

32734

DISPOSITION AND DEVELOPMENT AGREEMENT

between

THE CITY OF LONG BEACH, CALIFORNIA

and

TEMPLE CREATIVE REALTY, LLC

(Property address: 224 - 230 East Broadway,
The American Hotel Building)

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Attachments

Attachment No. 1	Site Map
Attachment No. 2	Legal Description of the Site
Attachment No. 3	Schedule of Performance
Attachment No. 4	Grant Deed
Attachment No. 5	Scope of Development

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Attachment No. 8 Agreement Containing Covenants Affecting Real Property
Attachment No. 9 Certificate of Completion

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into on August 6, 2012, by and between THE CITY OF LONG BEACH, CALIFORNIA, a charter city ("City") and TEMPLE CREATIVE REALTY, LLC, a California limited liability company ("Developer"). City and Developer agree as follows:

1. SUBJECT OF AGREEMENT

1.1 Purpose of Agreement

The purpose of this Agreement is to provide for the conveyance by City of certain real property (the "Site") within the City of Long Beach to the Developer for rehabilitation and preservation of a historically significant structure totaling approximately 15,750 square feet of gross building area, with ground floor retail or restaurant uses and creative office space above, and utilizing a historically significant façade (the "Project"). Developer shall provide the tenant improvements required to serve office tenants.

1.2 The Site

The "Site" is that real property shown as the shaded area on the "Site Map" which is incorporated and attached to this Agreement as Attachment No. 1, and commonly known as 224 – 230 East Broadway, Long Beach, California, APN 7280-028-916. It is the parties' intention to increase the area of the Site through a lot line adjustment to move the southerly boundary of the existing Site up to an approximately eighteen feet and the easterly boundary of the existing Site approximately nine inches. A legal description of the Site, as increased by a lot line adjustment, is incorporated and attached as Attachment No. 2.

1.3 Parties to the Agreement

1.3.1 The City

The City is a charter city, exercising governmental functions and powers. The City is entering into this Agreement in its proprietary capacity only.

The principal office of the City for purposes of this Agreement is located at City Hall, 333 West Ocean Boulevard, third floor, Long Beach, California 90802.

1.3.2 The Developer

Developer is Temple Creative Realty, LLC, a California limited liability company. The sole member of Developer is InterTrend Communications, Inc.

The address of the Developer, for purposes of this Agreement, is: c/o InterTrend Communications, Inc., 555 E. Ocean Boulevard, 9th Floor, Long Beach, California 90802, Attn: Ms. Julia Huang.

1.3.3 Prohibition Against Change in Ownership, Management and Control of Developer

(a) Developer represents and agrees that its ownership of the Site and its other undertakings pursuant to this Agreement are, and will be used, for the purpose of acquisition of the Site and development of the Site, and not for speculation in landholding. Developer acknowledges that, in view of:

(i) the importance of the development of the Site to the general welfare of the community;

(ii) the public aids that have been made available by law and by the government for the purpose of making such development possible; and

(iii) the fact that a change in ownership or control of Developer or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or control of Developer or the degree thereof, is, for practical purposes, a transfer or disposition of the property then owned by Developer;

the qualifications and identity of Developer, and its principals, are of particular concern to the community and City. Developer further acknowledges that it is because of such qualifications and identity that City is entering into this Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement.

(b) Accordingly:

(i) Developer shall not assign all or any part of this Agreement; and

(ii) there shall be no change in the identity of the persons or entities which have majority control of Developer, by any method or means.

The restrictions of this Section shall terminate upon issuance by City of a Certificate of Completion for the Project as described in Section 3.5 of this Agreement.

2. DISPOSITION OF THE SITE

2.1 Sale and Purchase

In accordance with and subject to all the terms, covenants and conditions of this Agreement, the City agrees to sell the Site to Developer, and Developer agrees to purchase the Site from the City in consideration of its promises pursuant to Article 3 hereof (the "Purchase Price").

2.1.1 Conditions Precedent for the Benefit of City to Conveyance of the Site

City shall not be obligated to convey the Site until City has determined that the following conditions have been satisfied:

a. The Oversight Board of the Successor Agency to the Redevelopment Agency of the City of Long Beach and the State of California established pursuant to the provisions of H&S Code 34179 et seq. has either reviewed and approved the sale of the Site in accordance with this Agreement, or has declined to review the transaction contemplated by this Agreement, or has determined that it does not have jurisdiction over the transaction contemplated by this Agreement, and no action has been brought by any governmental agency or other third party challenging this Agreement under AB 1484 or any other applicable law.

b. Developer has entered into a construction contract with a reputable contractor experienced in renovating buildings of historical value, on such terms and conditions as are acceptable to the Director of Development Services of the City ("Director") in her reasonable discretion; such contract shall provide for the restoration and development of the American Hotel in accordance with the Scope of Development.

c. Developer has approved the environmental, geological and soils condition of the Site, including any mitigation measures and monitoring requirements which may be required by the City for the Project.

d. Developer has approved the General Plan and City's zoning as it affects the Site.

e. The Director has approved Developer's evidence of financing.

f. City has approved the Final Construction Drawings and related documents for the development of the Project.

g. The Director has approved Developer's construction budget for the Project.

h. The lot line adjustment has been approved and a final map (or other acceptable document) has been filed in the official records of Los Angeles County.

i. Developer and the Director have agreed upon a Pro Forma Title Report for the Site.

j. The Title Company confirms that the City is the fee owner of the Site.

k. The Title Company has committed to issuing a title policy substantially in conformance with the Pro Forma Title Report pursuant to Section 2.5 when Developer becomes the fee owner of the Site.

l. Developer shall have executed and delivered to City or the Escrow Agent the following documents in recordable form, the Grant Deed and the Agreement Containing Covenants.

m. Developer shall have presented proof acceptable to the Director that it has obtained insurance in accordance with the requirements of Section 3.1.11 below.

n. Developer's construction loan will close at the Close of Escrow.

o. Developer shall have obtained, or concurrently with the Close of Escrow and payment of fees shall obtain, a building permit for the improvements.

p. Developer shall have secured adequate parking for the Project.

q. Developer shall not be in default under this Agreement.

Within fourteen (14) business days after receipt from Developer of a written statement that all of the above conditions precedent to conveyance have been satisfied, City shall either notify Developer that it will proceed with conveyance of the Site, or deliver a written statement setting forth those conditions precedent which City submits have not been satisfied. The failure by City to respond to Developer's statement that the conditions precedent have been satisfied shall not be deemed to constitute a waiver of the conditions precedent set forth above.

2.1.2 Conditions Precedent for the Benefit of Developer to Conveyance of the Site

Developer shall not be obligated to accept conveyance of the Site until Developer has determined that the following conditions have been satisfied:

a. The environmental, geological and soils condition of the Site, including any mitigation measures and monitoring requirements which may be required by the City for the Project, are in all respects satisfactory.

b. Developer has approved the General Plan and City's zoning as it affects the Site.

c. Developer and the Director have agreed upon a Pro Forma Title Report for the Site.

d. The lot line adjustment has been approved and a final map (or other acceptable document) has been filed in the official records of Los Angeles County.

e. The Title Company has confirmed that the City is the fee owner of the Site with the authority to grant fee title of the Site to Developer.

f. The Title Company has committed to issuing a title policy substantially in conformance with the Pro Forma Title Report pursuant to Section 2.8 when Developer becomes the fee owner of the Site.

g. City shall have executed and delivered to Escrow Agent the following documents in recordable form, the Grant Deed and the Agreement Containing Covenants.

h. Developer shall have obtained insurance in accordance with the requirements of Section 3.1.11 below.

i. Developer shall have obtained, or concurrently with the Close of Escrow and payment of fees shall obtain, a building permit.

j. Developer shall have secured adequate parking for the Project.

k. City shall not be in default under this Agreement.

Developer shall not deliver to City a request to proceed until all of the above conditions precedent have been satisfied or waived by Developer.

