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**DEVELOPMENT AGREEMENT**

**by and among**

**THE CITY OF LOS ANGELES**

**and**

**THE UNIVERSITY OF SOUTHERN CALIFORNIA**

\_\_\_\_\_, 2012

*This document is a draft and is not intended to create any binding obligations. Any agreement shall be reflected in a written document signed by both parties.*

DEVELOPMENT AGREEMENT

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DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is executed this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the CITY OF LOS ANGELES, a municipal corporation (“City”), and THE UNIVERSITY OF SOUTHERN CALIFORNIA, a California non-profit corporation (“USC” or “Property Owner”), pursuant to California Government Code Section 65864 et seq., and the implementing procedures of the City, with respect to the following:

**1. DEFINITIONS.**

For all purposes of this Agreement, except as otherwise expressly provided or unless the context requires:

1.1 **“Agreement”** means this Development Agreement and all amendments and modifications thereto.

1.2 **“Applicable Rules”** means the rules, regulations, ordinances and officially adopted policies of the City in full force and effect as of the Effective Date of this Agreement, including, but not limited to the City’s General Plan and the USC Specific Plan, as amended by the Project Approvals. Additionally, notwithstanding the language of this Section or any other language in this Agreement, all specifications, standards and policies regarding the design and construction of public works facilities, if any, except those included in Vesting Tentative Tract No. \_\_\_\_\_ shall be those that are in effect at the time the Project plans are being processed for approval and/or under construction.

1.3 **“Assignment Agreement”** means a written agreement between the Property Owner and a Transferee of the Property Owner, consistent with the terms of this Agreement, in which the Parties agree to specific obligations of this Agreement being transferred from the Property Owner to the Transferee of the Property Owner.

1.4 **“Certificate of Performance”** has the meaning set forth in Section 6.11.5.

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

1.6 **“City”** means the City of Los Angeles, a charter city and municipal corporation, including each and every agency, department, board, commission, authority, employee, and/or official acting under the authority of the City, including without limitation the City Council and the Planning Commission.

1.7 **“City Council”** means the City Council of the City and the legislative body of the City pursuant to California Government Code Section 65867.

1.8 **“Conditions of Approval”** means the Conditions of Approval for the Project, including those contained in \_\_\_\_\_, approved by the City

Planning Commission at its hearings held on \_\_\_\_\_, and by the City Council on \_\_\_\_\_.

1.9 **“Development Agreement Act”** means Section 65864 et seq., of the California Government Code.

1.10 **“Discretionary Action”** means an action which requires the exercise of judgment, deliberation or a decision on the part of the City, including any board, commission or department or any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity which merely requires the City, including any board, commission or department or any officer or employee thereof, to determine whether there has been compliance with statutes, ordinances or regulations.

1.11 **“Effective Date”** is the date on which this Agreement is attested by the City Clerk of the City of Los Angeles after execution by the Property Owner and the Mayor of the City of Los Angeles.

1.12 **“Fees”** means Impact Fees, Processing Fees and any other fees or charges imposed or collected by the City.

1.13 **“FEIR”** means the Final Environmental Impact Report for the Project, ENV-2009-271-EIR, State Clearinghouse No. 2009011101, certified by the City in accordance with the requirements of CEQA.

1.14 **“First Source Hiring Policy”** means the local hiring program described in Section 3.1.3.19 below.

1.15 **“First Source Referral System”** means the system developed and operated to implement the First Source Hiring Policy.

1.16 **“General Plan”** means the General Plan of the City.

1.17 **“Impact Fees”** means impact fees, linkage fees, exactions, assessments or fair share charges or other similar impact fees or charges imposed on and in connection with new development by the City pursuant to rules, regulations, ordinances and policies of the City in full force and effect as of the Effective Date of this Agreement. Impact Fees do not include (i) Processing Fees or (ii) other City-wide fees or charges of general applicability, provided that such City-wide fees or charges are not imposed on impacts of new development.

1.18 **“Initial Buildings”** means any buildings or structures constructed on the Property pursuant to Discretionary Approvals or Ministerial Permits and Approvals issued prior to the City Council’s final approval of this Agreement.

1.19 **“Ministerial Permits and Approvals”** means the permits, approvals, plans, inspections, certificates, documents, licenses, and all other actions required to be taken by the City in order for Property Owner to implement, develop and construct the Project and the Mitigation Measures, including without limitation, building permits, foundation permits, public

works permits, grading permits, stockpile permits, encroachment permits, and other similar permits and approvals which are required by the Los Angeles Municipal Code and Project plans and other actions required by the Project Approvals to implement the Project and the Mitigation Measures. Ministerial Permits and Approvals shall not include any Discretionary Actions.

1.20 **“Mitigation Measures”** means the mitigation measures described in the FEIR and in the Mitigation Monitoring Program for the Project.

1.21 **“Mortgagee”** has the meaning set forth in Section 6.25.1

1.22 **“Parties”** means collectively Property Owner and the City. Each shall be referred to in the singular as a “Party”.

1.23 **“Planning Commission”** means the City Planning Commission and the planning agency of the City pursuant to California Government Code Section 65867.

1.24 **“Planning Director”** means the Planning Director for the City or his or her designee.

1.25 **“Processing Fees”** means all processing fees and charges required by the City including, but not limited to, fees for land use applications, Project permits and/or approvals, building applications, building permits, grading permits, encroachment permits, tract or parcel maps, lot line adjustments, air right lots, street vacations and certificates of occupancy which are necessary to accomplish the intent and purpose of this Agreement. Expressly exempted from Processing Fees are all Impact Fees which may be imposed by the City on development projects pursuant to rules, regulations, ordinances and policies enacted after the Effective Date of this Agreement, except as specifically provided for in this Agreement. The amount of the Processing Fees to be applied in connection with the development of the Project shall be the amount which is in effect on a City-wide basis at the time an application for the City action is made. Notwithstanding the language of this Section or any other language in this Agreement, Property Owner shall not be exempt from the payment of fees, if any, imposed on a City-wide basis as part of the City’s program for storm water pollution abatement mandated by the Federal Water Pollution Control Act of 1972 and subsequent amendments thereto, unless a waiver of these fees is provided by the City in a subsequent agreement.



1.26 **“Project”** means the development of the University of Southern California Development Plan, which would increase the amount of academic space per student to support academic excellence, increase the amount of University-affiliated housing, and provide additional retail and commercial uses that will enhance the community. As more particularly set forth in the Project Approvals, development would consist of uses permitted by and in accordance with the USC Specific Plan, including, but not limited to, up to approximately 2,500,000 square feet of academic and University uses; 350,000 square feet of retail/commercial uses; 5400 student beds; 250 faculty housing units; an approximately 165,000 square-foot hotel and conference center with up to 150 guest rooms and other amenities; and a new University-affiliated K-8 laboratory school and community educational academy comprised of approximately 80,000 square feet.

