances and covenants created and required by this Agreement. The forgoing notwithstanding, nothing herein shall limit or restrict the ability of the City to grant Building Permits for the buildings and structures existing on the

Property as of the Effective Date or limit or restrict the right of Developer to secure Building Permits for buildings or structures existing on the Property as of the Effective Date.

12. 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 shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said 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, 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.

Subject to the foregoing, after notice and expiration of the thirty (30) day period without cure, the notifying 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.

13. Termination and Expiration. Upon the expiration of the term or termination of this Agreement, 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 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 provided that a Building Permit has been issued for any portion of the Project. After a Building Permit has been issued for any portion of the Project, the obligations under Section 10, and the obligation to pay any claim arising before the effective date of expiration or termination shall continue after termination in perpetuity or until completed.

14. 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 other than a retail purchaser of an individual residential condominium unit, Developer agrees 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 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. Such writing shall be in form and content reasonably satisfactory to the City Attorney. No owner of a residential condominium interest shall have any development rights under this Agreement by virtue of such ownership interest.

15. 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, including the successful bidder at a foreclosure sale, who comes into possession of the Project or the Property or any part thereof pursuant to foreclosure, eviction or otherwise, 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 shall prevent City from exercising any

remedy it may have for a default under this Agreement, 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.

16. 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 the land.

17. 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 17, 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 EIR prepared and certified for the Project, Developer shall 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 EIR 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 agreement of the City. In the event Developer fails or refuses to reimburse the City for its cost to defend any challenge to this Agreement, the Project Approvals or the EIR, the City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 12 above. In all events, the City shall have the right to resolve any challenge in any manner, in its sole discretion, provided, however, Developer's consent shall be required if 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 EIR (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 17(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 EIR prepared and adopted 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. 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 ($50,000.00) 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 and the City shall cooperate fully in the defense of any such claim or action, but shall have the right to resolve any challenge, in any manner, in its sole discretion, provided, however, Developer's consent shall be required if the resolution of the challenge shall require a payment by Developer or limit Developer's rights under this Agreement.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. Periodic Reviews.

(a) Annual Reviews. The City shall conduct annual reviews to determine whether Developer is acting in good faith compliance with the provisions of this Agreement and Government Code Section 65865.1. The reasonable cost of each annual review conducted during the term of this Agreement shall be reimbursed to the City by Developer. Such reimbursement shall include all direct and indirect expenses reasonably incurred in such annual reviews.

(b) Special Reviews. In addition, 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.

(c) Procedure for Review. The City's Director of Community Development (the "Community Development Director") shall conduct the review contemplated by this Section 24 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.

(d) 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 12 and the City may follow the default procedures as set forth in Section 12.

(e) Effect on Default Procedures. Nothing in this Section 24 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 24, or from terminating this Agreement pursuant to the provisions of Section 12 following any event of default by Developer.

25. 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, but not limited to, reasonable attorneys' fees and expert witness fees.

(b) Scope of Fees. Attorneys' fees under this Section 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.

26. 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."

27. 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.

28. 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.

29. 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.

30. 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 10 is held invalid or unenforceable before approval of a tentative subdivision map for the Project, then this entire Agreement shall be void and unenforceable and of no further force and effect.

31. 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, the Project Approvals or the EIR.

32. 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: Oasis West Realty LLC
9860 Wilshire Boulevard
Attn: Samuel Surloff, Esq
Beverly Hills, CA 90210

With Copy to: George Mihlsten, Esq.
Latham & Watkins

633 W. Fifth Street
Los Angeles, CA 90017

To City: City Manager
City of Beverly Hills
455 North Rexford Drive
Third 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 32 change the address 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.

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

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

35. 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.

36. 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.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the ____ day of _____ , 200___.

CITY OF BEVERLY HILLS,
A Municipal Corporation

_____
BARRY BRUCKER
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

OASIS WEST REALTY LLC, a Delaware limited liability company

By: _____
Name: Theodore F. Kahan
Its: President

By: _____
Name: Sam Surloff
Its: Secretary

APPROVED AS TO FORM:

_____
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

_____
RODERICK J. WOOD
City Manager

EXHIBIT A

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

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

PARCEL 1:

Lots 1, 2 and 8 and those portions of lots 3 and 7 in block 33 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 13 Pages 62 and 63 of Maps, in the office of the County Recorder of said County, lying Easterly of the following described line:

Beginning at a point in the Northerly line of said block 33 distant South 89° 55' 00" East 335 feet from the Northeast corner of lot 5 of said block 33; thence South 0° 05' 00" West 177 feet; thence Southeasterly to a point in the Northwesterly line of Santa Monica Boulevard 85 feet wide, distant North 50° 28' 30" East 485 feet from the most Southerly corner of block 33.

PARCEL 2:

Those portions of lots 3 and 7 in block 33 of Beverly in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 13 Pages 62 and 63 of Maps, in the office of the County Recorder of said County, lying Easterly of the following described line:

Beginning at a point in the Northerly line of said block 33, distant South 89° 55' 00" East 300 feet from the Northeast corner of lot 5 of said block 33; thence South 0° 05' 00" West 177 feet; thence Southeasterly to a point in the Northwesterly line of Santa Monica Boulevard 85 feet wide distant North 50° 28' 30" East 431.22 feet from the most Southerly corner of said block 33.

EXCEPT those portions lying within Parcel 1 above described.

PARCEL 3:

An easement for private road purposes over the West 20 feet of the following described property.

Those portions of lots 3, 4 and 7 in block 33 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 13 Pages 62 and 63 of Maps, in the office of the County Recorder of said County, included within a strip of land 40 feet wide, the center line of which is described as follows:

Beginning at a point in the Northerly line of said lot 3 distant North 89° 55' 00" East 300 feet measured along the Northerly line of said block 33 from the Northwest corner of lot 4 of said block 33; thence South 0° 05' 00" East 177.00 feet; thence Southeasterly South 38° 46' 45" East 583.79 feet to a point on the Southeasterly line of lot 7 of said block 33; distant 431.22 feet from the most Southerly corner of lot 6 of said block 33.

Assessor's Parcel Number: **4327-028-001**

EXHIBIT B

Bus Turnout Dedication and Location

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO: City Clerk City of Beverly Hills 455 N. Rexford Drive Beverly Hills, California 90210	
	THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

A.P.N.: _____

Exempt from recording fees pursuant to Government Code § 27383.

Exempt from documentary transfer taxes pursuant to Revenue Taxation Code § 11922.

BUS TURNOUT EASEMENT AGREEMENT

This BUS TURNOUT EASEMENT AGREEMENT (the "Agreement") is entered into as of _____, 2008 (the "Effective Date"), by and between OASIS WEST REALTY, LLC, a Delaware limited liability company ("Grantor") and THE CITY OF BEVERLY HILLS, a municipal corporation ("Grantee").

RECITALS

A. Grantor is the owner of the land described on Exhibit "A" and the improvements thereon ("Grantor Parcel").

B. Grantor and Grantee have entered into a Development Agreement dated _____, 2008 (the "Development Agreement") in connection with a proposed development ("Development") on the Grantor Parcel.

C. The Development Agreement requires that Grantor enter into this Agreement prior to the issuance of a building permit with Grantee to provide right of way easements for bus turnouts along the Development's Wilshire Boulevard and Santa Monica Boulevard frontages that are assignable to the Metropolitan Transportation Authority (the "MTA") or any other governmental entity responsible for operating public bus service along those roadways.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee and its successors and assigns two perpetual easements in gross in and over the Grantor Parcel described on Exhibit B (the "Easements") as follows: (i) one easement sufficient to provide a sidewalk area, behind bus turnout along the Development's Wilshire Boulevard frontage, and (ii) one easement sufficient to provide a sidewalk area, behind bus turnout along the Development's Santa Monica Boulevard frontage.

2. Purpose of Easement. The purpose of the Easements shall be for the construction, installation, operation, access to (including access by the public), maintenance, improvement and repair/replacement (as necessary) of sidewalk area, behind bus turnouts.

3. Property Taxes; Liens. Grantor shall pay, prior to delinquency, all property taxes, special taxes and assessments assessed against the easement areas, and shall keep the easement areas free of all liens except for liens securing financing for the Development, which must be subordinate or subordinated to this Agreement and the Easement.

4. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Agreement or the Easement, Grantee shall give written notice to Grantor of such violation. If Grantor fails to cure the violation within fifteen (15) days after said written notice is given, or said cure reasonably requires more than fifteen (15) days to complete and Grantor fails to begin to cure within the fifteen (15) day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by Grantor with the terms of this Agreement or the Easement, to recover any damages to which Grantee may be entitled for violation by Grantee of the terms of this Agreement or the Easement, or may cure the violation in which event Grantor shall reimburse Grantee for the costs incurred by Grantee in connection with violation within ten (10) days after written demand with evidence of such costs. Additionally, without notice or the expiration of any cure period, Grantee may enjoin the violation, ex parte, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief.