2.2 Escrow

The City agrees to open an escrow with an escrow company (the "Escrow Agent") selected by City and acceptable to Developer, in Los Angeles County, California within the

time provided in the Schedule of Performance incorporated and attached as Attachment No. 3. This Agreement constitutes the joint escrow instructions of the City and the Developer, and a copy of this Agreement will be delivered to the Escrow Agent on the opening of escrow. The City and the Developer will provide additional escrow instructions as will be necessary and consistent with this Agreement and financing requirements. The Director of Development Services ("Director") is authorized to provide additional escrow instructions on the City's behalf. The Escrow Agent is empowered to act under this Agreement.

Any insurance policies of the City covering the Site are not to be transferred.

The Developer will pay in escrow to the Escrow Agent the following fees, charges and costs promptly after the Escrow Agent has notified the Developer of the amount of the fees, charges, and costs:

- 2.2.1 The escrow fee;
- 2.2.2 The premium for the title insurance policy; and
- 2.2.3 All recording fees.
- 2.2.4 Any State, County or City documentary stamps or transfer tax.

The City shall not have any responsibility to pay any costs required to close this transaction.

The City will, in a timely manner, acknowledge and deliver a properly executed Grant Deed in the form as set forth at Attachment No. 4 to the Escrow Agent conveying title to the Site in accordance with the requirements of Section 2.5 of this Agreement, together with written notice certifying that the Developer has completed all acts necessary to entitle Developer to the conveyance.

The Escrow Agent is authorized to:

- 2.2.5 Pay, and charge the Developer for any fees, charges and costs payable under this Section 2.2 of this Agreement. Before payments are made, the Escrow Agent will notify the Developer of the fees, charges and costs necessary to clear title and close the escrow; and
- 2.2.6 Record the Grant Deed and the Agreement Containing Covenants Affecting Real Property in the official records. The date the Grant Deed and the Agreement Containing Covenants are recorded in the official records is referred to as the "Close of Escrow."

All funds received in this escrow will be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general escrow account or accounts with any state or national bank doing business in the State of California. The funds may be transferred to any other general escrow account or accounts. All disbursements will be made on the basis of a thirty (30) day month.

If this escrow is not in condition to close on or before the time for conveyance established in Section 2.3 of this Agreement, either party who then will have fully performed the acts to be performed before the conveyance of title may, in writing, demand the return of its money, papers, or documents from the Escrow Agent. No demand for return will be recognized until ten (10) days after the Escrow Agent will have mailed copies of the demand to the other party or parties at the address of its principal place of business. Objections, if any, will be raised by written notice to the Escrow Agent and to the other party within the ten (10)-day period, in which event the Escrow Agent is authorized to hold all money, papers and documents until instructed by a mutual agreement of the parties or by a court of competent jurisdiction. If no demands are made, the escrow will be closed as soon as possible.

The Escrow Agent will not be obligated to return any money, papers or documents except on the written instructions of both the City and Developer, or until the party entitled to any money, papers or documents has been determined by a final decision of a court of competent jurisdiction.

Any amendment to these escrow instructions will be in writing and signed by both the City and Developer. At the time of any amendment the Escrow Agent will agree to carry out its duties as escrow agent under the amendment.

All communications from the Escrow Agent to the City or Developer will be directed to the addresses and in the manner established in Section 6.1 of this Agreement for notices, demands, and communications.

The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed on it under Sections 2.2 to 2.9, both inclusive, of this Agreement.

2.3 Conveyance of Title and Delivery of Possession

Subject to any mutually agreed on extensions of time, conveyance to the Developer of title to the Site (in accordance with the provisions of Section 2.5 of this Agreement) will be completed on or prior to the date specified in the "Schedule of Performance."

Possession of the Site will be delivered to Developer concurrently with conveyance of title in conformity with the provisions of Section 2.5 of this Agreement. Developer will accept title and possession on conveyance by the City.

2.4 Form of Deed

The City will convey to Developer title to the Site in the condition provided in Section 2.5 of this Agreement by grant deed in form as attached hereto as Attachment No. 4.

2.5 Condition of Title

Prior to the execution of this Agreement City delivered to Developer a preliminary title report for the Site from North American Title Company (the "Title Company") dated January 14, 2011, Order Number 1063653 ("PTR") together with underlying documents. Developer hereby agrees that those exceptions to title shown as numbers 1 and 3 through 8 to Schedule B of the PTR are permitted exceptions to title, together with all exceptions created by the Grant Deed and the Agreement Containing Covenants Affecting Real Property (the "Permitted Exceptions"). Possessory rights and all monetary liens other than taxes not yet due and payable are not Permitted Exceptions. In addition, title to the Site shall be subject to other matters of record that do not interfere with development, and to the exclusion therefrom (to the extent now or hereafter validly excepted and reserved by the parties named in existing deeds, leases, and other documents of record) of all oil, gas, hydrocarbon substances and minerals of every kind and character lying more than 500 feet below the surface, together with the right to drill into, through, and to use and occupy all parts of the Site lying more than 500 feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from the Site but without, however, any right to use either the surface of the Site or any portion thereof within 500 feet of the surface for any purpose or purposes therefor whatsoever. At the Close of Escrow, Title Company will deliver to Developer a CLTA owner's policy of title insurance insuring fee simple to the Site, subject only to the Permitted Exceptions, in the amount as set forth at Section 2.8 below (the "Title Policy").

2.6 Time and Place for Delivery of Deed

The City will deposit the Grant Deed to the Site and the Agreement Containing Covenants with the Escrow Agent on or before three days prior to the date established for the date of conveyance pursuant to the "Schedule of Performance," Attachment No. 3.

2.7 Lot Line Adjustment

Developer shall prepare and file with the Department of Development Services, at its cost, an application for a lot line adjustment, together with all required materials, to

move the southerly boundary eighteen (18) feet to the south and the easterly boundary nine (9) inches to the east, so that the dimensions of the Site shall be approximately 76 feet by 68 feet. City (as party to this Agreement) shall cooperate with Developer to assist in the preparation of the application and to obtain City's (in its governmental capacity) approval of the application. Developer acknowledges that City has entered into this Agreement in its proprietary capacity, and that this Agreement does not insure that City will approve the application for the lot line adjustment.

2.8 Title Insurance

Concurrently with recordation of the Deed conveying title to the Site, Title Company will deliver to the Developer a title insurance policy issued by the Title Company insuring that the title to the Site is vested in Developer in the condition required by Section 2.5 of this Agreement. The Title Company will provide the City with a copy of the title insurance policy. The title insurance policy for the Site will be in the amount of the anticipated value of the Project as completed, one million eight hundred two thousand one hundred twenty five dollars (\$1,802,125).

The Developer will pay for all title insurance premiums and for extended coverage or special endorsements.

2.9 Taxes and Assessments

Ad valorem taxes, possessory interest tax, and assessments, if any, on the Site, will be paid by the City prior to conveyance.

2.10 Occupants of the Site

Title to the Site will be conveyed by City to Developer free of any possession or right of possession.

2.11 Zoning of the Site

If necessary, Developer, at its sole cost and expense, shall exert its best efforts to secure zoning at the time of conveyance to be such as to permit development and construction of improvements on the Site in accordance with the provisions of this Agreement. City, acting in its proprietary capacity through the Department of Development Services, agrees to cooperate with Developer and to exert its best efforts to secure such zoning. If the City does not change the zoning where requested, Developer shall still proceed with development that is in accord with City zoning ordinances. The City's Department of Development Services will cooperate in any effort to change the zoning, but it is unable, in its proprietary capacity, to cause any change over the City's refusal.

Developer will pay all costs associated with a change in the zoning or obtaining any permits from the City.

2.12 Condition of the Site

2.12.1 AS-IS.

DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS SELLING AND DEVELOPER IS PURCHASING THE SITE ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT, DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE SITE, INCLUDING WITHOUT LIMITATION: (i) the quality, nature, adequacy and physical condition and aspects of the Site, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Site, (iv) the development potential of the Site, and the Site's use, habitability, merchantability, or fitness, or the suitability, value or adequacy of the Site for any particular purpose, (v) the zoning or other legal status of the Site or any other public or private restrictions on use of the Site, (vi) the compliance of the Site with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence of Hazardous Substances (as defined below) on, under or about the Site or the adjoining or neighboring property, and (viii) the condition of title to the Site.

a. "Hazardous Substance(s)" means any substance or material that is described as a toxic or hazardous substance, waste or material or a pollutant or contaminant or infectious waste, or words of similar import, in any local, state or federal environmental laws, and includes asbestos, petroleum or petroleum products (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), polychlorinated byphenyls, urea formaldehyde, radon gas, radioactive matter, medical waste, and chemicals which may cause cancer or reproductive toxicity.