1.27 **“Project Approvals”** means the following land use actions requested by USC from the City of Los Angeles: 1) USC Specific Plan; 2) General Plan Amendments; 3) Zone and Height District Changes; 4) Zone Text Amendment to add USC Specific Plan zone to Zoning Code; 5) Vesting Tentative Tract Map(s) to create ground and airspace lots, including potential street vacations; 6) Approvals under the Exposition/University Park Redevelopment Project Area; 7) Approvals under the Council District Nine Corridors South of the Santa Monica Freeway Recovery Redevelopment Project Area; and 8) certification of the Environmental Impact Report for the Project, ENV-2009-271-EIR, State Clearinghouse No. 2009011101.

1.28 **“Property”** means the real property owned by Property Owner as described in Exhibit A and depicted in Exhibit B.

1.29 **“Property Owner”** means the University of Southern California, or its successors and assignees as described in Section 6.9.

1.30 **“Reserved Powers”** means the rights and authority excepted from this Agreement’s restrictions on the City’s police powers and which are instead reserved to the City. The Reserved Powers include the powers to enact regulations or take future Discretionary Actions after the Effective Date of this Agreement that may be in conflict with the Applicable Rules and Project Approvals, but: (1) are necessary to protect the public health and safety, and are generally applicable on a City-wide basis (except in the event of natural disasters as found by the City Council such as floods, earthquakes and similar acts of God); (2) are amendments to Uniform Codes, as adopted by the City of Los Angeles, and/or the Los Angeles Municipal Code, as applicable, regarding the construction, engineering and design standards for private and public improvements to be constructed on the Property; or (3) are necessary to comply with state or federal laws and regulations (whether enacted previous or subsequent to the Effective Date of this Agreement) as provided in Section 3.2.3.3.

1.31 **“Term”** means the period of time for which this Agreement shall be effective in accordance with Section 6.2 hereof.

1.32 “**Transferee**” means individually or collectively, Property Owner’s successors in interest, assignees or transferees of all or any portion of the Property.

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

1.34 “**Vermont Façade Improvement Program**” has the meaning set forth in Section 3.1.3.13.

## 2. RECITALS OF PREMISES, PURPOSE AND INTENT.

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

“The Legislature finds and declares that:

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

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

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

obtained by traditional City controls and conditions imposed on development project applications.

## 2.2 City Procedures and Actions.

**2.2.1 City Planning Commission Action.** The City Planning Commission held duly noticed public hearings on \_\_\_\_\_, 2011 and recommended approval of this Agreement.

**2.2.2 City Council Action.** The City Council on \_\_\_\_\_, 2011, after conducting a duly-noticed public hearing, adopted Ordinance No. \_\_\_\_\_, to become effective on the thirty-first day after publication, or on the forty-first day after posting, approving this Agreement, found that its provisions are consistent with the City's General Plan, the South Los Angeles Community Plan, the Southeast Los Angeles Community Plan and the Municipal Code, and authorized the execution of this Agreement.

## 2.3 Purpose of this Agreement.

**2.3.1 Public Benefits.** This Agreement provides assurances that the public benefits identified below in section 3.1.3 will be achieved and developed in accordance with the Applicable Rules and Project Approvals and with the terms of this Agreement and subject to the City's Reserved Powers. The Project will provide local and regional public benefits to the City, including without limitation those public benefits listed in Section 3.1.3 below.

**2.3.2 Property Owner Objectives.** In accordance with the legislative findings set forth in the Development Agreement Act, and with full recognition of the City's policy of judicious restraints on its police powers, the Property Owner wishes to obtain reasonable assurances that the Project may be developed in accordance with the Applicable Rules and Project Approvals and with the terms of this Agreement and subject to the City's Reserved Powers. To the extent of Project development, and as provided by Section 3.1.1, Property Owner anticipates making capital expenditures or causing capital expenditures to be made in reliance upon this Agreement. In the absence of this Agreement, Property Owner would have no assurance that it can complete the Project for the uses and to the density and intensity of development set forth in this Agreement and the Project Approvals. This Agreement, therefore, is necessary to assure Property Owner that the Project will not be (1) reduced or otherwise modified in density, intensity or use from what is set forth in the Project Approvals, or (2) subjected to new rules, regulations, ordinances or official policies or plans which are not adopted or approved pursuant to the City's Reserved Powers.

**2.3.3 Mutual Objectives.** Development of the Project in accordance with this Agreement will provide for the orderly development of the Property in accordance with the objectives set forth in the General Plan. Moreover, a development agreement for the Project will eliminate uncertainty in planning for and securing orderly development of the Property, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted. The Parties believe

that such orderly development of the Project will provide public benefits, as described in Section 2.3.1, to the City through the imposition of development standards and requirements under the provisions and conditions of this Agreement, including increased tax revenues, creation and retention of jobs, and improvements to the University, resulting in benefits to the City. Additionally, although development of the Project in accordance with this Agreement will restrain the City's land use or other relevant police powers, this Agreement provides the City with sufficient Reserved Powers during the Term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to City, the Property Owner will receive assurance that the Project may be developed during the Term of this Agreement in accordance with the Applicable Rules, Project Approvals and Reserved Powers, subject to the terms and conditions of this Agreement.

2.4 **Applicability of the Agreement.** This Agreement does not: (1) grant density or intensity in excess of that otherwise established in the Project Approvals or Applicable Rules; (2) eliminate future Discretionary Actions relating to the Project if applications requiring such Discretionary Action are initiated and submitted by the owner of the Property after the Effective Date of this Agreement; (3) guarantee that Property Owner will receive any profits from the Project; or (4) amend the City's General Plan except as specified in the Project Approvals. This Agreement has a fixed Term. Furthermore, in any subsequent Discretionary Actions applicable to the Property, the City may apply such new rules, regulations and official policies as are contained in its Reserved Powers.

### 3. AGREEMENT AND ASSURANCES.

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

3.1.1 **Project Development.** Property Owner agrees that it will use commercially reasonable efforts, in accordance with its own subjective business judgment and taking into account the needs of an institution of higher learning, market conditions and economic considerations, to undertake any development of the Project in accordance with the terms and conditions of this Agreement and the Project Approvals. However, nothing in this Agreement shall be deemed to obligate Property Owner to initiate or complete development of the Project or any portion thereof within any period of time or at all, or deemed to prohibit Property Owner from seeking any necessary land use approvals for any different land use project on the Property.