5. Miscellaneous.

(a) Notices. Any notice to be given under or in connection with this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) one (1) business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, or (iii) two (2) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

If to Grantor: Oasis West Realty LLC
9860 Wilshire Boulevard
Beverly Hills, California 90210
Attn: Samuel Surloff, Esq

With a copy to: Latham & Watkins LLP
633 W. Fifth Street
Los Angeles, California 90071
Attn: George J. Mihlsten, Esq.

If to Grantee: City of Beverly Hills
Beverly Hills City Hall
455 North Rexford Drive
Beverly Hills, California 90210
Attn: City Manager

With a copy to: City of Beverly Hills
455 North Rexford Drive, Suite 220
Beverly Hills, California 90210
Attn: City Attorney

Notice of a change of any of the foregoing addresses for notice may be given, and shall be effective, in the manner set forth herein.

(b) Assignment; Successors and Assigns. The Grantee may assign its rights and obligations hereunder to the MTA or to or any other governmental entity responsible for operating public bus service along Wilshire Boulevard or Santa Monica Boulevard and, upon a written assumption by such assignee of the obligations hereunder, Grantee shall be released from all obligations and liabilities arising from and after the date of the assumption. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of, each party, its successors, assigns and successors-in-interest.

(c) Running With Land. The covenants and agreements contained herein and the rights, privileges and easements herein granted shall run with and burden the Grantor Parcel.

(d) Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

(e) Severability. If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the validity of the other provisions of this Agreement shall in no way be affected thereby.

(f) Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(g) Further Acts. Each of the parties shall execute and record, if appropriate, such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the parties and carry out the terms of this Agreement (including, without limitation, obtaining and delivering to Grantee prior to the recordation of this Agreement reasonable subordination agreements from the holders of any liens encumbering the easement areas that are or might be senior to this Agreement as of the date of the recordation of this Agreement).

(h) Attorneys' Fees. If any action shall be commenced to enforce the terms of this Agreement or to declare the rights of the parties hereunder, the prevailing party shall be entitled to recover all of its costs and expenses (including, but not limited to, its actual attorneys'

fees) from the nonprevailing party. In addition to the foregoing award of attorneys' fees and other litigation costs to the prevailing party, the prevailing party in any lawsuit on this Agreement shall be entitled to its attorneys' fees and other litigation costs 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. This provision shall survive the termination of this Agreement.

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

GRANTOR:

OASIS WEST REALTY, LLC
a Delaware limited liability company

By: _____
Print Name: _____
Title: _____

GRANTEE:

THE CITY OF BEVERLY HILLS

By: _____
Print Name: _____
Title: _____

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

Approved as to form:

_____
LAURENCE WIENER
City Attorney

Approved as to content:

_____
RODERICK J. WOOD
City Manager

ACKNOWLEDGMENT

State of California)
)
County of _____)

On _____ before me, _____
(insert name and title of the officer)

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.

Signature_____ (Seal)
Signature of Notary Public

ACKNOWLEDGMENT

State of California)
)
County of _____)

On _____ before me, _____
(insert name and title of the officer)

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.

Signature_____ (Seal)
Signature of Notary Public

ACKNOWLEDGMENT

State of California)
)
County of _____)

On _____ before me, _____
(insert name and title of the officer)

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.

Signature_____ (Seal)
Signature of Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION OF THE GRANTOR PARCEL

EXHIBIT "B"

DESCRIPTION OF EASEMENTS

CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by that certain Bus Turnout Easement Agreement dated _____, 200__, from _____ _____, to the CITY OF BEVERLY HILLS, a municipal corporation (the "City"), which is a governmental agency, is hereby accepted by the undersigned officer on behalf of the City pursuant to the authority conferred by resolution of the City, Resolution Number _____, adopted on _____, and that the City consents to recordation thereof by its duly authorized officer.

Dated: _____ __, 200__

CITY OF BEVERLY HILLS

_____

_____,
City Manager

ACKNOWLEDGMENT

State of California)
)
County of _____)

On _____ before me, _____
(insert name and title of the officer)

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.

Signature_____ (Seal)
Signature of Notary Public

EXHIBIT C

City Shuttle Access Easement

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO: City Clerk City of Beverly Hills 455 N. Rexford Drive Beverly Hills, California 90210	
	THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

A.P.N.: _____

Exempt from recording fees pursuant to Government Code § 27383.

Exempt from documentary transfer taxes pursuant to Revenue Taxation Code § 11922.

SHUTTLE ACCESS EASEMENT AGREEMENT

This SHUTTLE ACCESS EASEMENT AGREEMENT (the "Agreement") is entered into as of _____, 2008 (the "Effective Date"), by and between OASIS WEST REALTY, LLC a Delaware limited liability company ("Grantor") and THE CITY OF BEVERLY HILLS, a municipal corporation ("Grantee").

RECITALS

A. Grantor is the owner of the land described on Exhibit "A" and the improvements thereon (collectively "Grantor Parcel").

B. Grantor and Grantee have entered into a Development Agreement dated _____, 2008 (the "Development Agreement") in connection with a proposed development ("Development") on the Grantor Parcel .

C. The Development Agreement requires that Grantor enter into this Agreement with Grantee prior to the issuance of any building permit for the proposed development.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee and its successors and assigns a non-exclusive perpetual easement in gross ("Easement") in and over the portion of the Grantor Parcel described on Exhibit "B" (the "Easement Area").

2. Purpose of Easement. The purpose of the easement shall be for the ingress, egress and the loading and unloading of members of the public by any shuttle vehicle operated by a shuttle vehicle service designated in writing to Grantor from time to time by the City Manager.

3. Property Taxes; Liens. Grantor shall pay, prior to delinquency, all property taxes, special taxes and assessments assessed against the Easement Area, and shall keep the Easement

Area free of all liens except for liens securing financing for the Development, which must be subordinate or subordinated to this Agreement and the Easement.

4. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Agreement or the Easement, Grantee shall give written notice to Grantor of such violation. If Grantor fails to cure the violation within fifteen (15) days after said written notice is given, or said cure reasonably requires more than fifteen (15) days to complete and Grantor fails to begin to cure within the fifteen (15) day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by Grantor with the terms of this Agreement or the Easement, to recover any damages to which Grantee may be entitled for violation by Grantee of the terms of this Agreement or the Easement, or may cure the violation in which event Grantor shall reimburse Grantee for the costs incurred by Grantee in connection with violation within ten (10) days after written demand with evidence of such costs. Additionally, without notice or the expiration of any cure period, Grantee may enjoin the violation, ex parte, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief.

5. Miscellaneous.

(a) Notices. Any notice to be given under or in connection with this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) one (1) business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, or (iii) two (2) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

If to Grantor: Oasis West Realty LLC
9860 Wilshire Boulevard
Beverly Hills, California 90210
Attn: Samuel Surlogg, Esq.

With a copy to: Latham & Watkins LLP
633 W. Fifth Street
Los Angeles, California 90071
Attn: George J. Mihlsten, Esq.

If to Grantee: City of Beverly Hills
Beverly Hills City Hall
455 North Rexford Drive, Third Floor
Beverly Hills, California 90210
Attn: City Manager

With a copy to: City of Beverly Hills
455 North Rexford Drive, Suite 220
Beverly Hills, California 90210
Attn: City Attorney

Notice of a change of any of the foregoing addresses for notice may be given, and shall be effective, in the manner set forth herein.

(b) Runs With Land. The covenants and agreements contained herein and the rights, privileges and easements herein granted shall run with and burden the Grantor Parcel.

(c) Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

(d) Severability. If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the validity of the other provisions of this Agreement shall in no way be affected thereby.

(e) Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(f) Further Acts. Each of the parties shall execute and record, if appropriate, such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the parties and carry out the terms of this Agreement (including, without limitation, obtaining and delivering to Grantee prior to the recordation of this Agreement reasonable subordination agreements from the holders of any liens encumbering the Easement Area that are or might be senior to this Agreement or the Easement as of the date of the recordation of this Agreement).

(g) Attorneys' Fees. If any action shall be commenced to enforce the terms of this Agreement or to declare the rights of the parties hereunder, the prevailing party shall be entitled to recover all of its costs and expenses (including, but not limited to, its actual attorneys' fees) from the nonprevailing party. In addition to the foregoing award of attorneys' fees and other litigation costs to the prevailing party, the prevailing party in any lawsuit on this Agreement shall be entitled to its attorneys' fees and other litigation costs 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. This provision shall survive the termination of this Agreement.