2.12.2. Environmental Disclosures.

The City will give all environmental information in its possession regarding the Site to Developer; however, the City makes no representations or warranties as respects the suitability of the soils for the use or uses to which the Site will be put. It is the Developer's sole responsibility, at its expense, to determine the suitability of the Site for the proposed development. If the structural, geological or environmental conditions of the Site, or any portion thereof, are not in all respects entirely suitable

for the use or uses to which the Site will be put, then it is the obligation of Developer to take such actions as may be necessary to place the Site in a condition entirely suitable for the development thereof.

2.12.3. Natural Hazards Disclosures.

Without limiting Paragraph 2.12.1, City and Developer acknowledge that the Disclosure Statutes (as defined below) provide that a seller of real property must make certain disclosures regarding certain natural hazards potentially affecting the property, as more particularly provided in the Disclosure Statutes. As used in this Agreement, "Disclosure Statutes" means, collectively, California Government Code Sections 8589.3 (special flood hazard area), 8589.4 (area of potential flooding) and 51183.5 (very high fire hazard), California Public Resources Code Sections 2621.9 (earthquake fault zone), 2694 (seismic hazard zone) and 4136 (state responsibility area) and any other California statutes that require City to make disclosures concerning the Site. At least fifteen (15) days prior to the Close of Escrow City shall cause the Escrow Agent to deliver to Developer all natural hazard disclosure reports (the "Reports") required by the Disclosure Statutes. Upon acceptance of conveyance of the Site, Developer agrees as follows with respect to the Disclosure Statutes and the Reports:

- a. Developer has received all Reports and they satisfy all obligations and requirements of City under the Disclosure Statutes.
- b. Developer has had an opportunity to review all Reports and to investigate the disclosures and information.
- c. City shall not be liable for any error or inaccuracy in, or omission from, the information in the Reports.
- d. The Reports are provided by City for purposes of complying with the Disclosure Statutes and shall not be deemed to constitute a representation or warranty by City as to the presence or absence in, at or around of the Site of the conditions that are the subject of the Disclosure Statutes.

2.12.4 Site Remediation Prior to Close of Escrow.

In the event that prior to the Close of Escrow, the environmental, soils or geological conditions of the Site, or any part of it, are not suitable, or the Site contains contaminants in excess of permissible levels, for the use or uses to which the Site will be put, as permitted by the Project and as determined by Developer in its reasonable discretion, Developer may terminate this Agreement prior to the Close of Escrow, as provided in Section 5.4.1 of this Agreement.

2.12.5 Developer Responsibility After Close of Escrow.

After the Close of Escrow, and whether or not City has provided any of the disclosures set forth above, it shall be Developer's responsibility to remedy such soil or geologic condition at its cost and to fulfill its obligations hereunder.

2.12.6 Release.

Without limiting Paragraphs 2.12.1 through 2.12.5, Developer on behalf of itself and its successors and assigns waives its right to recover from, and forever releases and discharges City and its affiliates, and its officers, attorneys, employees and agents, and its successors and assigns, from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the Site including, without limitation, the physical or environmental condition of the Site or any law or regulation applicable thereto, including without limitation, any laws, rulings or orders concerning the dissolution of redevelopment agencies and the transfer of real estate assets in connection therewith. With respect to the waiver and release set forth herein relating to unknown and unsuspected claims, Developer hereby acknowledges that such waiver and release is being made after obtaining the advice of counsel and with full knowledge and understanding of the consequences and effects of such waiver, and that such waiver is made with the full knowledge, understanding and agreement that California Civil Code Section 1542 provides as follows, and that the protections afforded by said code section are hereby waived:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

This Paragraph 2.12.6 shall be effective as of the Close of Escrow.

2.13 Preliminary Work by the Developer

Prior to the conveyance of title to the Site to Developer, representatives of the Developer will have the right of access to the Site at all reasonable times for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement. Developer hereby indemnifies and holds the City harmless from any injury or damages

arising out of any activity of Developer, its agents, employees and contractors, performed and conducted on the Site pursuant to this Section.

2.14 Submission of Evidence of Financing

The Developer will submit to the City evidence reasonably satisfactory to the City that the Developer has the financing necessary for the development of the Site, in accordance with the Schedule of Performance, Attachment No. 3. Developer's evidence of financing shall include, without limitation, a construction budget showing the projected predevelopment and development costs of the Project and a sources and uses statement showing that the projected funding sources will be available as needed to fund all such projected costs at the time incurred.

2.15 Construction Contract

Developer agrees to deliver to City, for its review, a fully executed and effective construction contract (the "Construction Contract") for construction of the Project, which Construction Contract shall obligate a reputable and financially responsible General Contractor(s) capable of being bonded and licensed in California and with experience in completing the type of Improvements contemplated by this Agreement, to commence and complete the construction of the Project in accordance with this Agreement and at the price stated therein. The General Contractor shall have experience renovating historical structures acceptable to the Director. City shall review said Construction Contract within ten (10) business days of its submission for purposes of confirming that said contract is for construction of the Project as approved by City in the final construction drawings. Such confirmation shall not constitute a waiver by City of any breach or violation of this Agreement that is a result of acts that are or purport to be in compliance with or in furtherance of said Construction Contract.

2.16 Performance Deposit

Prior to City's execution of this Agreement, Developer shall deposit with the City a performance deposit (the "Performance Deposit") in the amount of Ten Thousand Dollars (\$10,000). In the event that this Agreement is terminated pursuant to Section 5.4.2, or a Certificate of Completion is not issued pursuant to Section 3.6 below, City shall retain the Performance Deposit. In the event that this Agreement is terminated pursuant to Section 5.4.1, or if this Agreement is not terminated and a Certificate of Completion is issued pursuant to Section 3.5 below, the entire Performance Deposit shall be returned to the Developer.

2.18 LBMNHA Grant.

Developer has been awarded by the Long Beach Navy Memorial Heritage Association a grant (the "LBNMHA Grant") in the amount of twenty five thousand dollars (\$25,000) to assist Developer to pay for costs directly related to that portion of the Project directly related to the restoration of the façade of the existing improvements (the "Façade Project"), and as identified on the Facade Services and Construction Budget.

2.18.1 Cultural Heritage Plans. As noted in the Scope of Development, the Façade Project must comply with the plans approved by the Cultural Heritage Commission ("CHC") on November 8, 2010, which plans are attached to the Scope of Development as Exhibit A. Any change to the Façade Project from the CHC approved plans must be approved in advance and in writing by the Director of Development Services or designee, or by the CHC.

3. DEVELOPMENT OF THE SITE

3.1 Development of the Site

3.1.1 Scope of Development

The Site will be developed according to the "Scope of Development" incorporated and attached to this Agreement as Attachment No. 5. Prior to the recordation of a Certificate of Completion, the Developer will not substantially change the site plan, building design, proposed use, or proposed occupancy of the site without prior written approval of the Director. Developer shall provide tenant improvements required to serve office tenants.

3.1.2 Basic Concept Drawings

The Developer has prepared and submitted to the City the Site Plan and Development Review Drawings and related documents for the development of the Site, which drawings and related documents were approved upon execution of this Agreement by City.

The development will be as generally established in the Site Plan and Development Review Drawings and related documents.

3.1.3 Site Plans and Related Documents

The Developer has prepared and submitted site plans, elevations and related documents in preliminary stages for the development of the Site to the City for review and written approval. Any items so submitted and approved in writing by the City will not be subject to subsequent disapproval by City.

3.1.4 City Approval of Plans, Drawings and Related Documents

The City will have the right of architectural review of all plans and submissions, including any changes.

The City will approve or disapprove the plans, drawings, and related documents referred to in this Agreement within the times established in the Schedule of Performance, Attachment No. 3. Failure by the City to either approve or disapprove within the time established in the Schedule of Performance will be deemed an approval. The Developer, on receipt of a disapproval based on powers reserved by the City, will revise such portions as are not a logical evolution of the construction drawings and related documents and resubmit to the City as soon as possible after receipt of the notice of disapproval.