3.1.2 **Timing of Development.** The Parties acknowledge that Property Owner cannot at this time predict when or at what rate the Property would be developed. Such decisions depend upon numerous factors which are not all within the control of Property Owner, such as market orientation and demand, availability of funds, interest rates, and competition. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal. 3d 465 (1984), that the failure of the parties therein to provide for the timing of development

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

**3.1.3 Additional Obligations of Property Owner as Consideration for this Agreement.** As additional consideration for this Agreement, Property

Owner shall also provide additional public benefits including, but not limited to, the specific public benefits listed below:

**3.1.3.1. Revolving Loan Fund for Rehabilitating Existing Housing in Surrounding Community.** The Property Owner will work with an affordable housing non-profit corporation to create a revolving loan fund to provide low or no-interest loans to certain property owners for the purpose of ensuring that, as students move out of formerly traditional single family housing units in the area surrounding the project and into student housing within the Project, funds are available to assist in the conversion and/or rehabilitation of these existing housing units back to traditional single family housing units. The revolving loan fund will be available to qualified property owners within the following geographic boundaries: Adams Boulevard to the north, Normandie Avenue to the west, Exposition Boulevard to the south, and Figueroa Street on the east. Property owners seeking to utilize the revolving loan fund will need to demonstrate that their property (i) historically was a single family residence; (ii) that the single family residence was substantially altered for purposes of housing university students; (iii) that the house will need to be substantially rehabilitated or renovated in order to convert it back to housing that is appropriate for a single family; and (iv) that the property owner meets any other requirements or restrictions of the revolving loan fund as they are established and may be revised over time. The Property Owner will invest a one-time lump sum of \$2,000,000 into the revolving loan fund. The fund will be administered and operated by the affordable housing non-profit corporation, and said organization will have full responsibility for reviewing and approving or denying all applications, distributing funds, and collecting loan payments from loan recipients. The Property Owner will have no obligation to administer or operate the revolving loan fund. The Property Owner will have no obligation to provide additional funds beyond the initial payment of \$2,000,000 into the revolving loan fund. The Property Owner will submit proof of compliance with this obligation prior to issuance of a certificate of occupancy for any building within Subarea 3A of the Specific Plan.

**3.1.3.2. Full-Service Grocery Store.** The Project is located in an area identified by the Los Angeles Board of Public Works as a "food desert," due to a lack of access to local and fresh produce. The Property Owner will provide space in Subarea 3A of the Project to accommodate one full-service grocery store. The location, size and identity of the grocery store will be within the sole discretion of the Property Owner. The Property Owner shall submit proof of compliance with this obligation by demonstrating build out of the shell and core prior to issuance of a certificate of occupancy for any building within Subarea 3A of the Specific Plan.

3.1.3.3. **Mobility Hub.** The Property Owner will provide space in Subarea 3A of the Specific Plan for a mobility hub to encourage transit use in the community. The mobility hub may include facilities and/or information to encourage various modes of transportation, including but not limited to bicycles, buses, Metrolink, MTA, shared cars, etc. [Language may change depending on definition from LADOT.] The Property Owner shall submit proof of compliance with this obligation as part of the required Development Agreement compliance review set forth in Section 4.1.

3.1.3.4. **Partnership with Local Schools.** The Property Owner currently voluntarily partners with ten neighborhood schools, including elementary, middle and high schools, providing educational, cultural and developmental opportunities to more than 13,000 children. Known as the “Family of Schools,” through this partnership the Property Owner funds programs at the ten schools that focus on safety, positive extracurricular activities, literacy, technology, science education, student academic achievement, parental involvement and education, and school administrator professional development. Currently, more than 60 programs are funded by the Property Owner, including the highly acclaimed Neighborhood Academic Initiative, the TRIO program and Upward Bound programs. The Property Owner commits to continue its partnership with the Family of Schools over the course of the Development Agreement at a minimum level of \$25,000 per year for the Term of this Agreement. The Property Owner shall submit proof of compliance with this obligation as part of the required Development Agreement compliance review set forth in Section 4.1.

3.1.3.5. **Community Room.** The Property Owner will provide and manage on a non-exclusive basis an approximately 800 square-foot community room in the Project for use at no cost by various groups and community organizations, during reasonable business hours. The Property Owner will provide the meeting space for the duration of the Term of this Agreement. The Property Owner shall establish and operate a reservation system whereby community groups can reserve the room at no cost. The community room will be included at a location to be determined at the sole discretion of the Property Owner. The Property Owner may relocate the community room from time to time as necessary over the Term of the Agreement. The community room may be used by residents, tenants or others in the Project. The Property Owner may establish reasonable rules for the use of the community room and may exclude organizations or individuals who do not follow such rules. The Property Owner shall submit proof of compliance with this obligation prior to issuance of a certificate of occupancy for any building within Subarea 3A of the Specific Plan.

3.1.3.6. **Community Outreach.** In order to facilitate community participation and outreach over the course of the Project’s development, the Property Owner will maintain a website for purposes of informing the community of the status of developments and/or phases within the Project. The Property Owner will submit proof of compliance with this obligation as part of the required Development Agreement compliance review set forth in Section 4.1.

3.1.3.7. **Local Graffiti Abatement.** The Property Owner currently voluntarily abates graffiti in the vicinity of the University Park Campus, within the general boundaries of the Specific Plan. The Property Owner will expand its graffiti abatement program

to extend beyond the Specific Plan, with the following boundaries of Vermont on the west, Adams on the north, Exposition on the south and Flower on the east. The Property Owner commits to continue the graffiti abatement program with expanded boundaries, with an annual total cost for the program not to exceed \$20,000, for the duration of the Term of this Agreement. The Property Owner will submit proof of compliance with this obligation as part of the required Development Agreement compliance review set forth in Section 4.1.

3.1.3.8. **New Fire Station.** Los Angeles Fire Department Station No. 15 is located within the Project site. The Fire Department has expressed a desire to replace the station with a new facility, as the current location is outdated and access to the site is not optimum. Provided that the LAFD conveys the existing Fire Station No. 15 to Property Owner, the Property Owner will construct a new fire station for the Fire Department at a site location mutually selected and agreed upon by the Fire Department and the Property Owner. The Property Owner will provide up to \$2,000,000 in funds for property acquisition for the site if necessary, and up to \$8,000,000 in funds for the construction of the new fire station. The Property Owner will submit proof of compliance with this obligation prior to issuance of a building permit for the renovation of the existing Fire Station No. 15.