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

GRANTOR:

OASIS WEST REALTY LLC,
a Delaware limited liability company

By: _____
Print Name: _____
Title: _____

GRANTEE:

THE CITY OF BEVERLY HILLS,
a municipal corporation

By: _____
Print Name: _____
Title: _____

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

Approved as to form:

_____
LAURENCE WIENER
City Attorney

Approved as to content:

_____
RODERICK J. WOOD
City Manager

ACKNOWLEDGMENT

State of California)
)
County of _____)

On _____ before me, _____
(insert name and title of the officer)

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.

Signature_____ (Seal)
Signature of Notary Public

ACKNOWLEDGMENT

State of California)
)
County of _____)

On _____ before me, _____
(insert name and title of the officer)

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.

Signature_____ (Seal)
Signature of Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION OF THE GRANTOR PARCEL

EXHIBIT "B"

DESCRIPTION OF EASEMENT AREA

CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by that certain Shuttle Access Easement Agreement dated _____, 2008, from OASIS WEST REALTY LLC, to the CITY OF BEVERLY HILLS, a municipal corporation (the "City"), which is a governmental agency, is hereby accepted by the undersigned officer on behalf of the City pursuant to the authority conferred by resolution of the City, Resolution Number _____, adopted on _____, and that the City consents to recordation thereof by its duly authorized officer.

Dated: _____ __, 2008

CITY OF BEVERLY HILLS

_____

Roderick Wood,
City Manager

ACKNOWLEDGMENT

ıte of California)
)
County of _____)

On _____ before me, _____
(insert name and title of the officer)

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.

Signature_____ (Seal)
Signature of Notary Public

EXHIBIT D

Subway Portal Easement

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO: City Clerk City of Beverly Hills 455 N. Rexford Beverly Hills, California 90210	
	THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

A.P.N.: _____

Exempt from recording fees pursuant to Government Code § 27383.

Exempt from documentary transfer taxes pursuant to Revenue Taxation Code § 11922.

SUBWAY PORTAL EASEMENT AGREEMENT

This SUBWAY PORTAL EASEMENT AGREEMENT (this "Agreement") is entered into as of _____, 2008 (the "Effective Date"), by and between OASIS WEST REALTY LLC, a Delaware limited liability company ("Grantor") and THE CITY OF BEVERLY HILLS, a municipal corporation ("Grantee").

RECITALS

A. WHEREAS, Grantor is the owner of the land described on Exhibit "A" and the improvements thereon (the "Grantor Parcel").

B. WHEREAS, Grantor and Grantee have entered into that certain Development Agreement dated _____, 2008 in connection with a proposed development on the Grantor Parcel (the "Development Agreement").

C. WHEREAS, the Development Agreement requires that Grantor enter into this Agreement with Grantee to provide an entranceway or "portal" for a subway station along or under Wilshire Boulevard or Santa Monica Boulevard that is assignable to the Metropolitan Transportation Authority ("MTA") (or any other governmental entity responsible for constructing and maintaining a subway station) for the benefit of a future subway line.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Subject to the terms and conditions contained herein, Grantor hereby grants to Grantee and its successors and assigns a perpetual subway portal easement in gross on, over, across, along, in and under the Grantor Parcel (the "Easement"); provided, however, that the surface area of the Easement (*i.e.*, at ground level) shall not exceed three hundred (300) square feet and shall not be located within any building or structure (collectively,

the "Improvements") that either (i) exists as of the Effective Date or (ii) is to be constructed by Grantor pursuant to the Development Agreement.

2. Purpose of Easement. The purpose of the Easement shall be for the construction, installation, operation, access to (including access by the public), maintenance, improvement and repair/replacement (as necessary) of an entrance or "portal" (and related improvements) ("Portal") to a subway station to be constructed along or under Wilshire Boulevard or Santa Monica Boulevard.

3. Location of Easement Area. The location of the surface area and underground portion of the Easement ("Easement Area") shall be within the area described on Exhibit "B" hereto. Grantor and Grantee shall reasonably agree upon the exact location of the Easement Area within the area described on Exhibit "B" within a reasonable time period following the final selection of the alignment of the subway line and the location of all relevant subway stations thereon. For the purpose of this paragraph, the duration of the reasonable time period for agreement shall not be less than one hundred eighty days (180) days.

4. Property Taxes; Liens. Grantor shall pay, prior to delinquency, all property taxes, special taxes and assessments assessed against the Easement Area (including the Portal), and shall keep the Easement Area (including the Portal) free of all liens except for liens securing financing for the Development, which must be subordinate or subordinated to this Agreement and the Easement.

5. Portal Agreement. Prior to the construction or operation of the Portal pursuant to this Easement, Grantor and Grantee (or grantee's assignee) shall meet and confer in good faith and shall negotiate and execute a separate agreement ("Portal Agreement") containing commercially reasonable terms that are consistent with Grantee's (or grantee's assignee's) standard operations utilized with comparable portals on other properties, addressing the following issues:

A. Indemnification between the parties for damages caused by the negligent or wrongful acts or omissions of a party in the construction or operation of the Portal.

B. Indemnification between the parties for damages to the Portal or Easement Area caused by the negligent or wrongful acts or omissions of a party.

C. The existence or use of hazardous materials during or after construction of the Portal, but only to the extent such materials might materially and adversely affect the Portal, the Grantor Parcel or the Improvements.

D. The maintenance and operation of the Portal and the areas immediately adjacent to the Portal, but only to the extent such maintenance and operations might materially and adversely affect the Portal, the Grantor Parcel or the Improvements.

The parties shall commence negotiations for the Portal Agreement within thirty (30) days after Grantee (or Grantee's assignee) provides written notice to Grantor of its intent to construct the Portal. Should the parties fail to negotiate and execute a mutually acceptable Portal Agreement within ninety (90) days of the commencement of negotiations, the parties shall submit all

disputed issues for resolution by an arbitrator through expedited binding arbitration pursuant to the arbitration provisions below. Any arbitration of disputes under this paragraph shall be resolved in the most expedited time possible with both parties hereby declaring their mutual intent that such proceedings be completed within ninety (90) days after the arbitration demand.

6. Construction. Grantee shall be responsible, at its sole cost and expense, for the construction of the Portal. The Portal may not be constructed in any manner that adversely and materially affects the structural integrity of the Improvements. Upon the written request of Grantee, Grantor shall reasonably cooperate, at Grantor's expense, in the design of the Portal to insure the structural integrity of the Improvements.

7. Operating Schedule, Security and Utilities.

A. Operations Schedule. Prior to commencing public use of the Portal, Grantee shall submit to Grantor a schedule, to be determined in Grantee's sole and absolute discretion, indicating the hours when the Portal shall be utilized.

B. Security. Grantee shall use commercially reasonable efforts, consistent with its standard operations utilized with comparable portals on other properties, to operate the Portal in a safe and secure manner.

C. Utilities. Grantee shall install any utilities necessary for the operation of the Portal. Grantee shall be responsible for all costs of utilities serving the Portal, including, without limitation, the installation and maintenance thereof.

8. Repair Work. In the event that any repair work is required with respect to the Portal, Grantee shall use reasonable efforts to coordinate such activities with Grantor so as to minimize any disruption to the operations and activities of the Improvements.

9. Special Restrictions on Use of Easement. In its exercise of its rights hereunder, Grantee shall not (a) materially impair, interfere with, restrict or disrupt the operation, use of or general access to the Grantor Parcel or the Improvements, (b) adversely and materially affect the structural integrity of the Grantor Parcel or the Improvements, or (c) cause the loss of any parking spaces from the Grantor Parcel.

10. Coordination with Transportation Agencies. Grantee shall procure all approvals that may be required by all governmental agencies for the construction and operation of the Portal.

11. No Liens. Grantee shall provide notice, in writing, to Grantor of any construction or repair work as allowed pursuant to this Agreement not less than five (5) days prior to the date Grantee commences such work; PROVIDED, however, that Grantee shall only be required to provide reasonable notice of construction or repair work in the event of an emergency or of a threat to the security or safety of or at the Portal. Grantor shall have the right to post and maintain notices of non-responsibility on or adjacent to the Easement Area. Grantee shall pay all claims for work, labor, services and materials which could become a lien upon the Easement Area or any portion thereof as a result of Grantee's construction or repair of the Portal. If a lien shall at any time be recorded against the Easement Area or any portion thereof as a result of any

work or labor done, services performed or materials used or furnished in connection with the Portal or the Easement Area by or on behalf of Grantee, then within sixty (60) days after such recording, Grantee shall either (a) pay and discharge the underlying claim and cause a release of such lien to be recorded or (b) if Grantee disputes the underlying claim, diligently pursue the resolution of such dispute and provide such security in a manner and in the amount necessary to satisfy statutory requirements to effect the release of such lien. In the event that Grantee does not cause any such lien to be released of record within such sixty (60) day period, Grantor shall have the right, but not the obligation, to cause the same to be released by such reasonable means as Grantor shall deem proper, and all reasonable expenses (including, without limitation, reasonable attorneys' fees and costs) incurred by Grantor in connection therewith shall be immediately payable by Grantee to Grantor on demand.