All materials shall be subject to the prior approval of the Planning Bureau.

The exercise by City of its right of review of Developer's plans, specifications and drawings pursuant to this Agreement is to monitor conformity to and compliance with the Schedule of Performance and the design and exterior architectural treatment agreed to by Developer and approved by City in the Scope of Development; the approved plans, drawings, and related documents; and this Agreement.

3.1.5 City and Other Governmental Permits

Before commencement of construction or development of any building, structures or other work of improvement on or with the Site, the Developer will at its own expense secure or cause to be secured any and all permits which may be required by the City or any other federal, state or local governmental agency having jurisdiction over such demolition, clearance, construction, development or work. The City in its proprietary capacity acting through the Department of Development Services will provide all proper assistance to the Developer in securing these permits. To the extent that any environmental document under the California Environmental Quality Act is required with respect to the development under this Agreement, the City will prepare such documents at Developer's expense. Developer agrees to provide all information, assistance and cooperation necessary to prepare the document.

Nothing contained herein shall be deemed to entitle Developer to any City permit or other City approval necessary for the development of the Site, or waive any applicable City requirements relating thereto. This Agreement does not (a) grant any land use entitlement to Developer, (b) supersede, nullify or amend any condition which may be imposed by the City in connection with approval of the development described herein, (c) guarantee to Developer or any other party any profits from the development of the Site, or

(d) amend any City laws, codes or rules. This is not a Development Agreement as provided in Government Code Section 65864.

3.1.6 Construction Costs and Schedule

The cost of developing the Site and constructing all improvements, including costs associated with implementing mitigation measures as required to comply with the California Environmental Quality Act, will be borne by the Developer.

The Developer will begin and complete all construction and development within the times specified in the Schedule of Performance. The Schedule of Performance is subject to revision from time to time as mutually agreed on in writing between the Developer and City. The Director, in her reasonable discretion, may extend the times for performance as set forth in the Schedule of Performance up to a cumulative total of one hundred eighty (180) days.

3.1.7 Hiring Practices and Preferences; Job Training

To assist in providing job opportunities to lower income residents of the City, Developer shall utilize the services of the City's Pacific Gateway Workforce Investment Network (the "Network") as provided in this Section. The Network administers a Job Training Program pursuant to state and federal law which program provides opportunities to local residents and contractors to apply and/or bid for work on projects developed within the City (the "Network Services"). Developer and/or its contractor or subcontractors shall invite the Director of the Network to attend any pre-bid conferences in order to ensure that the contractor and its subcontractors understand the requirements of this Section. In addition, prior to the commencement of construction Developer shall meet with the Director of the Network (or designee) in order to notify the Network of anticipated workforce needs. Thereafter, Developer shall provide to the Network notice of opportunities for training, employment or bidding for contracts in order that the Network may provide local residents and contractors with the ability to apply and/or bid for work on the Project. Developer shall in good faith and as practicable utilize, and shall require its contractors and subcontractors to utilize, in good faith and as practicable, the Network Services in their hiring programs in connection with the development of the Project. For Developer's Contractor or subcontractors that are unionized, such Contractor or subcontractors may notify the union representative of anticipated workforce needs in lieu of notifying the Network. The ultimate determination of employment or contracting, however, shall remain with Developer and its contractors and subcontractors in their sole discretion.

Prior to the issuance of a certificate of occupancy for the Project Developer shall deliver to the Director a written report setting forth its compliance with the requirements of this Section.

For any portion of the Project subject to the Prevailing Wage law, Developer shall require its contractors and their subcontractors to submit to Developer their certified payrolls for each pay day, and Developer shall maintain such certified payrolls on behalf of the City. Developer shall submit such certified payrolls to the Network within thirty (30) days after issuance of the Certificate of Completion. Developer shall maintain the certified payrolls for at least two (2) years after the issuance of a certificate of occupancy for the Project, or longer if required by the California Department of Industrial Relations.

3.1.8 Rights of Access

Representatives of City shall have the reasonable right of access to the Site throughout the Project without charge or fees, at normal construction hours, during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. City agrees to and shall indemnify, defend and hold harmless Developer from any and all injuries or damages arising out of the negligence of said representative while on the Site.

3.1.9 Local, State and Federal Laws; Prevailing Wage

Developer shall carry out the construction of the Project in conformity with all applicable laws, including all applicable federal and state labor standards. City makes no representation that the Project is or is not a "public work" as defined in California Labor Code Section 1720.

Prevailing Wage. Developer agrees that all public work (as defined in California Labor Code Section 1720) performed pursuant to this Agreement (the "work") shall comply with the requirements of California Labor Code Sections 1770 et seq. In all bid specifications, contracts and subcontracts for the work, Developer (or its general contractor, in the case of subcontracts) shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification or type of worker needed to perform the work, and shall include such rates in the bid specifications, contract or subcontract. Such bid specifications, contract or subcontract must contain the following provision:

It shall be mandatory for the contractor to pay not less than the said prevailing rate of wages to all workers employed by the contractor in the execution of this contract. The contractor expressly agrees to comply with the penalty provisions of California Labor Code Section 1775 and the payroll record keeping requirements of California Labor Code Section 1771.

Developer shall indemnify and hold City harmless from and against any and all claims, demands, causes of action, obligations, damages, liabilities, costs and expenses, including reasonable attorneys' fees, that may be asserted against or incurred by City with respect to

or in any way arising from Developer's compliance with or failure to comply with applicable laws, including all applicable federal and state labor standards including without limitation the requirements of Labor Code Section 1720.

3.1.10 Nondiscrimination During Construction

Developer for itself, its successors and assigns, agrees that in the construction of the improvements on the Site provided for in this Agreement, Developer will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, sexual orientation, AIDS, AIDS-related condition, age, marital status, disability or handicap, or Vietnam Era veteran status.

3.1.11 Indemnification; Bodily Injury and Property Damage Insurance

Developer agrees to and shall defend, indemnify and hold City harmless from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of the death of any person or any accident, injury, loss, or damage whatsoever caused to any person or to the property of any person resulting from the alleged negligent or intentional acts or omissions of Developer, its officers, agents or employees in the performance of this Agreement.

This indemnification provision supplements and in no way limits the scope of the indemnification set out elsewhere in this Agreement. The indemnity obligation of Developer under this Section 3.1.11 shall survive the expiration or termination, for any reason, of this Agreement.

(a) Required Insurance Coverage. Prior to any entry on the Site, until the issuance of the Certificate of Completion, developer shall procure and maintain, at Developer's expense, the following insurance coverages from insurance carriers authorized to write insurance in the State of California or nonadmitted insurers listed in the California Department of Insurance List of Eligible Surplus Line Insurers (LESLI) with a current rating of or equivalent to A:VIII by A.M. Best Company:

(i) Commercial general liability insurance equivalent in scope to ISO form CG 00 01 11 85 or 11 88 in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate. Such coverage shall include but shall not be limited to independent contractors liability, broad form contractual liability, cross liability protection, and products and completed operations liability. The City and its officials, employees, and agents shall be named as additional insureds by endorsement equivalent in scope to ISO form CG 20 26 11 85 with respect to liability arising out of activities by or on behalf of Developer or in connection with the development, use or occupancy

of the Site. This insurance shall contain no special limitations on the scope of protection afforded to the City and its officials, employees, and agents.

(ii) Commercial automobile liability insurance equivalent in scope to ISO form CA 00 01 06 92 covering Auto Symbol 1 (Any Auto) in an amount not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

(iii) Professional liability insurance in an amount not less than One Million Dollars (\$1,000,000) per claim covering the work of any person providing architectural, engineering, environmental, landscape architectural, surveying, project management, soils engineering, or other professional services with respect to the development and construction of the Facilities. If such insurance is written on a claims-made basis, it must be provided with a pre-paid, one-year extended reporting endorsement incepting at the date of the Certificate of Completion.

(iv) "All Risk" Property insurance, including builder's risk protection during the course of construction and debris removal, in an amount sufficient to cover the full replacement value of all buildings and structural improvements erected on the Site. The City shall be named as additional insured and loss payee under a standard loss payable endorsement.

Developer shall also obtain coverage for the perils of earthquake and flood, if available from responsible insurance companies at commercially reasonable rates, and the City be named as an additional insured and loss payee under a standard loss payable endorsement.