3.1.3.9. **Open Space.** In addition to the open space provided within the Project, the Property Owner understands the City's desire to provide new or improved active or passive open space within the vicinity of the Project, but not located within the Project boundaries. The Property Owner will make a one-time payment of \$350,000 to the L.A. Parks Foundation, a 501(c) (3) public charity that raises funds for parks in the City, for the purpose of providing improvements and funds for maintenance of either Hoover Park, located at the northeast corner of S. Hoover Street and W. Adams Boulevard, the current Hoover Gateway parcel located at Hoover Street and 23<sup>rd</sup> Street, or such other existing or new public park as identified by the City, provided that such park is within a two-mile radius of the Project. The Property Owner will submit this payment to the LA Parks Foundation prior to the issuance of a certificate of occupancy for any building within Subarea 3A of the Specific Plan.

3.1.3.10. **Vermont Streetscape Improvement.** The Property Owner will partner with the City or other public agency to seek funding to construct and maintain a landscaped median along Vermont Avenue between Jefferson Boulevard and the 10 Freeway. In addition, the Property Owner will reimburse the City for actual costs of irrigating the median, not to exceed \$1,000 per year, during the Term of this Agreement. The Property Owner will submit proof of compliance with this obligation as part of the required Development Agreement compliance review set forth in Section 4.1.

3.1.3.11. **Jefferson Boulevard Pedestrian Improvements.** The Property Owner will construct or provide funds for the construction of pedestrian improvements along Jefferson Boulevard consisting of improved pedestrian lighting, planting of additional 24-inch box shade trees, and upgraded crosswalks utilizing Duratherm, stamped concrete or any other commercially acceptable material selected by the Property Owner. These improvements shall be implemented along the length of Jefferson Boulevard as applicable between Vermont Boulevard on the west and Grand Avenue on the east. The Property Owner will submit proof of

compliance with this obligation prior to issuance of a certificate of occupancy for any building within Subarea 3A of the Specific Plan.

3.1.3.12. **Bicycle Lane on Jefferson Boulevard.** The Property Owner will develop and maintain a bicycle lane along Jefferson Boulevard between Vermont Avenue and Flower Street, as determined feasible and approved by the Department of Transportation. The Property Owner will submit proof of compliance with this obligation prior to issuance of a certificate of occupancy for any building within Subarea 3A of the Specific Plan.

3.1.3.13. **Transit Connectivity Enhancements.** The Property Owner will provide \$1,000,000 in funds to be used (a) by small businesses located on Vermont Avenue between Adams Boulevard to the north and Exposition Boulevard to the south, for the purpose of making minor façade improvements, or (b) towards purchase of uniform street furniture, signage, or lighting maintenance (the “Vermont Façade Improvement Program”), or (c) towards the establishment of Transit Oriented District Plans with the goal of emphasizing transportation alternatives and creating linkages between the USC campus and adjacent neighborhoods around the Vermont, Jefferson/23rd Street and Grand Avenue Exposition light rail stations. The property owner will make a one-time payment to the City of Los Angeles, Department of City Planning (DCP), for the purpose of completing the enhancements described within this section. The funds shall be allocated at the discretion of the Director of Planning.

The Façade Improvement Program will be administered by LANI (the Los Angeles Neighborhood Initiative, a 501(c)(3) non-profit organization) or a similar third-party non-profit organization. LANI or such other third-party organization selected by the Property Owner will have full responsibility for reviewing and approving or denying all applications for funds and distribution of funds. The Property Owner will have no obligation to administer or operate the Vermont Façade Improvement Program.

The Property Owner will submit proof of compliance with this obligation upon City Council adoption of the USC Specific Plan.

3.1.3.14. **Shared Car Program.** The Property Owner currently operates a shared car program available to its students, faculty and staff. The Property Owner will continue to provide a shared car program at the current level of service and may expand the program as demand mandates, for the Term of this Agreement. The Property Owner has sole discretion to select or change shared car program operators. The Property Owner will submit proof of compliance with this obligation as part of the required Development Agreement compliance review set forth in Section 4.1.

3.1.3.15. **Buy-out of Existing Alcohol Licenses.** The Property Owner will make a good faith effort, to the satisfaction of the Planning Director, to purchase up to 4 alcohol licenses from existing establishments located within a five-mile radius of the Project site; provided that the Property Owner shall place the highest priority on those establishments located within a two-mile radius of the Project site. The Property Owner will submit proof of compliance with this obligation as part of the required Development Agreement compliance review set forth in Section 4.1.



3.1.3.16. **Bicycle Parking.** The Property Owner will provide secured bicycle parking for all new developments within the Project in accordance with the Specific Plan. The Property Owner will submit proof of compliance with this obligation prior to the issuance of a certificate of occupancy for each building in the Project.

3.1.3.17. **Expanded Tram Service.** The Property Owner will extend the existing USC tram service to provide connectivity between the surrounding community and the proposed new University Village development in the Project. The Property Owner will submit proof of compliance with this obligation prior to issuance of a certificate of occupancy for any building within Subarea 3A of the Specific Plan.

3.1.3.18. **Programming at Public Parks.** The Property Owner currently provides resources for programs at public parks in the vicinity of the Project. Programs include after-school sports instruction (including, but not limited to, martial arts, soccer, basketball, volleyball) and dance classes (ballet, jazz and hip hop) and are offered to students in the Family of Schools programs. The Property Owner will continue to contribute financial resources of a minimum of \$10,000 annually for these or alternate programs for the duration of this Agreement. The Property Owner shall submit proof of compliance with this obligation as part of the required Development Agreement compliance review set forth in Section 4.1.

3.1.3.19. **Local Hiring and Job Training.** The Property Owner will work with the City of Los Angeles Community Development Department (CDD) or similar organization working in the City of Los Angeles (the "First Source Referral System") to implement a First Source Hiring Policy for exempt employees. The purpose of the First Source Hiring Policy is to facilitate the employment of local job applicants for jobs within the Specific Plan. The Property Owner, contractors and tenants will participate in the First Source Hiring Policy under which the First Source Referral Systems will promptly refer qualified, trained applicants to employers for available jobs. The Property Owner, contractors and tenants will have no responsibility to provide notice of job openings to the First Source Referral System if the First Source Referral System is not fulfilling its obligations under the First Source Hiring Policy to timely refer qualified, trained applicants. The First Source Referral System will also coordinate job-training programs. The Property Owner will submit proof of compliance with this obligation as part of the required Development Agreement compliance review set forth in Section 4.1.