12. Expiration. The Easement will expire in the event that: (i) the Grantee does not accept the Easement in writing on or before the twentieth (20th) anniversary of the Effective Date; or (ii) neither the MTA nor any other appropriate governmental entity involved with the subway has secured financing for the construction of the subway station on or before the twentieth (20th) anniversary of the Effective Date.

13. Miscellaneous.

A. Notices. Any notice to be given under or in connection with this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) one (1) business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, or (iii) two (2) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

If to Grantor:

Oasis West Realty LLC
9860 Wilshire Boulevard
Beverly Hills, California 90210
Attn: Samuel Surloff, Esq.

With a copy to:

Latham & Watkins LLP
633 W. Fifth Street
Los Angeles, California 90071
Attn: George J. Mihlsten, Esq.

If to Grantee:

City of Beverly Hills
Beverly Hills City Hall
455 North Rexford Drive
Beverly Hills, California 90210
Attn: City Manager

With a copy to:

City of Beverly Hills
455 North Rexford Drive, Suite 220
Beverly Hills, California 90210
Attn: City Attorney

Notice of a change of any of the foregoing addresses for notice may be given, and shall be effective, in the manner set forth herein.

B. Assignment; Successors and Assigns. Grantee may assign its rights and obligations hereunder to the MTA or to any other governmental entity responsible for constructing or maintaining a subway line and/or subway station along or under Wilshire Boulevard or Santa Monica Boulevard and, upon a written assumption by such assignee of all obligations hereunder, Grantee shall be released from all obligations and liabilities arising from and after the date of the assumption. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of, each party, its successors, assigns and successors-in-interest.

C. Running With Land. The covenants and agreements contained herein and the rights, privileges and easements herein granted shall run with and burden the Grantor Parcel.

D. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

E. Severability. If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the validity of the other provisions of this Agreement shall in no way be affected thereby.

F. Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

G. Further Acts. Each of the parties shall execute and record, if appropriate, such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the parties and carry out the terms of this Agreement (including, without limitation, obtaining and delivering to Grantee prior to the recordation of this Agreement reasonable subordination agreements from the holders of any liens encumbering the Easement Area that are or might be senior to this Agreement as of the date of the recordation of this Agreement).

H. Attorneys' Fees. If any proceeding shall be commenced to enforce the terms of this Agreement or to declare the rights of the parties hereunder, the prevailing party shall be entitled to recover all of its costs and expenses (including, but not limited to, its actual attorneys fees) from the nonprevailing party. In addition to the foregoing award of attorneys' fees and other litigation costs to the prevailing party, the prevailing party in any lawsuit on this Agreement shall be entitled to its attorneys' fees and other litigation costs 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. This provision shall survive the termination of this Agreement.

I. Compliance. Grantee, at its expense, shall comply with any and all applicable federal, state and local laws, ordinances, regulations, rules and orders with respect to any use by Grantee of the Easement including the construction, installation, operation, access to (including access by the public),. maintenance, improvement and repair/replacement (as necessary) of the Portal.

J. No Waiver. No waiver by any party of the rights, conditions, or the performance of any covenant or promise herein shall be effective unless if contained in a writing signed by such party. No such written waiver shall reduce the rights or remedies of the parties nor shall it invalidate this Agreement, nor shall it be deemed to be a waiver by such party of any other rights, conditions, or the performance of any covenant or promise (whether preceding or succeeding and whether or not of the same or similar nature). No failure or delay by one party to exercise any right or remedy it may have by reason of the default of any other party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right or remedy by such party while the other party continues to be so in default.

K. Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement, the parties do not intend by any provision herein to confer any right, remedy or benefit upon any third party (express or implied), and no third party shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of any provision of this Agreement.

L. Remedies. Each party will have all remedies at law and in equity; provided however, the parties waive any right to receive consequential damages against any other party hereto or any affiliate of any such party by reason of any breach of this Agreement. Unless otherwise expressly provided for in this Agreement, no remedy conferred upon a party in this Agreement is intended to be exclusive of any other remedy therein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given thereunder or now or hereafter existing at law, in equity or by statute. The parties agree that specific performance and injunctive relief should be available to enforce the rights of the parties under this Agreement.

M. Arbitration. All disputes arising under this Agreement shall be resolved by binding arbitration conducted by JAMS before a single, neutral arbitrator in accordance with the JAMS rules ("JAMS Rules") then applicable to such claims. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the rules of JAMS Rules:

1) Agreement to Arbitrate. The parties shall resolve disputes arising under this Agreement exclusively through binding arbitration in Los Angeles County. This arbitration provision shall apply to disputes of any kind or nature regardless of the nature of the relief sought.

2) Waiver of Trial by Judge or Jury. By agreeing to resolve all disputes through binding arbitration, the parties each waive the right to have their respective claims and defenses decided by a judge or a jury. All claims and defenses shall instead be decided by the arbitrator, or by the appeal arbitrators if applicable.

3) Final and Binding Award. The decision of the arbitrator shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in Los Angeles County, but the award may be vacated, modified or corrected only as permitted under applicable statutes, rules, and regulations.

4) Rules of Law. The arbitrator must follow California substantive law, including statutes of limitations, but strict conformity with the rules of evidence is not required, except that the arbitrator shall apply applicable law relating to privilege and work product. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

N. Joint Venture. Nothing contained in this Agreement shall be deemed or construed by any person to create the relationship of partnership, joint venture, co-ownership, or principal and agent between the parties.

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

GRANTOR:
OASIS WEST REALTY LLC

By:_____
Print Name:_____
Title:_____

GRANTEE:
THE CITY OF BEVERLY HILLS

By: _____
Print Name: _____
Title: _____

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

Approved as to form:

_____
LAURENCE WIENER
City Attorney

Approved as to content:

_____
RODERICK J. WOOD
City Manager

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On _____ before me, _____,
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.

Signature _____ (Seal)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On _____ before me, _____,
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.

Signature _____ (Seal)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On _____ before me, _____,
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.

Signature _____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION OF GRANTOR PARCEL

EXHIBIT "B"

MAP OF POTENTIAL EASEMENT AREA LOCATIONS

CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by that certain Subway Portal Easement Agreement dated _____, __ 200__, from _____, to the CITY OF BEVERLY HILLS, a municipal corporation (the "City"), which is a governmental agency, is hereby accepted by the undersigned officer on behalf of the City pursuant to the authority conferred by resolution of the City, Resolution Number _____, adopted on _____, and that the City consents to recordation thereof by its duly authorized officer.

Dated: _____, 200__

CITY OF BEVERLY HILLS

_____

_____,
City Manager

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On _____ before me, _____, 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.

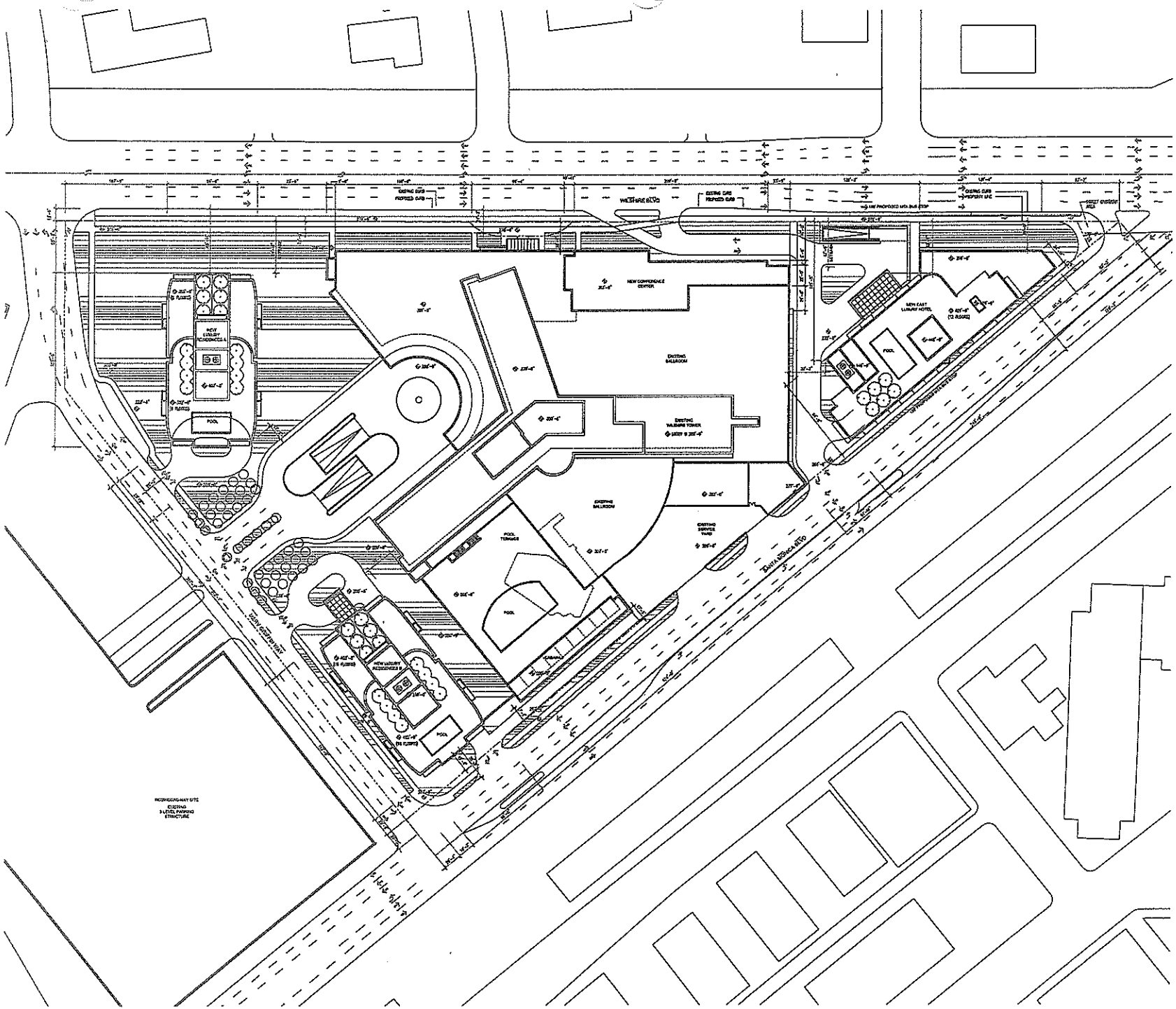
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT E