(v) All Risk property insurance in an amount sufficient to cover the full replacement value of Developer's personal property, improvements and equipment on the Site.

(vi) Workers' compensation insurance as required by the Labor Code of the State of California and endorsed, as applicable, to include United States Longshoremen and Harbor Workers' Act coverage, Jones' Act coverage, and employer's liability insurance with minimum limits of One Million Dollars (\$1,000,000) per accident.

(b) Insurance Requirements for Developer's Contractors and Subcontractors. Developer shall require Developer's contractors and subcontractors to meet the insurance requirements herein as applicable. With respect to Section 3.1.11(a)(i), the limit applicable to this Section shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two

Million Dollars (\$2,000,000) in aggregate. With respect to Section 3.1.11(a)(iv), this insurance is not applicable to this Section. In addition, City's Risk Manager shall consider contractors' and subcontractors' written requests for modification of the insurance requirements based on the scope of work to be performed.

(c) Waiver of Subrogation. With respect to damage to property, City and Developer hereby waive all rights of subrogation, one against the other, but only to the extent that collectible commercial insurance is available for said damage.

(d) Self-insurance and Deductibles. Any self-insurance program, self-insured retention, or deductible must be approved separately in writing by City's Risk Manager or designee and shall protect the City and its officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention or deductible provisions.

(e) Cancellation; Severability of Interests; Primary and Noncontributing. In addition to the endorsements specified herein, each insurance policy required herein shall also be endorsed to provide as follows: (a) that coverage shall not be voided, canceled or changed by either party except after thirty (30) days prior written notice to City, (b) that the insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; and (c) and that coverage shall be primary and not contributing to any other insurance or self-insurance maintained by City and its officials, employees, or agents.

(f) Delivery of Insurance Documentation.

(i) Prior to the start of performance under this Agreement, Developer shall deliver to City certificates of insurance and required endorsements evidencing the insurance coverage required by this Agreement for approval as to sufficiency and form, including any insurance required of Developer's contractors or subcontractors. The certificates and endorsements shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf.

(ii) Developer shall, at least thirty (30) days prior to expiration of the policies of insurance required herein, furnish City with certificates of insurance and endorsements evidencing renewal of the insurance required herein. City reserves the right to require complete certified copies of all policies of the Developer or any of the Developer's contractors or subcontractors at any time.

(g) No Limitation of Liability. The insurance required herein shall not be deemed to limit Developer's liability relating to performance under this Agreement. The procuring of insurance shall not be construed as a limitation on

liability or as full performance of the indemnification and hold harmless provisions of this Agreement. Developer understands and agrees that, notwithstanding any insurance, Developer is obligated to defend, indemnify, and hold City, and its officials, employees, and agents harmless hereunder for the full and total amount of any damage, injury, loss, expense, cost, or liability caused by the condition of the Site or in any manner connected with or attributed to the acts, omissions or operations of Developer, its officers, agents, contractors, subcontractors, employees, Developers, or visitors, or their use, misuse, or neglect of the Site.

(h) Books and Records. Developer agrees to make available to City all books, records and other information relating to the insurance coverage required by this Agreement during normal business hours.

(i) Amendments to the Insurance Provisions.

(i) If in the opinion of City's Risk Manager from time to time, the amount, scope, or type of insurance coverage specified herein is not adequate, Developer shall amend its insurance as required by City's Risk Manager or designee.

(ii) Any modification or waiver of the insurance requirements herein shall be made only with the written approval and sole discretion of the City's Risk Manager or designee after a written request from Developer.

3.2 Prohibition Against Transfer

Prior to the recordation by the City of a Certificate of Completion of construction for the Site, the Developer will not make any total or partial sale, transfer or conveyance, or assign the whole or any part of, the Site or the buildings or structures on the Site. This prohibition will not be deemed to prevent the granting of temporary easements or permits to facilitate the development of the Site.

No transfer or assignment will be deemed to relieve the Developer or any other party from any obligations under this Agreement.

3.3 Security Financing; Right of Holders

3.3.1 No Encumbrances Except Mortgages, Deeds of Trust or Other Conveyance for Financing for Development

Mortgages, deeds of trust or any other form of conveyance required for any reasonable method of financing are permitted before completion of the construction of the improvements, but only for the purpose of securing loans of funds to be used for financing

the acquisition of the Site, the construction of the improvements on the Site, and any other expenditures necessary and appropriate to develop the Site under this Agreement. The Developer will notify the City in advance of any mortgage or deed of trust. The Developer will not enter into any conveyance for financing without the prior written approval of the Director, which will be deemed approved unless rejected in writing by the City within thirty (30) days after notice is given to the City.

3.3.2 Holder Not Obligated to Construct Improvements

The holder of any mortgage or deed of trust or other security interest authorized by this Agreement will in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee construction or completion; nor will any covenant or any other provision in the deed be construed so to obligate the holder. Nothing in this Agreement will be deemed to construe, permit, or authorize any holder to devote the Site or any part of it to any uses, or to construct any improvements authorized by this Agreement.

3.3.3 Notice of Default to Mortgagee or, Deed of Trust or Other Security Interest Holders; Right to Cure

Whenever the City will deliver any notice or demand to the Developer with respect to any breach or default by the Developer in completion of construction of the improvements, the City will at the same time deliver to each holder of record of any mortgage, deed of trust or other security interest authorized by this Agreement a copy of such notice or demand. Each holder will (insofar as the rights of the City are concerned) have the right at its option within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any default and to add the cost to the security interest debt and the lien on its security interest. Nothing contained in this Agreement will be deemed to permit or authorize the holder to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed Developer's obligations to City by written agreement satisfactory to the City. The holder in that event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform the obligations. Any holder properly completing the improvements will be entitled, upon written request made to the City, to a Certificate of Completion from the City.

3.3.4 Failure of Holder to Complete Improvements

In any case where three months after default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage, deed of trust or other security interest creating a lien or encumbrance on the Site or any part of it

has not exercised the option to construct, or if it has exercised the option and has not proceeded diligently with construction, the City may purchase the mortgage, deed of trust or other security interest by payment to the holder of the amount of the unpaid debt. If the ownership of the Site or any part of it has vested in the holder, the City, if it so desires, will be entitled to a conveyance from the holder to the City of the Site or any part on payment to the holder of an amount equal to the sum of the following:

- a. The unpaid mortgage, deed of trust or other security interest debt at the time title became vested in the holder less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings.
- b. All expenses with respect to foreclosure.
- c. The net expenses, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site.
- d. The costs of any improvements made by such holder.
- e. An amount equivalent to the interest that would have accrued on the aggregate of the amounts had all the amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the City.

3.3.5 Right of the City to Cure Mortgage, Deed of Trust Default or Other Security Interest Default

In the event of a default or breach by the Developer of a mortgage, deed of trust or other security interest prior to the recordation of a Certificate of Completion for the improvements on the Site and the holder of any security interest has not exercised its option to construct, the City may cure the default. In that event, the City will be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City will also be entitled to a lien on the Site to the extent of such costs and disbursements. Any lien will be subject to mortgages, deeds of trust or other forms of financing executed for the sole purpose of obtaining funds to purchase and develop the Site.

3.4 Right of the City to Satisfy Other Liens on the Property After Title Passes

After the conveyance of title to the Site and prior to the recordation of a Certificate of Completion for construction, and after the Developer has had a reasonable time to challenge, cure or satisfy any liens or encumbrances on the Site, the City will have the right

to satisfy any liens or encumbrances, provided, however, that nothing in this Agreement will require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith will contest the validity or amount, and so long as the delay in payment will not subject the Site or any part of it to forfeiture or sale.

3.5 Parking

The American Hotel is a designated City landmark building. The current zoning designation of the American Hotel is within the Downtown Plan which currently allows the ground floor of existing landmark buildings to be converted to restaurant, retail or entertainment use without providing additional parking. Developer is required to provide code-required parking for the other portions of the Project, as required by the Planning Bureau. The Project does not and will not have on-site parking. City and Developer shall cooperate to determine a suitable location for the off-site parking. As of the date of this Agreement, City intends to offer parking for the Project on the vacant parcel adjacent to and south of the Site. Whether or not City is able to offer parking for the Project, it is Developer's responsibility to secure parking for the Project and to enter into an agreement or agreements with the provider(s) of the off-site parking as required to obtain a certificate of occupancy.