3.1.3.20. **Publicly Accessible Private Open Space.** The Property Owner shall provide publically accessible private ground level open space in the Project in accordance with the Specific Plan. The Property Owner shall make such space open to the public during normal business hours, but may in its discretion establish reasonable rules and regulations for use of such open space and may exclude individuals who do not follow such rules.

3.2 **Agreement and Assurances on the Part of the City.** In consideration for Property Owner entering into this Agreement, and as an inducement for Property Owner to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order

to effectuate the premises, purposes and intentions set forth in Section 2 of this Agreement, the City hereby agrees as follows:

**3.2.1 Entitlement to Develop.** Property Owner has the vested right to develop the Project subject to the terms and conditions of this Agreement, the Applicable Rules, Project Approvals and the Reserved Powers. Property Owner's vested rights under this Agreement shall include, without limitation, the right to remodel, renovate, rehabilitate, rebuild or replace the existing development and the Project or any portion thereof throughout the applicable Term for any reason, including, without limitation, in the event of damage, destruction or obsolescence of the existing development or the Project or any portion thereof, subject to the Applicable Rules, Project Approvals and Reserved Powers. To the extent that all or any portion of the existing development or the Project is remodeled, renovated, rehabilitated, rebuilt or replaced, Property Owner may locate that portion of the existing development or the Project, as the case may be, at any other location of the Property, subject to the requirements of the Project Approvals, the Applicable Rules, and the Reserved Powers.

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

**3.2.3 Changes in Applicable Rules.**

**3.2.3.1. Nonapplication of Changes in Applicable Rules.** Any change in, or addition to, the Applicable Rules, including, without limitation, any change in any applicable general or specific plan, zoning or building regulation, adopted or becoming effective after the Effective Date of this Agreement, including, without limitation, any such change by means of ordinance, City Charter amendment, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City, the Mayor, City Council, Planning Commission or any other Board, Commission, Department or Agency of the City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Property and/or the Project and which would conflict in any way with the Applicable Rules, Project Approvals, or this Agreement, shall not be applied to the Property or the Project unless such changes represent an exercise of the City's Reserved Powers, or are otherwise agreed to in this Agreement. Notwithstanding the foregoing, Property Owner may, in its sole discretion, consent to the application to the Project of any change in the Applicable Rules.

**3.2.3.2. Changes in Building and Fire Codes.** Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes which may occur from time to time in the Uniform Codes, as such Codes are adopted by the City of Los Angeles. In addition, development of the Project shall be subject to changes occurring from time to time in Chapters V (Public Safety and Protection) and IX (Building Regulations) of the Municipal Code regarding the construction, engineering and design standards

for both public and private improvements provided that these changes are (1) necessary to the health and safety of the residents of the City, and (2) are generally applicable on a Citywide basis (except in the event of natural disasters found by the Mayor or City Council, such as floods, earthquakes and similar disasters).

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

**3.2.4 Subsequent Development Review.** The City shall not require Property Owner to obtain any approvals or permits for the development of the Project in accordance with this Agreement other than those permits or approvals that are required by the Applicable Rules, the Reserved Powers and/or the Project Approvals. However, any subsequent Discretionary Action initiated by Property Owner, which substantially changes the permitted uses or substantially increases the height, and density or floor area allowed under the Project Approvals, shall be subject to the rules, regulations, ordinances and official policies of the City then in effect; provided, however, that no such subsequent Discretionary Action, when approved, will constitute grounds for the termination of this Agreement or otherwise affect the enforceability of this Agreement with respect to the development of the Property hereunder. The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that future Discretionary Actions may require additional environmental review pursuant to CEQA. In the event that additional environmental review is required by CEQA, the City agrees to utilize tiered environmental documents to the fullest extent permitted by law, as determined by the City, and as provided in California Public Resources Code Sections 21093 and 21094.

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

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

**3.2.7 Moratoria or Interim Control Ordinances.** In the event an ordinance, resolution, policy, or other measure is enacted, whether by action of the City, by initiative, or otherwise, which relates directly or indirectly to the Project or to the rate, amount, timing, sequencing, or phasing of the development or construction of the Project on all or any part of the Property or the implementation of the Mitigation Measures adopted in connection with approval of the Project, City agrees that such ordinance, resolution or other measure shall not apply to the Property, the Project or this Agreement, unless such changes are adopted pursuant to the Reserved Powers or other applicable provisions of this Agreement.

**3.2.8 Special Taxes and Assessments.** Property Owner shall not be obligated to support infrastructure financing undertaken by the City or others. Property Owner shall have the right, to the extent permitted by law, to protest, oppose and vote against any and all special taxes, assessments, levies, charges and/or fees imposed with respect to any assessment districts, Mello-Roos or community facilities districts, maintenance districts or other similar districts.

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

**3.2.10 Processing Fees.** Property Owner shall pay all Processing Fees for Ministerial Permits and Approvals.

**3.2.11 Timeframes and Staffing for Processing and Review.** The City agrees that expeditious processing of Ministerial Permits and Approvals and Discretionary Actions, if any, and any other approvals or actions required for the Project are critical to the implementation of the Project. In recognition of the importance of timely processing and review of Ministerial Permits and Approvals, the City agrees to work with Property Owner to establish time frames for processing and reviewing such Ministerial Permits and Approvals and to comply with timeframes established in the Project Approvals. Furthermore, the City shall expedite all requests by Property Owner for Discretionary Actions requested for the Project, if any.

**3.2.12 Substitute Mitigation.** To the extent permitted by law, to the extent Property Owner cannot complete a mitigation measure or condition of approval as required in the Project Approvals, or otherwise, because the measure or condition has been performed by others, has been rejected by an agency with jurisdiction, or for other reasons outside of the Property Owner's reasonable control, Property Owner shall be allowed to complete the Project without performing such infeasible mitigation measure or condition of approval mitigation measure and/or condition of approval so long as Property Owner pays to the City the mutually agreed upon cost that Property Owner would have otherwise incurred to complete such mitigation measure or condition of approval, unless the City specifies another substituted measure that (A)

substantially accomplishes the same environmental goals as the original measure or condition, (B) has a nexus with and is proportional to the Project impacts that the original measure or condition was intended to address, and (C) does not exceed the cost agreed to by the Parties for the original mitigation measure or condition of approval, in which case Property Owner shall complete or cause to be completed such substitute mitigation measure and/or condition of approval in lieu of the original measure or condition.