Site Plan of Project



01 17 2013	Revised Plan
02 14 2013	Conversation Approval Plan
02 25 2013	Revised Conversation Detailed Plan
02 12 2013	Conversation Detailed Plan
01 10 2007	Preliminary Alternative Set
03 08 2005	Application Set
01 09 2005	Operator Review Submission

Revision Date | Description

The Beverly Hilton Revitalization Plan

REVISED PLAN

9876 Wilshire Boulevard
Beverly Hills, CA 90210

Gwathmey Siegel & Associates Architects llc
475 Tenth Avenue
New York, NY 10018
(212) 947-1240

In Association with

Gensler & Associates
2500 Broadway, Suite 300
Santa Monica, CA 90404
(310) 449-5500

Peter Walker and Partners Landscape Architecture, Inc.
Landscape Architect
730 Allston Way
Berkeley, CA 94710
(510) 849-9494

Oasis West Realty LLC — Property Owner
9860 Wilshire Boulevard
Beverly Hills, CA 90210
(310) 274-6609

ISE Consulting Engineers — Civil Engineer
3621 South Harbor Boulevard, Suite 100
Santa Ana, CA 92704
(714) 241-6000

Overland Traffic Consultants, Inc. — Traffic Consultant
22001 Fountain Road, Suite 206
Santa Clarita, CA 91355
(661) 799-8423

Cheese Parking — Parking Consultant
16800 Von Karman Avenue, Suite 240
Irvine, CA 92606-4944
(949) 474-0200

Title
SITE CONTEXT PLAN

Scale: 1" = 20'-0"

Date: APRIL 12, 2005

A-001

DRAFT Development Agreement

~~RECORDING REQUESTED BY~~ :
CITY OF BEVERLY HILLS

WHEN RECORDED MAIL TO:

City of Beverly Hills
Attention: City Attorney's Office
455 North Rexford Drive
Room 220
Beverly Hills, CA 90210

DEVELOPMENT AGREEMENT
(WITH LIENS SECURING EMS FEES AND MUNICIPAL SURCHARGES)

THIS DEVELOPMENT AGREEMENT (WITH LIENS SECURING EMS FEES AND MUNICIPAL SURCHARGES) (this "Agreement") is made by and between THE CITY OF BEVERLY HILLS, a California municipal corporation (the "City"), and Oasis West Realty~~,~~ 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 fee owner of that certain real property located in the City of Beverly Hills, California and described in Exhibit A attached hereto and incorporated herein by reference.

B. Developer desires to develop the Project (as hereafter defined).

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. In anticipation of the development of the Project, Developer has made or will make application to the City (in its governmental capacity) for certain approvals, entitlements, findings and permits required for the development and construction of the Project, including, without limitation: (1) a general plan amendment, (2) a specific plan, (3) a zoning code amendment, (4) a vesting tentative tract map, and (5) 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 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 development of the Project with the uses, density and other land use characteristics specified in the Project Approvals. Developer would not enter into this Agreement, or agree to provide the public benefits and improvements described herein, without the City's agreement that the Project can be developed, during the term of this Agreement, with the uses, density and other land use characteristics specified in the Project Approvals.

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

I. On ___[DATES]_____ 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 __[DATES]__, 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 ___[DATE]___, 2008, the City Council adopted Ordinance No._____ approving this Agreement, and such ordinance became effective on __[DATE]__, 2008.

M. By Resolution No. _____ adopted by the City Council on __[DATE]__, the City Council reviewed and certified, after making appropriate findings, the EIR (as hereafter defined) that contemplates this Agreement.

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) "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, but not limited to, the City's Zoning Regulations and building regulations, adopted as of the Effective Date. Among other matters, the Applicable Rules set forth and govern the permitted uses of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, parking requirements, setbacks, and development standards, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction guidelines, standards and specifications applicable to the development of the Property.

(b) "Beverly Hills Public Art Ordinance" means the requirements set forth in Title 3, Chapter 1, Article 8 of the Beverly Hills Municipal Code.

(c) "Building Permit" means a permit issued by the City pursuant to Title 9 of the Beverly Hills Municipal Code to authorize construction of a building or other structure. "Building Permit" shall not include a demolition permit or excavation and shoring permit, but shall include a foundation permit.

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

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

(f) "Change of Control" shall refer to a transaction whereby a transferee acquires a beneficial ownership interest in Developer (or in an Existing Owner) such that after such transaction there is a change of identity of the person or entity that has the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of voting securities, by contract or otherwise, but not including a Foreclosure Transaction or an Affiliate Transaction.

(g) "Conditions of Approval" shall mean those conditions of approval imposed by the City in connection with the Project Approvals.

(h) "Developer Fees" shall mean Municipal Surcharges, as defined below, and those fees established and adopted by the City pursuant to Section 66000 et seq., of the Government Code of the State of California to offset the impact of development on the City's capital facilities, including, without limitation, parking impact fees, affordable housing fees, traffic fees, infrastructure fee, linkage fees, exactions, assessments or fair share charges or other similar impact fees imposed on or in connection with new development by the City. Developer Fees do not mean or include Processing Fees.

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

(j) "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).

(k) "Discretionary Action(s)" or "Discretionary Approval(s)" means an action which 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).

(l) "Effective Date" shall mean the date this Agreement, fully executed, is recorded in the official records of the Los Angeles County Recorder.

(m) "EIR" shall mean the final Environmental Impact Report (SCH No. 2006091053) that addresses the Project.

(n) "EMS Fee" means the fee paid pursuant to the provisions of Section 10(e) of this Agreement.

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

(p) "Gross Room Revenue" means revenue that is or would be subject to the transient occupancy tax imposed by the City pursuant to Title 3, Chapter 1, Article 3 of the Beverly Hills Municipal Code as that Article exists on the Effective Date, plus any revenue that is exempt from the transient occupancy tax solely by virtue of the use of a United States State Department Tax Exempt Card.

(q) "Ministerial Permit(s)," or "Ministerial Approval(s)" means a permit or approval, including, but not limited to, Building Permits, grading permits, shoring and excavation permits, demolition permits, zone clearances, and certificates of occupancy, which 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.

(r) "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.

(s) "Mortgagee" means the holder of the beneficial interest under any Mortgage.

(t) "Municipal Surcharge" means the fee paid pursuant to Section 10(g) of this Agreement.

(u) "Processing Fees" means all processing fees and charges required by the City that are applied uniformly to all construction or development related activity including, but not limited to, fees for land use applications, Building Permit applications, Building Permits, grading permits, shoring and excavation permits, hauling permits, encroachment permits, demolition

permits, subdivision or parcel maps, lot line adjustments, street vacations, inspections, certificates of occupancy and plan check. Processing Fees shall not mean or include Developer Fees.

(v) "Project" means the development project as described in the final EIR, as modified by the Project Approvals.

(w) "Project Approvals" shall include, collectively, a General Plan Amendment, specific plan, zone change, zoning code amendment, and vesting tentative tract map approved by the City with respect to the Project and shall include any Subsequent Project Approvals (as hereafter defined).

(x) "Property" means the real property described in Exhibit "A" attached hereto.

(y) "Public Benefit Contribution" means the payment from the Developer to the City pursuant to Section 10(d) of this Agreement.