3.6 Certificate of Completion

Upon completion of all construction to be completed by the Developer on the Site, after receipt of a Certificate of Occupancy and thirty (30) days after recording of a Notice of Completion pursuant to Civil Code Section 3093 in the official records, the Director will furnish the Developer with a Certificate of Completion, in form as attached hereto as Attachment No. 9, on written request by the Developer. The Director will not unreasonably withhold such certificate. The certificate will provide that satisfactory completion of the construction required by this Agreement has been conclusively determined by the City. On issuance of the Certificate of Completion the respective rights and obligations of the parties with reference to the Site will be limited to those stated in the Grant Deed to the Site and the Agreement Containing Covenants and in such other recorded documents as will be joined in by Developer to impose certain restrictions and covenants on the use of the Site pursuant to this Agreement. All restrictions and covenants not previously terminated will cease and terminate at such time as the improvements constructed pursuant to this Agreement are no longer maintained on the Property, except the covenants against discrimination, which covenants will remain in perpetuity.

A Certificate of Completion of construction for the entire improvement on the Site will be in a form as to permit it to be recorded in the Recorder's Office of Los Angeles County.

The Certificate of Completion will not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the improvements, or any part thereof. The Certificate of Completion is not a notice of completion as referred to in California Civil Code Section 3093.

4. USE OF THE SITE

4.1 Uses

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site or any part of it, that during construction and after construction the Developer, those successors and assigns will devote the Site to the uses specified in the Agreement Containing Covenants, the Grant Deed and the other recorded documents as will be joined in by Developer to impose certain restrictions and covenants on the Site pursuant to this Agreement, including but not limited to the restrictions and covenants as are contained in the Scope of Development and in Sections 4.2 – 4.5 inclusive.

4.2 Maintenance of Site

Developer agrees that the Site shall be maintained in a clean and attractive condition at all times, as provided in the Agreement Containing Covenants Affecting Real Property, Attachment No. 8 hereto.

4.3 Obligation to Refrain from Discrimination

Developer covenants and agrees for itself, its successors and its assigns in interest to the Site or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code or Vietnam Era veteran status, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land. Developer agrees that compliance with the Americans with Disabilities Act ("ADA") shall be its sole responsibility and shall defend, indemnify and hold harmless the City and the City of Long Beach for any liability arising from failure to comply therewith.

4.4 Form of Nondiscrimination and Nonsegregation Clause

Developer shall refrain from restricting the rental, sale or lease of the Site on the basis of sex, sexual orientation, marital status, race, color, creed, religion, ancestry or national origin of any person. All deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

4.4.1 In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, or Vietnam Era veteran status, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

4.4.2 In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, or Vietnam Era veteran status, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

4.4.3 In contracts: "There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, or Vietnam Era veteran status, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the

transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

4.5 Commercial Uses Only

The Site and the improvements thereon shall be used for commercial uses only. Residential uses and “live/work” uses shall not be permitted.

4.6 Promenade Maintenance District

Developer shall participate, with other developers along the Promenade between Ocean Avenue and Third Street, in a Promenade maintenance district (the “Maintenance District”). Those developers on the west side of Long Beach Boulevard between First Street and Broadway, including Developer, will participate in the maintenance district at a 50% level. The Maintenance District was initially managed by the Redevelopment Agency of the City of Long Beach; City as successor in interest to the Redevelopment Agency is now managing the Maintenance District, and shall be responsible for the maintenance and repair of the Promenade between Ocean Boulevard and 3rd Street. Developer’s obligation to participate in the Maintenance District is contained in the Agreement Containing Covenants.

5. DEFAULTS, REMEDIES AND TERMINATION

5.1 Defaults - General

Subject to the extensions of time stated in Section 6.5, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. A party who so fails or delays must immediately commence to cure, correct, or remedy the failure or delay, and will complete the cure, correction or remedy with reasonable diligence.

The injured party will give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, and except as otherwise expressly provided in this Agreement, the injured party may not institute proceedings against the party in default until thirty (30) days after giving notice. Delay in giving notice will not constitute a waiver of any default, nor will it change the time of default. The Director is authorized to give written notice of default on the City's behalf.

Any failures or delays by either party in asserting any of its rights and remedies as to any default will not operate as a waiver of any default or of any rights or remedies, or

deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any rights or remedies.

5.2 Legal Actions

5.2.1 Institution of Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. These legal actions must be instituted in the Superior Court of the County of Los Angeles, State of California, in any appropriate court in that county, or in the Federal District Court in the Central District of California.

5.2.2 Applicable Law

The laws of the State of California will govern the interpretation and enforcement of this Agreement.

5.3 Rights and Remedies are Cumulative

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of these rights or remedies will not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

5.4 Remedies and Rights of Termination Prior to Conveyance

5.4.1 Termination by Developer

In the event that:

- a. the City does not approve this Agreement within sixty (60) days after the date of signature by Developer and deliver a copy to the Developer; or
- b. the City, after satisfaction of all conditions precedent, does not allow Developer the right to access the Site; or
- c. the City cannot insure fee title to the Site by the date set forth therefor in the Schedule of Performance; or
- d. the City does not tender conveyance of the Site or possession of it, in the manner and condition, and by the date provided in this Agreement; or

e. the Developer fails after reasonable diligence, to secure the right, upon acquisition of title and payment of fees, to obtain permits necessary for the development of the Site pursuant to this Agreement; or

f. prior to the Close of Escrow, the soils of the Site contain contaminants in excess of permissible levels for the use or uses to which the Site will be put, and the City fails to take such actions as may be necessary to place the soils of the Site in a condition suitable for the development of the Site; or

g. prior to the Close of Escrow, the soils and geologic conditions of the Site are not in all respects entirely suitable for the use or uses to which the Site will be put, and Developer determines that development of the Project is economically infeasible;

then this Agreement will, at the option of the Developer, be terminated by written notice to the City. Thereafter, City and Developer will have no further rights against or liability to the other under the Agreement with respect to the Site. In the event of the occurrence of any event stated in this Section above, the right of termination provided in this Section will be Developer's sole and exclusive remedy. Upon termination pursuant to this Section, the Performance Deposit shall be returned to the Developer.

5.4.2 Termination by City

In the event that prior to the conveyance of the Site to the Developer and in violation of this Agreement:

a. the Developer assigns or attempts to assign the Agreement or any rights in it, or in the Site; or

b. the Developer fails to commence construction of the Project in accordance with the Schedule of Performance, and to diligently construct the Project to completion; or

c. there is a change in the ownership of the Developer, or with respect to the identity of the parties in control of the Developer, or the degree thereof contrary to the provisions of Section 1.5.3; or

d. the Developer does not submit site and elevation plans, insurance certificates and related documents, as required by this Agreement, in satisfactory form and in the manner and by the dates respectively provided in this Agreement; or

e. the Developer does not take title to the Site on tender of conveyance by the City pursuant to the Agreement; or

f. the Developer secures the right, conditioned only upon acquisition of title and payment of fees, to obtain permits from governmental agencies as required (including, but not limited to the City of Long Beach) necessary for the development of the Site and nonetheless fails to proceed with development in accordance with the Schedule of Performance; or

g. the Developer fails to use diligent efforts to obtain the financing necessary for the acquisition and development of the Site,

then this Agreement, and any rights of the Developer, or any assignee or transferee, in the Agreement or the Site, will at the option of the City, be terminated by written notice to the Developer. Thereafter, City and Developer will have no further rights against or liability to the other under the Agreement with respect to the Site. Upon termination pursuant to paragraphs a. through g., inclusive, of this Section, the Performance Deposit shall be retained by the City. **NOTWITHSTANDING ANY CONTRARY PROVISION CONTAINED HEREIN, IN THE EVENT THIS AGREEMENT IS TERMINATED BECAUSE OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF DEVELOPER, THE PERFORMANCE DEPOSIT (I.E., \$10,000) SHALL BE RETAINED BY CITY AS LIQUIDATED DAMAGES. THE PARTIES ACKNOWLEDGE THAT CITY'S ACTUAL DAMAGES IN THE EVENT OF A DEFAULT BY DEVELOPER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE PERFORMANCE DEPOSIT HAS BEEN AGREED ON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES AND AS CITY'S EXCLUSIVE REMEDY AGAINST DEVELOPER IN THE EVENT OF A DEFAULT ON THE PART OF DEVELOPER. IN THE EVENT THIS PROVISION SHOULD BE HELD TO BE VOID OR UNENFORCEABLE FOR ANY REASON, CITY SHALL BE ENTITLED TO ANY AND ALL DAMAGES AND REMEDIES WHICH CITY WOULD HAVE HAD UNDER LAW OR IN EQUITY IN THE ABSENCE OF SAID PROVISION.**