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

#### 4. ANNUAL REVIEW.

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

4.2 **Pre-Determination Procedure.** Property Owner's submission of compliance with this Agreement, in a form which the Planning Director may reasonably establish, shall be made in writing and transmitted to the Planning Director not later than sixty (60) days prior to the yearly anniversary of the Effective Date. The public shall be afforded an opportunity to submit written comments regarding compliance to the Planning Director at least sixty (60) days prior to the yearly anniversary of the Effective date. All such public comments and final staff reports shall, upon receipt by the City, be made available as soon as possible to the Property Owner.

4.3 **Director's Determination.** On or before the yearly anniversary of the Effective Date of the Agreement, the Planning Director shall make a determination regarding whether or not Property Owner has complied in good faith with the provisions and conditions of this Agreement. This determination shall be made in writing with reasonable specificity, and a copy of the determination shall be provided to Property Owner in the manner prescribed in Section 6.15. Copies of the determination shall also be made available to members of the public. If the Planning Director determines that the Property Owner has complied in good faith with the provisions and conditions of this Agreement, the annual review process for that year shall end.

4.4 **Appeal By Property Owner.** In the event the Planning Director makes a finding and determination of non-compliance, Property Owner shall be entitled to appeal that determination to the Planning Commission. After a public hearing on the appeal, the Planning Commission shall make written findings and determinations, on the basis of substantial evidence, whether or not Property Owner has complied in good faith with the provisions and conditions of this Agreement. If the Planning Commission determines that the Property Owner has complied in good faith with the provisions and conditions of this Agreement, the annual review process for that year shall end. Nothing in this Section or this Agreement shall be construed as modifying or

abrogating Los Angeles City Charter Section 245 (City Council review of Commission and Board actions).

**4.5 Period To Cure Non-Compliance.** If, as a result of this Annual Review procedure, it is found and determined by the Planning Director or the Planning Commission, on appeal, that Property Owner has not complied in good faith with the provisions and conditions of this Agreement, the City, after denial of any appeal or, where no appeal is taken, after the expiration of the appeal period described in Section 6.3, shall submit to Property Owner, by registered or certified mail, return receipt requested, a written notice of non-compliance in the manner prescribed in Section 6.15, stating with specificity those obligations of Property Owner which have not been performed. Upon receipt of the notice of non-compliance, Property Owner shall promptly commence to cure the identified items of non-compliance at the earliest reasonable time after receipt of the notice of non-compliance and shall complete the cure of such items of non-compliance not later than sixty (60) days after receipt of the notice of non-compliance, or such longer period as is reasonably necessary to remedy such items of non-compliance, provided that Property Owner shall continuously and diligently pursue such remedy at all times until such item of non-compliance is cured.

**4.6 Failure To Cure Non-Compliance Procedure.** If the Planning Director finds and determines that Property Owner, or its successors, transferees, and/or assignees, as the case may be, has not cured or commenced to cure an item of non-compliance pursuant to this Section, and that the City intends to terminate or modify this Agreement or those transferred or assigned rights and obligations, as the case may be, the Planning Director shall make a report to the Planning Commission. The Planning Director shall then set a date for a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after such public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Property Owner, or its successors, transferees, and/or assignees, as the case may be, has not brought the Project into compliance pursuant to this Section, and that the City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the finding and determination shall be appealable to the City Council in accordance with Section 6.3 hereof. In the event of a finding and determination of compliance, there shall be no appeal by any person or entity. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245 (City Council's review of Commission and Council actions).

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

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

## 5. DEFAULT PROVISIONS

### 5.1 Default By Property Owner.

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

**5.1.2 Notice of Default.** City shall first submit to Property Owner a written notice of default stating with specificity those obligations that have not been performed. Upon receipt of the notice of default, Property Owner shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than sixty (60) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that Property Owner shall continuously and diligently pursue such remedy at all times until such default(s) is cured. In the event that Property Owner has assigned all or any portion of its interests pursuant to Section 6.9, Property Owner shall have the right but not the obligation to cure any defaults of any assignee or successor-in-interest. Further, any assignee or successor-in-interest shall have the right but not the obligation to cure any defaults of Property Owner. In the case of a dispute as to whether Property Owner (or its assignee or successor-in-interest) has cured the default, the Parties shall submit the matter to dispute resolution pursuant to Section 6.5 of this Agreement.

**5.1.3 Failure to Cure Default Procedures.** If after the cure period has elapsed, the Planning Director finds and determines that Property Owner, or its successors, transferees and/or assignees, as the case may be, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Planning Director shall make a report to the Planning Commission and then set a public hearing before the Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Property Owner, or its successors, transferees and/or assigns, as the case may be, has not cured such default pursuant to this Section, and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, Property Owner and its successors, transferees and/or assigns, shall be entitled to appeal that finding and determination to the City Council in accordance with Section 6.3. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245 (City Council review of Commission and Board actions).

**5.1.4 Termination or Modification of Agreement.** The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after such final determination of the City Council or, where no appeal is taken, after the expiration of the appeal periods described in Section 6.3. There shall be no modifications of this

Agreement unless the City Council acts pursuant to Government Code Sections 65867.5 and 65868, irrespective of whether an appeal is taken as provided in Section 6.3.

## 5.2 Default By The City.

**5.2.1 Default.** In the event the City does not accept, process, or render a decision on necessary development permits, entitlements, or other land use or building permits or approvals for use as provided in this Agreement upon compliance with the requirements thereof, or as otherwise agreed to by the Parties, or the City otherwise defaults under the provisions of this Agreement, Property Owner shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement, provided that Property Owner or Transferee, as the case may be, has first complied with the procedures in Section 5.2.2. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses the City may otherwise have with respect to claims for monetary damages.

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

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

## 6. GENERAL PROVISIONS.

**6.1 Effective Date.** This Agreement shall be effective as set forth in Section 1.10 above.

**6.2 Term.** The Term of this Agreement shall commence on the Effective Date and shall extend for a period of twenty (20) years after the Effective Date, unless said Term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties hereto. Following the expiration of this Term, this Agreement shall terminate and be of no further force and effect; provided, however, that this termination shall not affect any right or duty arising from entitlements or approvals, including the Project Approvals on the Property, approved concurrently with, or subsequent to, the Effective Date of this Agreement. The Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from any enactments pursuant to the Reserved Powers or moratoria,



or from legal actions, administrative proceedings such as appeals or delays of ministerial actions, or appeals which enjoin performance under this Agreement or act to stay performance under this Agreement (other than bankruptcy or similar procedures), or for the period of time during which a lawsuit or litigation (including appeals) relating to the Project or the Project Approvals, including this Development Agreement, has been filed and is pending in a court of competent jurisdiction.