(z) "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 condominiums within the City, including without limitation, regulations of hotel operations and regulations concerning condominiums that receive services from hotels, provided that such regulations do not impact the permitted density, height, or square footage of the Project permitted by the Beverly Hilton Revitalization Specific Plan.

(aa) "Sales Transaction" means any transaction evidenced by the recording of a conveyance document that conveys the Property, or any subdivided portion of the Property, and which conveyance would be subject to, and not exempt from, the Los Angeles County Documentary Transfer Tax (Los Angeles County Code, Chapter 4.60) or the City of Los Angeles Real Estate Transfer Tax (Los Angeles City Municipal Code, Chapter 2, Article 1.9) as those taxes existed on the Effective Date of this Agreement. A transaction whereby the possession of all or a portion of the Property is transferred but the seller retains the title as security for the payment of the price shall be deemed a Sales Transaction. Notwithstanding the foregoing: (i) a transfer of all or a portion of the Property as a result of a judicial or non-judicial foreclosure, or by deed in lieu of foreclosure, initiated by a Mortgagee, shall not be deemed a Sales Transaction (a "Foreclosure Transaction") and (ii) a conveyance of the Property between affiliated entities where the same person or entity possesses, directly or indirectly, more than fifty percent (50%) of the beneficial ownership interest in both entities and the power, directly or indirectly, to direct or cause the direction of the management and policies of both entities, shall not be deemed a Sales Transaction (an "Affiliate Transaction") for the purposes of triggering the EMS Fee. For the purposes of triggering the EMS Fee only, a Sales Transaction shall include (i) any sale, assignment, or transfer, directly or indirectly, of fifty percent (50%) or more of the beneficial ownership interest in Developer, whether in one transaction or a series of transactions, provided however, that any transfers of ownership interests among the owners (or the beneficial owners of

such owners) of any successor Developer hereunder (each an "Existing Owner"), shall not be deemed a Sales Transaction so long as the EMS Fee shall have been paid in connection with the acquisition of the Property by such successor Developer and the transferee was an Existing Owner at the time of such acquisition, or (ii) any Change of Control.

(bb) "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.

(cc) "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, including, without limitation, any tentative subdivision map, whether vesting or non-vesting. Following adoption or approval, a Subsequent Project Approval shall become a Project Approval.

(dd) "Waldorf=Astoria Hotel" shall mean the hotel permitted to be constructed by the Project Approvals, and identified on the site plan set forth on Exhibit E, whether or not operated under the "Waldorf=Astoria" name.

(ee) "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 a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.
>
> "(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval

will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development."

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City 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 the Property as described in the Project Approvals and the final plans submitted to the City, 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 proposed buildings, parking requirements, setbacks, and development standards, provisions for reservation or dedication of land for public purposes and location of public improvements, and the design, improvement, construction 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 and this Agreement, including 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 five (5) years. If a vesting tentative subdivision map is approved in connection with the Project, then, upon approval of such map, the term of this Agreement shall be extended until expiration of the tentative map or approval of a final subdivision map for the Project, whichever is earlier. If a final subdivision map is approved in connection with the Project, then the term of this Agreement shall be extended until the expiration of the vested rights that accompany the vesting tentative tract map for the Project. In addition to the above, at any time, the term may be extended for one year or more provided that the total extension period does not exceed five (5) years. An extension pursuant to the prior sentence shall be effective upon written request of Developer provided to the City at least ten (10) days before the expiration of the term (including any previous extension) and a concurrent payment to the City of the following amounts: for the first and second years of extension, Developer shall pay two hundred fifty thousand dollars ($250,000), for the third year of extension, Developer shall pay five hundred thousand dollars ($500,000) and for the fourth and fifth years of extension, Developer shall pay seven hundred fifty thousand dollars ($750,000).

Notwithstanding the term set forth above, the obligation to pay the ~~Environmental Mitigation and Sustainability~~EMS Fee and the Municipal Surcharge pursuant to Section 10 shall continue indefinitely as provided in Sections 10 and 13.

6. Timing of Development. The Parties acknowledge that Developer cannot at this time predict when or if the Property will be developed. Such decisions depend upon numerous factors that are not within the control of Developer. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, (the Pardee Case) that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that, except as provided below, Developer shall have the right to develop the Property consistent with the Project Approvals and the Conditions of Approval in such order and at such rate and at such times as Developer deems appropriate within the exercise of its sole and subjective business judgment during the term of this Agreement. This provision shall be broadly construed to provide Developer the greatest amount of time and flexibility (in light of the Pardee Case and/or any other similar or distinguishing cases) as necessary or appropriate to permit Developer to complete the development of the Project irrespective of later adopted rules, regulations or initiatives which would otherwise restrict the Developer's time to complete the Project.

Notwithstanding the above, provided that the Developer elects to proceed with the Project, Developer shall ~~begin construction on~~obtain a Building Permit for the Waldorf=Astoria Hotel either before ~~beginning construction of,~~ or contemporaneously with~~, the~~ obtaining a Building Permit for the first of the two condominium ~~building~~buildings permitted by the Project Approvals and shown on the site plan set forth in Exhibit E. Additionally, if Developer does not obtain a certificate of occupancy (or temporary certificate of occupancy) for the Waldorf=Astoria Hotel before occupancy of the first condominium ~~tower~~building, then, upon request by the City, Developer shall provide security, reasonably satisfactory to the City, to ensure completion of the Waldorf=Astoria Hotel.

7. Permitted Uses; Density; Building Heights and Sizes; Required Dedications. The City and Developer hereby agree that the permitted uses of the Property, the density and intensity of such uses, the maximum heights and sizes of the buildings and improvements to be constructed on the Property, and the reservation and dedication of land for public purposes, if any, required in connection with the development of the Property shall be as set forth in and consistent with the Project Approvals, as they may be lawfully amended by Developer from time to time. Developer shall not cause or permit any use of the Property that is not permitted by the Project Approvals, 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 Project Approvals, as they may be lawfully amended by Developer from time to time. In addition, Developer shall not permit the use of the Property for an Adult Entertainment Business or Sexual Encounter Center as defined in the zoning regulations of the City of Beverly Hills~~. Further, no hotel on the Property shall permit occupancies in excess of thirty days; provided, however, nothing in this Agreement shall prohibit consecutive thirty day occupancies.~~ .

8. Developer's Rights. Developer shall have and is hereby vested with the rights, during the term of this Agreement, including any extensions, to develop the Project as set forth in the Project Approvals, as they may be lawfully amended by Developer from time to time, all of which are hereby incorporated in this Agreement by reference. Developer shall not be obligated to pay any Developer Fees in connection with the Project, as all Developer Fees are included within the Public Benefit Contribution.

9. 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 (including any regulation relating to the timing, sequencing, or phasing of the Project or construction of all or any part of the Project), 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 Applicable Rules or Developer's entitlements under the Project Approvals, 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 in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time in the provisions of the City's building, mechanical, plumbing and electrical regulations which are based on the recommendations of a multi-state professional organization and become applicable throughout the City, including, but not limited to, the California Building Code, and other similar or related uniform codes.

(c) 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. ~~The~~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.

(d) Changes in Processing Fees Under Applicable Rules. The Project shall be subject to any increase in Processing Fees imposed by the City, provided that such a change is applied on a Citywide basis.

10. 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 costs to process the Project Approvals, including legal and environmental processing costs related to the Project Approvals and preparation of this Agreement, if any.

(c) Processing Fees. Developer agrees to pay all Processing Fees, including City plan check fees, building inspection fees, and permit fees, at the rate and amount in effect at the time the fee is required to be paid.

(d) Beverly Hilton Revitalization Contribution and Public Benefit Contribution. Developer shall pay to the City a Beverly Hilton Revitalization Contribution of seven million seven hundred fifty thousand dollars ($7,750,000) and a Public Benefit Contribution of ~~ten~~ fifteen million dollars ($~~10,000,000~~15,000,000) for a total cash contribution of twenty two million seven hundred fifty thousand dollars ($22,750,000) together with the Municipal Surcharge as required by Section 10(g).

(i) *Timing of Payment.* Developer shall pay ~~six~~eleven million five hundred thousand dollars ($~~6,000,000~~11,500,000) of the ~~Public Benefit Contribution~~total cash contribution prior to or concurrent with issuance of the Building Permit to construct the Waldorf=Astoria Hotel. ~~The remaining four~~Developer shall pay eleven million two hundred fifty thousand dollars ($~~4,000,000~~11,250,000) of the Public Benefit Contribution ~~shall be paid~~ prior to ~~issuance of,~~ or concurrent with~~.~~ issuance of the Building Permit for the condominium building ~~shown~~designated on Exhibit E as Residence B.