CITY AND DEVELOPER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF, AND CONFIRM THE ACCURACY OF THE STATEMENTS MADE IN THIS PARAGRAPH AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

City's Initials *AP*

Developer's Initials *[Signature]*

APPROVED AS TO FORM

7.16, 2012

ROBERT F. GANNON, City Attorney
BY *[Signature]*
ROBERT F. GANNON, City Attorney

5.4.3 Termination by Developer or City

Either City or Developer may terminate this Agreement immediately upon written notice by one party to the other that the Oversight Board of the Successor Agency to the Redevelopment Agency of the City of Long Beach and the State of California established pursuant to the provisions of H&S Code 34179 et seq. has instructed the City that it may not convey the Site in accordance with this Agreement. Upon termination of this Agreement pursuant to this paragraph, then this Agreement, and any rights of the Developer, or any assignee or transferee, in the Agreement or the Site, will be terminated, and thereafter City and Developer will have no further rights against or liability to the other under the Agreement with respect to the Site. Upon termination of this Agreement pursuant to this Section, the Performance Deposit shall be returned to the Developer.

5.5 Remedies of the Parties for Default After Passage of Title and Prior to Completion of Construction

5.5.1 Termination and Damages

After conveyance of title to the Site and prior to recordation of a Certificate of Completion for the Site if any of the Developer or the City defaults with regard to any provision of this Agreement, the nondefaulting party will serve written notice of default on the defaulting party. If the default is not cured or commenced to be cured by the defaulting party within thirty (30) days after service of the notice of default, the defaulting party will be liable to the other party for any damages caused by the default and other relief as is afforded by applicable law.

5.5.2 Action for Specific Performance

If the Developer or the City defaults under any of the provisions of this Agreement after the conveyance of title and prior to the recordation of a Certificate of Completion for the improvements and development to be made on the Site, the nondefaulting party will serve written notice of the default on the defaulting party. If the default is not commenced to be cured by the defaulting party within thirty (30) days of service of the notice of default, the nondefaulting party at its option may institute an action for specific performance of the terms of this Agreement.

5.5.3 Liquidated Damages.

The parties agree that under certain circumstances as set forth in this Subsection 5.5.3, City may assess liquidated damages in the amounts set forth below.

Liquidated damages may be assessed at any time prior to City's exercise of its right of reverter pursuant to the Grant Deed until the issuance of a Certificate of Completion.

a. Commencement of Construction. If Developer fails to commence construction by the time set forth therefor in the Schedule of Performance, the Director may, without notice, assess liquidated damages against the Developer in the amount of ten thousand dollars (\$10,000), and withdraw such amount from the Performance Deposit.

b. Hours of Construction. Developer shall comply with the City's permitted hours of construction (*i.e.*, 7 a.m. until 7 p.m., Monday through Friday, and 9 a.m. until 6 p.m. on Saturday). With the prior written consent of the Director, Developer may undertake construction activities at times other than the permitted hours of construction. If Developer undertakes construction activities at times other than the permitted hours of construction without the Director's prior written consent, the Director shall deliver written notice to Developer of violation of this Subsection. Commencing with the third violation and for each subsequent violation of this Subsection, the Director may, after sending written notice to Developer of the violation, assess liquidated damages against the Developer in the amount of five thousand dollars (\$5,000) per violation, and withdraw such amount from the Performance Deposit.

c. Failure to Comply with Approved Plans and Drawings. If the Project as constructed materially deviates from the approved plans and drawings, the Director may assess liquidated damages as provided in this Subsection. Prior to constructing any component of the Project which materially deviates from the approved plans and drawings Developer shall request in writing that the Director approve such material deviation, which approval may be withheld in the Director's sole and absolute discretion. If the Director determines that a component of the Project may materially deviate from the approved plans and drawings, the Director shall notify Developer as soon as is reasonably practicable of such deviation and request that Developer correct the identified material deviation. If Developer fails to correct the identified deviation prior to issuance of a certificate of occupancy, the Director may assess liquidated damages against Developer in the amount of twenty five thousand dollars (\$25,000) and withdraw a portion of such amount from the Performance Deposit.

d. Completion of Construction. If Developer fails to complete construction (as evidenced by the issuance of a Certificate of Completion) by the time set forth therefor in the Schedule of Performance for reasons other than *force majeure* (see Section 6.5), the Director may, without notice, assess liquidated damages in the amount of five thousand dollars (\$5,000) for every thirty (30) days

completion of the Project is delayed, and withdraw such amount from the Performance Deposit.

e. Acknowledgement. NOTWITHSTANDING ANY CONTRARY PROVISION CONTAINED HEREIN, IN THE EVENT DEVELOPER IS IN VIOLATION OF ONE OR MORE OF SUBSECTIONS a. THROUGH d., INCLUSIVE, CITY MAY RETAIN THE AMOUNTS AS SET FORTH IN THOSE SUBSECTIONS FROM THE PERFORMANCE DEPOSIT AS LIQUIDATED DAMAGES; PROVIDED, HOWEVER, THAT IF THE PERFORMANCE DEPOSIT HAS BEEN DEPLETED, THE LIQUIDATED DAMAGES AMOUNT MAY BE ASSESSED AGAINST DEVELOPER AND SHALL BE DUE AND PAYABLE WITHIN THIRTY (30) DAYS AFTER ASSESSMENT; AMOUNTS NOT PAID WHEN DUE SHALL BEAR INTEREST AT THE HIGHEST LEGAL RATE UNTIL PAID. THE PARTIES ACKNOWLEDGE THAT CITY'S ACTUAL DAMAGES IN THE EVENT OF SUCH VIOLATIONS BY DEVELOPER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS ABOVE AT SUBSECTION 5.4.2, THE PARTIES ACKNOWLEDGE THAT THE LIQUIDATED DAMAGES AMOUNT FOR EACH SUCH VIOLATION HAS BEEN AGREED ON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF CITY'S DAMAGES AND AS CITY'S EXCLUSIVE REMEDY AGAINST DEVELOPER IN THE EVENT OF THE VIOLATIONS AS DESCRIBED ABOVE ON THE PART OF DEVELOPER. IN THE EVENT THIS PROVISION SHOULD BE HELD TO BE VOID OR UNENFORCEABLE FOR ANY REASON, CITY SHALL BE ENTITLED TO ANY AND ALL DAMAGES AND REMEDIES WHICH CITY WOULD HAVE HAD UNDER LAW OR IN EQUITY IN THE ABSENCE OF SAID PROVISION.

CITY AND DEVELOPER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF, AND CONFIRM THE ACCURACY OF THE STATEMENTS MADE IN THIS SECTION AND BY THEIR INITIALS ABOVE AT SUBSECTION 5.4.2 (IN CONNECTION WITH LIQUIDATED DAMAGES UPON TERMINATION BY CITY PRIOR TO CONVEYANCE) AGREE TO BE BOUND BY ITS TERMS.

5.5.4 Right of Reverter

Pursuant to the covenants contained in the Grant Deed, the City will have the additional right at its option to reenter and take possession of the Site with all improvements and to terminate and revert in the City the estate conveyed to the Developer if, after conveyance of title to the Site and prior to the recordation of the Certificate of Completion on the Site the Developer (or its successors in interest) will:

- a. Fail to commence construction of the improvements as required by this Agreement for a period of ninety (90) days after written notice from the City pursuant to Section 6.1;
- b. Abandon or substantially suspend construction of the improvements for a period of ninety (90) days after written notice of the abandonment or suspension from the City;
- c. Transfer, or suffer any involuntary transfer of, the Site, or any part of it, in violation of this Agreement, and the violation will not be cured within ninety (90) days after written demand by City to Developer.