**6.3 Appeals To City Council.** Where an appeal by Property Owner to the City Council from a finding and/or determination of the Planning Commission is created by this Agreement, such appeal shall be taken, if at all, within twenty (20) days after the mailing of such finding and/or determination to Property Owner, or its successors, transferees, and/or assignees, as the case may be. The City Council shall act upon the finding and/or determination of the Planning Commission within eighty (80) days after such mailing, or within such additional period as may be agreed upon by the Property Owner and the City Council. The failure of the City Council to act shall not be deemed a denial or an approval of the appeal, which shall remain pending until final City Council action.

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

**6.5 Dispute Resolution.**

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

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

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

**6.5.4 Extension Of Term.** The Term of this Agreement as set forth in Section 6.2 shall automatically be extended for the period of time in which the Parties are engaged in dispute resolution to the degree that such extension of the Term is reasonably required because activities which would have been completed prior to the expiration of the Term are delayed beyond the scheduled expiration of the Term as the result of such dispute resolution.

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

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

**6.8 Amendments.** This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any amendment to this Agreement which relates to the Term, permitted uses, density or intensity of use, height, or size of buildings, provisions for reservation and dedication of land, conditions, restrictions, and requirements relating to subsequent discretionary action or any conditions or covenants relating to the use of the Property, which are not allowed or provided for under the Project Approvals or Applicable Rules, shall require notice and public hearing before the Parties may execute an amendment thereto.

**6.9 Assignment.** The Property, as well as the rights and obligations of Property Owner under this Agreement, may be transferred or assigned in whole or in part by Property

Owner without the consent of the City, except as set forth in Sections 6.9.1 and 6.9.2 below. Upon such assignment the assignor shall be released from the obligations so assigned.

**6.9.1 Conditions for Assignment.** No such assignment shall be valid until and unless the following occur:

6.9.1.1. **Written Notice of Assignment Required.** Property Owner, or any successor transferor, gives prior written notice to the City of its intention to assign or transfer any of its interests, rights or obligations under this Agreement and a complete disclosure of the identity of the assignee or transferee, including copies of the Articles of Incorporation in the case of corporations and the names of individual partners in the case of partnerships. Upon request by Property Owner, City shall provide written acknowledgement of such assignment in the form reasonably requested by Property Owner. Any failure by Property Owner or any successor transferor to provide the notice shall be curable in accordance with the provisions of Section 5.1.

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

**6.9.2 Liability Upon Assignment.** Unless otherwise stated elsewhere in this Agreement to the contrary, each Transferee of any portion of the Property shall be solely and only liable for performance of such Transferee's obligations applicable to its portion of the Property under this Agreement as specified in the applicable Assignment Agreement. Upon the assignment or transfer of any portion of the Property, the Transferee shall become solely and only liable for the performance of those assigned or transferred obligations and shall have the rights of a "Property Owner" under this Agreement; which such rights and obligations shall be set forth specifically in the Assignment Agreement, acknowledged by the transferring Property Owner, and the Transferee, as of the date of such transfer, assignment or conveyance of the applicable portion of the Property. The failure of any Transferee to perform the obligations assigned to it may result, at the City's option, in a declaration that this Agreement has been breached with regards to that specific Transferee, and an election to terminate this Agreement as provided for in Section 5.1 hereof, as it relates to that Transferee's holding only and no other portion of the Property. This partial termination is severable from the entire Agreement, and shall not affect the remaining entirety of the Agreement.

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

6.11 **Cooperation And Implementation.**

**6.11.1 Processing.** Upon satisfactory completion by Property Owner of all required preliminary actions and payment of appropriate Processing Fees, including the fee for

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

**6.11.2 Other Governmental Permits.** Property Owner shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. The City shall cooperate with Property Owner in its endeavors to obtain such permits and approvals and shall, from time to time at the request of Property Owner, attempt with due diligence and in good faith to enter into binding agreements with any such entity to ensure the availability of such permits and approvals, or services, provided such agreements are reasonable and not detrimental to the City. These agreements may include, but are not limited to, joint powers agreements under the provisions of the Joint Exercise of Powers Act (Government Code Section 6500, et seq.), or the provisions of other laws to create legally binding, enforceable agreements between such parties. To the extent allowed by law, Property Owner shall be a party to any such agreement, or a third party beneficiary thereof, entitled to enforce for its own benefit on behalf of the City, or in its own name, the rights of the City or Property Owner thereunder or the duties and obligations of the parties thereto. Property Owner shall reimburse the City for all costs and expenses incurred in connection with seeking and entering into any such agreement provided that Property Owner has requested such agreement. Property Owner or Transferee, as the case may be, shall defend the City in any challenge by any person or entity to any such agreement, and shall reimburse the City for any costs and expenses incurred by the City in enforcing any such agreement. Any fees, assessments, or other amounts payable by the City thereunder shall be borne by Property Owner or Transferee, as the case may be, except where Property Owner or Transferee, as the case may be, has notified the City in writing, prior to the City entering into such agreement, that it does not desire for the City to execute such agreement.

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

**6.11.4 Operating Memoranda.** The provisions of this Agreement require a close degree of cooperation between the City and Property Owner. During the Term of this Agreement, clarifications to this Agreement and the Applicable Rules may be appropriate with respect to the details of performance of the City and Property Owner. If and when, from time to time, during the Term of this Agreement, the City and Property Owner agree that such clarifications are necessary or appropriate, they shall effectuate such clarification through operating memoranda approved in writing by the City and Property Owner. After execution by both Parties, each operating memoranda shall be attached hereto and become part of this Agreement and the same may be further clarified from time to time as necessary with future written approval by the City and Property Owner. Operating memoranda are not intended to and cannot constitute an amendment to this Agreement or allow a subsequent Discretionary Action to

the Project but are mere ministerial clarifications, therefore public notices and hearings shall not be required. The Planning Director shall be authorized, upon consultation with, and approval of, Property Owner, to determine whether a requested clarification may be effectuated pursuant to this Section 6.15 or whether the requested clarification is of such character to constitute an amendment hereof. The authority to enter into such operating memoranda is hereby delegated to the Planning Director, who is hereby authorized to execute any operating memoranda hereunder without further City action.

**6.11.5 Certificate of Performance.** Upon the completion of the Project, or upon performance of this Agreement or its earlier revocation and termination, the City shall provide Property Owner, upon Property Owner's request, with a statement (the "**Certificate of Performance**") evidencing said completion or revocation and the release of Property Owner from further obligations under this Agreement, except for any obligations or liabilities that are expressly designated in this Agreement as surviving the termination of this Agreement. The Certificate of Performance shall be signed by the appropriate agents of Property Owner and the City and shall be recorded in the official records of Los Angeles County, California.