(ii) ~~*Adjustment of Public Benefit Contribution.* The Public Benefit Contribution for the Project is based on the development of 451,018 square feet of gross floor area of condominiums (the "Floor Area"). If the maximum amount of condominium gross floor area authorized by the Project Approvals exceeds the Floor Area, then the Public Benefit Contribution shall be increased by $ 17.73 per square foot of difference between the maximum amount of condominium gross floor area permitted by the Project Approvals and the Floor Area. Conversely, if the maximum amount of condominium gross floor area authorized by the Project Approvals is less than the Floor Area, then the Public Benefit Contribution shall be reduced by $17.73 per square foot of difference between the Floor Area and the maximum amount of condominium gross floor area permitted by the Project Approvals. If the Public Benefit Contribution is increased or decreased pursuant to this subsection (ii), then each of the payments required under subsection (i) shall be increased or decreased proportionally so that the total of the two payments continues to equal the total amount of the Public Benefit Contribution.~~

~~(iii)~~ *Affordable Housing Contribution.* The City Council shall place a portion of the Public Benefit Contribution into an affordable housing fund that shall be used by the City for the purpose of promoting the provision of affordable housing in the City of Beverly Hills, or as otherwise may be permitted by State

law. The amount to be placed in the affordable housing fund shall be ~~calculated by multiplying $261,733.00 times ten percent (10%) of the number of dwelling units constructed pursuant to the Project Approvals. For example, if sixty dwelling units were constructed pursuant to the Project Approvals, then the amount of the affordable housing fund would be $1,570,398.00 [$261,733 x (60/10) = $1,570,398.00].~~ one million five-hundred thousand dollars ($1,500,000).

~~(iv) *Funding for Improvement of Intersection of Santa Monica and Wilshire Boulevards.* The City Council shall place the sum of $1,000,000.00 or 10% of the Public Benefit Fee, whichever is greater, into a fund to be used solely for the purpose of implementing improvements to address congestion at the intersection of Santa Monica Boulevard and Wilshire Boulevard.~~

(e) Environmental Mitigation and Sustainability Fee.

(i) *Amount of Fee.* Concurrent with the close of each Sales Transaction, the seller shall pay or cause to be paid to City an Environmental Mitigation and Sustainability Fee ("EMS Fee"). The amount of the EMS Fee shall be equal to $4.50 for each $1,000 of the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale). The EMS Fee shall be paid from the escrow account set up for the Sales Transaction. The EMS fee shall be paid upon each Sales Transaction by the then current owner.

(ii) *Adjustment of EMS Fee.* If, after the Effective Date of this Agreement, the City adopts or increases a real estate transfer tax or documentary transfer tax for Beverly Hills, so that the combined total of the City's taxes and the County of Los Angeles Documentary Transfer Tax exceeds the current $1.10 per $1000 of City and County documentary transfer taxes, then the EMS Fee imposed upon all subsequent Sales Transactions shall be reduced by the amount of the combined taxes that exceeds $1.10 per $1000. For example, if City adopts a real estate transfer tax of $2.20 per $1000, thus increasing the combined City and County real estate transfer taxes and documentary transfer taxes to $3.30 per $1,000 of sales price, then the EMS Fee on all subsequent Sales Transactions would be $2.30 per $1000 of sales price ($4.50-$2.20= $2.30). If the City increases the documentary transfer tax or adopts a real estate transfer tax so that the combined taxes exceed $5.60 per $1000 of sales price, then no further EMS Fee shall be due or payable.

(f) Liens for EMS Fee Payable Upon Sale. Developer hereby grants to the City, with power of sale, a lien on the Property, and each lot or parcel created by any tentative tract map for the Project, including without limitation, following the creation thereof, each condominium unit in the Project, to secure the payment of the EMS Fee payable upon each Sales Transaction. In the event that the EMS Fee secured by such lien is not paid concurrently with and as a condition to the closing of a Sales Transaction, then the City may enforce such lien by sale of the portion of the Property subject to the Sales Transaction (and only such portion) by the City, its attorney or any other person or entity authorized by the City Manager to conduct the

sale. Any such sale shall be conducted in accordance with California Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h, or in any other manner permitted or provided by law. The City, through its agent authorized by the City Manager, shall have the power to bid on the encumbered property at the sale, using as a credit bid the amounts secured by such lien, its own funds, or funds borrowed for such purpose and to acquire the lot or parcel. The City is hereby granted, in trust, the applicable lot or parcel and is appointed as trustee for purposes of noticing and effecting any sale pursuant to the provisions of this Section and is hereby expressly granted a "power of sale" in connection therewith. Developer, or any subsequent owner of the Property or any portion thereof, shall provide notice to City, in a form satisfactory to City, upon any opening of escrow that will result in a Sales Transaction or any other conveyance of the Property or portion thereof. The notice shall include a declaration stating the amount of the EMS Fee due upon closing of any Sales Transaction, or in the case of a conveyance that is not a Sales Transaction, the reason that such conveyance is not a Sales Transaction and therefore not subject to the EMS Fee. Upon receipt of the full amount of the EMS Fee payable with respect to a ~~sale~~Sales Transaction, the City shall execute and deliver such documentation, in recordable form, as Developer, the buyer or the title company may reasonably request to evidence the payment of the EMS Fee and extinguishment of the City's lien rights with respect to such ~~sale~~Sales Transaction (a "Lien Release"). Such Lien Release shall also indicate that payment of the EMS Fee shall not extinguish the City's lien rights with respect to subsequent Sales Transactions. In the event that the City determines that a conveyance is not a Sales Transaction, the City shall execute and deliver to the seller, buyer or title company documentation that the City has determined that the conveyance is not a Sales Transaction and not subject to the EMS Fee.

(g) Municipal Surcharge. The owner of the Waldorf=Astoria Hotel, shall pay to the City, in perpetuity, ~~two and one half~~five percent (~~2.5~~5.0%) of the Gross Room Revenue generated by the Waldorf=Astoria Hotel (the "Municipal Surcharge").

(i) *Timing of Payment.* The Municipal Surcharge shall by 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) *Lien to Secure Municipal Surcharge.* Developer hereby grants to the City, with power of sale, a lien on the Property, or if the Property is subdivided, a lien solely on the lot or parcel that includes the Waldorf=Astoria Hotel, to secure the payment of the Municipal Surcharge and any other sums payable under clause g(iv) below. In the event that the Municipal Surcharge or any other sums payable under clause g(iv) below is not timely paid, then the City may enforce such lien by sale of the property subject to the Municipal Surcharge by the City, its attorney or any other person or entity authorized by the City Manager to conduct the sale. Any such sale shall be conducted in accordance with California Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h, or in any other manner permitted or provided by law. The City, through its agent authorized by the City Manager, shall have the power to bid on the encumbered property at the sale, using as a credit bid the amounts secured by such lien, its own funds, or funds

borrowed for such purpose. The City is hereby granted in trust, the Property, or if the Property is subdivided the lot or parcel that includes the Waldorf=Astoria Hotel, and is appointed as trustee for purposes of noticing and effecting any sale pursuant to the provisions of this Section and is hereby expressly granted a "power of sale" in connection therewith. The Municipal Surcharge shall not apply to the Beverly Hilton Hotel.

(iii) *Acknowledgement.* The parties acknowledge and agree that the Municipal Surcharge is not a tax or a levy by City~~, but instead is compensation provided in exchange for the benefits received pursuant to this Development Agreement.~~.

(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) $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 and one-half percent (18.5%), or (ii) the highest rate then permitted by applicable law.

(h) Gateway. Prior to issuance of a certificate of occupancy (or temporary certificate of occupancy) for the Waldorf =Astoria Hotel, Developer shall construct or install (or provide a guarantee of the construction or installation in form and content satisfactory to the City Attorney and the Director of Community Development) a significant "gateway statement" to enhance the significance of the entry to Beverly Hills. The gateway statement shall be located on the Property near the intersection of Wilshire Boulevard and Santa Monica Boulevard. The gateway statement shall be located in an area that is clearly visible to the general public traveling along Wilshire Boulevard and Santa Monica Boulevard. The gateway statement may take the form of public art, landscaping, architectural features such as fountains, or other features satisfactory to the City as hereafter provided.

(i) *Design.* Prior to issuance of a Building Permit for the Waldorf=Astoria Hotel, Developer shall provide to the Director of Community Development conceptual drawings, satisfactory to the Director, depicting the gateway statement and its location or Developer shall provide a one million dollar

guarantee of the construction or installation in form and content satisfactory to the City Attorney and the Director of Community Development. The gateway statement shall be reviewed and approved by the City's Architectural Commission prior to construction or installation. The aggregate cost of constructing, or purchasing and installing, the gateway statements shall not be required to exceed one million dollars ($1,000,000). If the gateway statement includes public art, the City's Fine Arts Commission shall review and approve the public art prior to its installation. Decisions of the Architectural Commission and Fine Arts Commission shall be appealable to the Planning Commission, and decisions of the Planning Commission shall be appealable to the City Council pursuant to the procedures set forth in the Beverly Hills Municipal Code. Any appeals shall be filed within ten (10) days of the final decision that is the subject of the appeal. The gateway statement shall be constructed or installed in substantial compliance with the approvals of the Architectural and Fine Arts Commissions.