**6.11.6 Estoppel Certificate.** At any time and from time to time Property Owner may deliver written notice to the City requesting that the City certify in writing that, to the knowledge of the City (i) this Agreement is in full force and effect and a binding obligation of the City, (ii) this Agreement has not been amended, or if amended, the identity of each amendment, and (iii) the Property Owner not in breach of this Agreement, or if in breach, a description of each such breach. The City shall execute and return the certificate within thirty (30) days following receipt of the notice. The failure of the City to deliver such a written notice within such time shall constitute a conclusive presumption that this Agreement is in full force and effect without modification, and that there are no uncured defaults in the performance of Property Owner. The Planning Director shall be authorized to execute, on behalf of the City, any Estoppel Certificate requested by Property Owner. The City acknowledges that a certificate may be relied upon by successors in interest to Property Owner who requested the certificate and by Mortgagees.

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

**6.13 Hold Harmless and Insurance.**

**6.13.1 Hold Harmless.** Property Owner hereby agrees to and shall indemnify, save, hold harmless and, if requested by the City, defend the City in any action brought by a third party (i) challenging the validity of this Agreement or (ii) seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this Agreement. Nothing in this Section shall be construed to mean that Property Owner shall hold the City harmless and/or defend it from any claims arising from, or alleged to arise from,

the negligent acts, negligent failure to act, or intentional acts on the part of the City. City agrees that it shall fully cooperate with Property Owner in the defense of any matter in which Property Owner is defending and/or holding the City harmless. City may make all reasonable decisions with respect to its representation in any legal proceeding.

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

**6.14 Extension of Time for All Project Approvals.** The duration of all Project Approvals shall automatically be extended for the Term of this Agreement.

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

If to the City:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with copies to:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to Property Owner:  
University of Southern California  
Real Estate & Asset Management  
UGW 110  
Los Angeles, CA 90089-7271

with copies to:  
University of Southern California  
Office of the General Counsel  
ADM 352  
Los Angeles, CA 90089-5013

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

**6.17 Constructive Notice And Acceptance.** Every person who now or hereafter owns or acquires any right, title, interest in or to any portion of the Property, is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether

or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

6.18 **Successors And Assignees.** Except as otherwise provided in Section 6.9, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties, any subsequent owner of all or any portion of the Property and their respective successors and assignees.

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

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

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

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

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

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

## 6.25 Mortgage Protection.

6.25.1 **Discretion to Encumber.** This Agreement shall not prevent or limit Property Owner in any manner, at its sole discretion, from encumbering the Property or any portion of the Property or any improvement on the Property by any mortgage, deed of trust or other security device securing financing with respect to the Property or its improvements. The City acknowledges that the lender(s) providing such financing may require certain Agreement interpretations and agrees, upon request, from time to time, to meet with the Property Owner and representatives of such lender(s) to provide within a reasonable time period the City's response to such requested interpretations. The City will not unreasonably withhold its consent to any such requested interpretation, provided that such interpretation is consistent with the intent and purposes of this Agreement. Any mortgagee of a mortgage or a beneficiary of a deed of trust encumbering all or any portion of the Property or any successor or assign thereof, including without limitation any purchaser at a judicial or non-judicial foreclosure sale or a person or entity who obtains title by deed-in-lieu of foreclosure on any portion of the Property (collectively, "**Mortgagee**") shall be entitled to the following rights and privileges:

6.25.2 **Mortgage Not Rendered Invalid.** Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the priority of the lien of any mortgage or deed of trust on the Property made in good faith and for value. No Mortgagee shall have an obligation or duty under this Agreement to perform the Property Owner's obligations, or to guarantee such performance, prior to taking title to all or a portion of the Property.

6.25.3 **Request for Notice to Mortgagee.** Each Mortgagee who has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive a copy of any notice of default delivered to the Property Owner.

6.25.4 **Mortgagee's Time to Cure.** The City shall provide a copy of any notice of default to the Mortgagee within ten (10) days of sending the notice of default to the Property Owner. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of sixty (60) days after receipt of such notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the Mortgagee shall continuously and diligently pursue such remedy at all times until such default(s) is cured. Notwithstanding the foregoing, if such default is of a nature that can only be remedied by such Mortgagee obtaining possession of a Property, or any portion thereof, and such Mortgagee seeks to obtain possession, such Mortgagee shall have until sixty (60) days after the date of obtaining such possession to cure or, if such default cannot reasonably be cured within such period, to commence to cure such default, provided that such default is cured no later than one (1) year after Mortgagee obtains such possession.

6.25.5 **Cure Rights.** Any Mortgagee who takes title to all or any part of the Property pursuant to foreclosure of the mortgage or deed of trust, or a deed in lieu of foreclosure, shall succeed to the rights and obligations of the Property Owner under this Agreement as to the Property or portion thereof so acquired; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of the Property Owner arising prior to acquisition



of title to the Property by such Mortgagee, except that any such Mortgagee shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees and other monetary or nonmonetary obligations due under this Agreement for the Property, or portion thereof acquired by such Mortgagee, have been satisfied.

6.25.6 **Bankruptcy.** If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving the Property Owner, the times specified in Section 6.25.4 above shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

6.25.7 **Disaffirmation.** If this Agreement is terminated as to any portion of the Property by reason of (i) any default or (ii) as a result of a bankruptcy proceeding, this Agreement is disaffirmed by a receiver, liquidator, or trustee for the Property Owner or its property, the City, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new development agreement for the Project as to such portion of the Property with the most senior Mortgagee requesting such new agreement. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this Section 6.25.7.

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

6.27 **Counterparts.** This Agreement is executed in duplicate originals, each of which is deemed to be an original. This Agreement, not counting the Cover Page, Table of Contents or Index, consists of \_\_\_ pages and \_\_\_\_\_ ( ) Exhibits.

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

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

APPROVED AS TO FORM:  
CARMEN TRUTANICH, City Attorney

By: \_\_\_\_\_

By: \_\_\_\_\_

Antonio Villaraigosa, Mayor

Laura M. Cadogan, Deputy City Attorney

DATE:

DATE:

ATTEST:  
\_\_\_\_\_, City Clerk

By: \_\_\_\_\_

Deputy

DATE:

THE UNIVERSITY OF SOUTHERN CALIFORNIA, a California non-profit corporation

APPROVED AS TO FORM:

\_\_\_\_\_

By: \_\_\_\_\_

Name:  
Title:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:  
Title:

**Exhibit A:**

**Legal Description of the Property**

PRELIMINARY DRAFT

**Exhibit B:**

**Depiction of the Property**

PRELIMINARY DRAFT