(ii) *Public Art Requirement.* The gateway statement, combined with a payment of five hundred thousand dollars ($500,000) into the fund established pursuant to Beverly Hills Municipal Code Section 3-1-808 shall satisfy Developer's obligations under the Beverly Hills Public Art Ordinance.

(iii) *Maintenance.* Developer shall own the gateway statement and maintain the gateway statement in good condition and repair. In the event that Developer transfers ownership of the Waldorf=Astoria Hotel, the gateway statement shall also be transferred to the owner of the Waldorf=Astoria Hotel and shall be maintained by the Waldorf=Astoria Hotel owner. Additionally, the Developer, initially, and thereafter the Waldorf=Astoria Hotel owner, shall maintain insurance satisfactory to the City's Risk Manager and City Attorney and in an amount equal to the value of the gateway statement, which insures the gateway statement against any loss or damage, including vandalism. Upon damage, the party obligated to maintain the gateway statement shall timely repair or replace the gateway statement, as appropriate, to the reasonable satisfaction of the City's Director of Community Development.

(i) Bus Turnouts. Prior to issuance of a Building Permit for the Waldorf=Astoria Hotel, Developer shall dedicate to the City of Beverly Hills right of way easements along the Project's Wilshire Boulevard frontage and Santa Monica Boulevard frontage sufficient to provide reasonable sidewalk area behind bus turnouts in locations as shown on Exhibit B. The dedication shall be in form and substance satisfactory to the City Attorney and substantially in the form set forth in Exhibit B.

(j) Access for City Shuttle. Prior to issuance of a Building Permit for the Waldorf=Astoria Hotel, Developer shall dedicate to the City a non-exclusive easement to allow any City sponsored, financed or operated shuttle service vehicle to access the Property for the purpose of picking up or dropping off residents and visitors to the Property. The easement shall be in form and substance satisfactory to the City Attorney and substantially in the form set forth in Exhibit C.

(k) Subway Portal. Prior to obtaining a Building Permit for the Waldorf=Astoria Hotel, Developer shall dedicate an easement to the City substantially in the form set forth in Exhibit D. The easement shall be for the purpose of providing a portal for a subway station under Wilshire Boulevard or Santa Monica Boulevard and shall be assignable to the Metropolitan Transportation Authority or any other governmental entity responsible for constructing or maintaining a subway line. The easement shall provide that the surface area of the portion of the portal on the Property at ground level shall be no more than 300 square feet. The easement shall automatically terminate unless each of the following conditions are met: (i) the City must accept the easement within twenty (20) years from the Effective Date of this Agreement; and (ii) the Metropolitan Transportation Authority, or other appropriate governmental entity, must have secured funding for construction of the station within twenty years from the Effective Date of this Agreement. The easement shall limit the portal so that it does not materially interfere with or limit access to the Project, materially interfere with the structural integrity of the Property or buildings or structures on the Property, or materially interfere with the operations of the Property or the businesses located on the Property.

(l) School Benefit Fee. Prior to the issuance of a Building Permit for the Project, Developer shall pay to the Beverly Hills Unified School District a school benefit fee in the amount of $_____.

11. Issuance of Building Permit. The City shall be under no obligation to issue a Building Permit for any portion of the Project until: (i) all the fees and other obligations set forth in Section 10 and due prior to or concurrent with issuance of the Building Permit have been fully paid or otherwise fulfilled or satisfied; and (ii) any lender whose lien is prior and superior to any lien created by this Agreement or any conveyance or covenant required by this Agreement shall have agreed to subordinate its lien to the liens, conveyances and covenants created and required by this Agreement. The forgoing notwithstanding, nothing herein shall limit or restrict the ability of the City to grant Building Permits for the buildings and structures existing on the Property as of the Effective Date or limit or restrict the right of Developer to secure Building Permits for buildings or structures existing on the Property as of the Effective Date.

12. 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 shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said 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, 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.

Subject to the foregoing, after notice and expiration of the thirty (30) day period without cure, the notifying 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.

13. Termination and Expiration. Upon the expiration of the term or termination of this Agreement, 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 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 provided that a Building Permit has been issued for any portion of the Project. After a Building Permit has been issued for any portion of the Project, the obligations under Section 10, and the obligation to pay any claim arising before the effective date of expiration or termination shall continue after termination in perpetuity or until completed.

14. 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 other than a retail purchaser of an individual residential condominium unit, Developer agrees 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~~.~~ 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. Such writing shall be in form and content reasonably satisfactory to the City Attorney. No owner of a residential condominium interest shall have any development rights under this Agreement by virtue of such ownership interest.

15. 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, including the successful bidder at a foreclosure sale, who comes into possession of the Project or the Property or any part thereof pursuant to foreclosure, eviction or otherwise, 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 shall prevent City from exercising any remedy it may have for a default under this Agreement, 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.

16. 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 the land.

17. 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 17, 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 EIR prepared and certified for the Project, Developer shall 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 EIR 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 agreement of the City. In the event Developer fails or refuses to reimburse the City for its cost to defend any challenge to this Agreement, the Project Approvals or the EIR, the City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 12 above. In all events, the City shall have the right to resolve any challenge in any manner, in its sole discretion, provided, however, Developer's consent shall be required if 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 EIR (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 17(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 EIR prepared and adopted 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. 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 ($50,000.00) 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 and the City shall cooperate fully in the defense of any such claim or action, but shall have the right to resolve any challenge, in any manner, in its sole discretion, provided, however, Developer's consent shall be required if the resolution of the challenge shall require a payment by Developer or limit Developer's rights under this Agreement.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. Periodic Reviews.

(a) Annual Reviews. The City shall conduct annual reviews to determine whether Developer is acting in good faith compliance with the provisions of this Agreement and Government Code Section 65865.1. The reasonable cost of each annual review conducted during the term of this Agreement shall be reimbursed to the City by Developer. Such reimbursement shall include all direct and indirect expenses reasonably incurred in such annual reviews.

(b) Special Reviews. In addition, 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.

(c) Procedure for Review. The City's Director of Community Development (the "Community Development Director") shall conduct the review contemplated by this Section 24 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.

(d) 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 12 and the City may follow the default procedures as set forth in Section 12.

(e) Effect on Default Procedures. Nothing in this Section 24 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 24, or from terminating this Agreement pursuant to the provisions of Section 12 following any event of default by Developer.

25. 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, but not limited to, reasonable attorneys' fees and expert witness fees.

(b) Scope of Fees. Attorneys' fees under this Section 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.

26. 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."

27. 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.

28. 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.

29. 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.

30. 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 10 is held invalid or

unenforceable before approval of a tentative subdivision map for the Project, then this entire Agreement shall be void and unenforceable and of no further force and effect.

31. 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, the Project Approvals or the EIR.

32. 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: Oasis West Realty, LLC
9860 Wilshire Boulevard
Attn: Samuel Surloff, Esq
Beverly Hills, CA 90210

With Copy to: George Mihlsten, Esq.
Latham & Watkins
633 W. Fifth Street
Los Angeles, CA 90017

To City: City Manager
City of Beverly Hills
455 North Rexford Drive
Third 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 32 change the address 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.

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

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

35. 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.

36. 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.

DRAFT Development Agreement

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the ____ day of _____ , 200___.

CITY OF BEVERLY HILLS,
A Municipal Corporation

_____
~~JIMMY DELSHAD~~BARRY BRUCKER
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

OASIS WEST REALTY LLC, a Delaware limited liability company

By: _____
Name: Theodore F. Kahan
Its: President

By: _____
Name: Sam Surloff
Its: Secretary

APPROVED AS TO FORM:

_____
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

_____
RODERICK J. WOOD
City Manager

DRAFT Development Agreement

EXHIBIT A

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

DRAFT Development Agreement

EXHIBIT B

Bus Turnout Dedication and Location

DRAFT Development Agreement

EXHIBIT C

City Shuttle Access Easement

DRAFT Development Agreement

EXHIBIT D

Subway Portal Easement

DRAFT Development Agreement

EXHIBIT E

Site Plan of Project

Document comparison done by DeltaView on Saturday, April 19, 2008 3:28:14 PM

Input:	
Document 1	C:\DOCUME~1\rdiaz\LOCALS~1\Temp\dvtemp2c4\PC Final Draft Development Agreement for Hilton Project.DOC
Document 2	C:\DOCUME~1\rdiaz\LOCALS~1\Temp\dvtemp2c4\Mayor Brucker Draft Development Agreement for Hilton Project 4-19-08.DOC
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	56
Deletions	36
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	92