The right to reenter, repossess, terminate and revest will be subject to and be limited by and will not defeat, render invalid, or limit:

- d. Any mortgage, deed of trust or other financing interest permitted by this Agreement;
- e. Any rights or interests provided in this Agreement for the protection of the holders of mortgages, deeds of trust or other financing interests.

The Grant Deed for the Site will contain appropriate reference and provision to give effect to the City's right, as stated in this Section under specified circumstances prior to recordation of the Certificate of Completion to reenter and take possession of the Site with all improvements and to terminate and revest in the City the estate conveyed to the Developer.

On the revesting in the City of title to the Site or any part of it as provided in this Section, the City will, pursuant to its responsibilities under state law, use its best efforts to resell the Site or part of it as soon and in such manner as the City will find feasible and consistent with the objectives of such law to a qualified and responsible party or parties as determined by the City who will assume the obligation of making or completing the improvements or the other improvements in their stead as will be satisfactory to the City and in accordance with the uses specified for the Site in this Agreement. On the resale of the Site, the proceeds will be applied:

- f. First, to reimburse the City for (1) all costs and expenses incurred by the City, including but not limited to salaries to personnel, in connection with the recapture, management, and resale of the Site, or part of it (but less any income derived by the City from the Site, or part of it in connection with such management); (2) all taxes,

assessments, and water and sewer charges with respect to the Site or part of it (or, in the event the Site is exempt from taxation or assessment or such charges during the period of ownership as determined by the County assessing official as would have been payable if the Site were not so exempt); (3) any payments made or necessary to be made to discharge, or prevent from attaching or being made, any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; (4) any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part of them; and (5) any amounts otherwise owing the City by the Developer and its successor or transferee; and

g. Second, to reimburse the Developer, its successor or transferee, up to the amount equal to: (1) the costs incurred for the development of the Site and for the improvements existing on the Site at the time of the reentry and repossession, less (2) any gains or income withdrawn or made by the Developer from the Site or the improvements.

Any balance remaining after the reimbursements will be retained by the City as its property.

The rights established in this Section are to be interpreted in light of the fact that the City will convey the Site to the Developer for development and not for speculation in undeveloped land.

6. GENERAL PROVISIONS

6.1 Notices, Demands and Communications Between the Parties

All notices under this Agreement shall be in writing and shall be effective upon receipt whether delivered by personal delivery or recognized overnight delivery service or sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the respective parties as follows:

If to Developer: Temple Creative Realty, LLC
c/o InterTrend Communications, Inc.
555 E. Ocean Boulevard, 9th Floor
Long Beach, California 90802
Attn: Ms. Julia Huang

If to City: City of Long Beach
333 West Ocean Boulevard, 3rd Floor
Long Beach, California 90802
Attn: Director of Development Services

With a copy to: Office of the City Attorney
City of Long Beach
333 West Ocean Boulevard, 11th Floor
Long Beach, California 90802
Attn: Deputy City Attorney

Any party can notify the other party of their change of address by notifying the other party in writing of the new address.

6.2 Attorneys' Fees.

In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out of court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including actual attorneys' fees. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including actual attorneys' fees (collectively "Costs") incurred in enforcing, perfecting and executing such judgment. For the purposes of this Section, Costs shall include, without limitation, attorneys' fees, costs and expenses incurred in (i) postjudgment motions, (ii) contempt proceeding, (iii) garnishment, levy, and debtor and third party examination, (iv) discovery, and (v) bankruptcy litigation.

6.3 Conflict of Interests

No member, official or employee of the City will have any financial interest, direct or indirect, in this Agreement, nor will any member, official or employee participate in any decisions relating to the Agreement which affects his financial interests or the interests of any corporation, partnership or association in which he is, directly or indirectly, financially interested.

The Developer warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

6.4 Nonliability of City and City Officials and Employees

No member, official or employee of the City will be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

6.5 Enforced Delay: Extension of Times of Performance

In addition to specific provisions of this Agreement, performance by either party will not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of the other party; acts or failure to act of the City of Long Beach in its governmental capacity or any other public or governmental City or entity (other than the acts or failure to act of the City in its proprietary capacity under this Agreement), which will not excuse performance by the City) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform.

6.6 Real Estate Commissions

City shall not be liable for any real estate commissions, brokerage fees or finders fees which may arise from this Agreement. The City and Developer each represent that none of them has engaged any broker, agent or finder in connection with this transaction. In the event of any claims for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Agreement, then Developer shall indemnify, save harmless and defend City from and against such claims. City shall indemnify, save harmless and defend Developer from and against any claims for brokers' or finders' fees or commissions claimed by any broker or finder retained by City.

6.7 Plans and Data

If this Agreement is terminated by City pursuant to Section 5.4.2, then Developer shall deliver to City any and all plans, drawings, studies and related documents concerning the Site. City shall have the right to use such materials without obligation to Developer, but subject to the rights of third parties who have an interest therein.

If this Agreement is terminated by Developer pursuant to Section 5.4.1, City shall have the right but not the obligation to purchase from Developer all plans, drawings, studies and related documents concerning the Site. The purchase price for all or any part

of said materials shall be their cost to Developer. Upon purchase, City shall have the right to use such materials subject to the rights of third parties who have an interest therein.

6.9 Representations and Warranties of Developer

Developer hereby covenants that the following representations and warranties of Developer are true as of the date of this Agreement and shall be true and correct as of the Close of Escrow. City's rights with respect to the following representations and warranties shall survive the Close of Escrow.

6.9.1 Power and Authority of Developer. Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California. Developer has the requisite right, power and authority to enter into and carry out the terms of this Agreement and the execution and delivery hereof and of all other instruments referred to herein. The person(s) executing this Agreement on behalf of Developer has been duly authorized to do so. The performance by Developer of Developer's obligations hereunder will not violate or constitute an event of default under the terms and provisions of any material agreement, document or instrument to which Developer is a party or by which Developer is bound. All proceedings required to be taken by or on behalf of Developer to authorize it to make, deliver and carry out the terms of this Agreement have been duly and properly taken. No further consent of any person or entity is required in connection with the execution and delivery of, or performance by Developer of its obligations under this Agreement, including, without limitation, the consent or approval of any bankruptcy or other court having jurisdiction over Developer.

6.9.2 Validity of Agreement. This Agreement is a valid and binding obligation of Developer, enforceable against Developer in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, or other similar laws affecting the rights of creditors generally and general equitable principles.

6.9.3 No Bankruptcy Proceedings. Developer has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Developer's creditors, (iii) suffered the appointment of a receiver to take possession of all or substantially all of Developer's assets, or (iv) suffered the attachment or other judicial seizure of all or substantially all of Developer's assets.

7. [RESERVED]

8. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

This Agreement integrates all of the terms and conditions mentioned or incidental to it, and supersedes all negotiations or previous Agreements between the parties with respect to all or any part of the subject matter of this Agreement.

All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the City or the Developer, and all amendments must be in writing by the appropriate authorities of the City and the Developer. This Agreement and any provisions may be amended by mutual written agreement between Developer and the City.

9. TIME FOR ACCEPTANCE OF AGREEMENT BY CITY

This Agreement when executed by the Developer and delivered to the City, must be authorized and executed by the City within sixty (60) days after the date of signature by the Developer or this Agreement will be voidable by the Developer upon notice in writing to the City.

THE CITY AND THE DEVELOPER have executed this Agreement as of the dates set opposite their signatures.

[Note: parties to initial at paragraph 5.4.2]

THE CITY OF LONG BEACH, CALIFORNIA, a charter city

July 17, 2012

By 
Amy J. Bodek
Director of Development Services

CITY

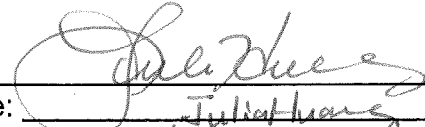
Approved as to form this 16 day of July, 2012.

ROBERT E. SHANNON, City Attorney of the City of Long Beach, California

By: 
Assistant Deputy

7-12, 2012

TEMPLE CREATIVE REALTY, LLC, a California limited liability company

By: 
Name: Juliette
Its: Manager

DEVELOPER

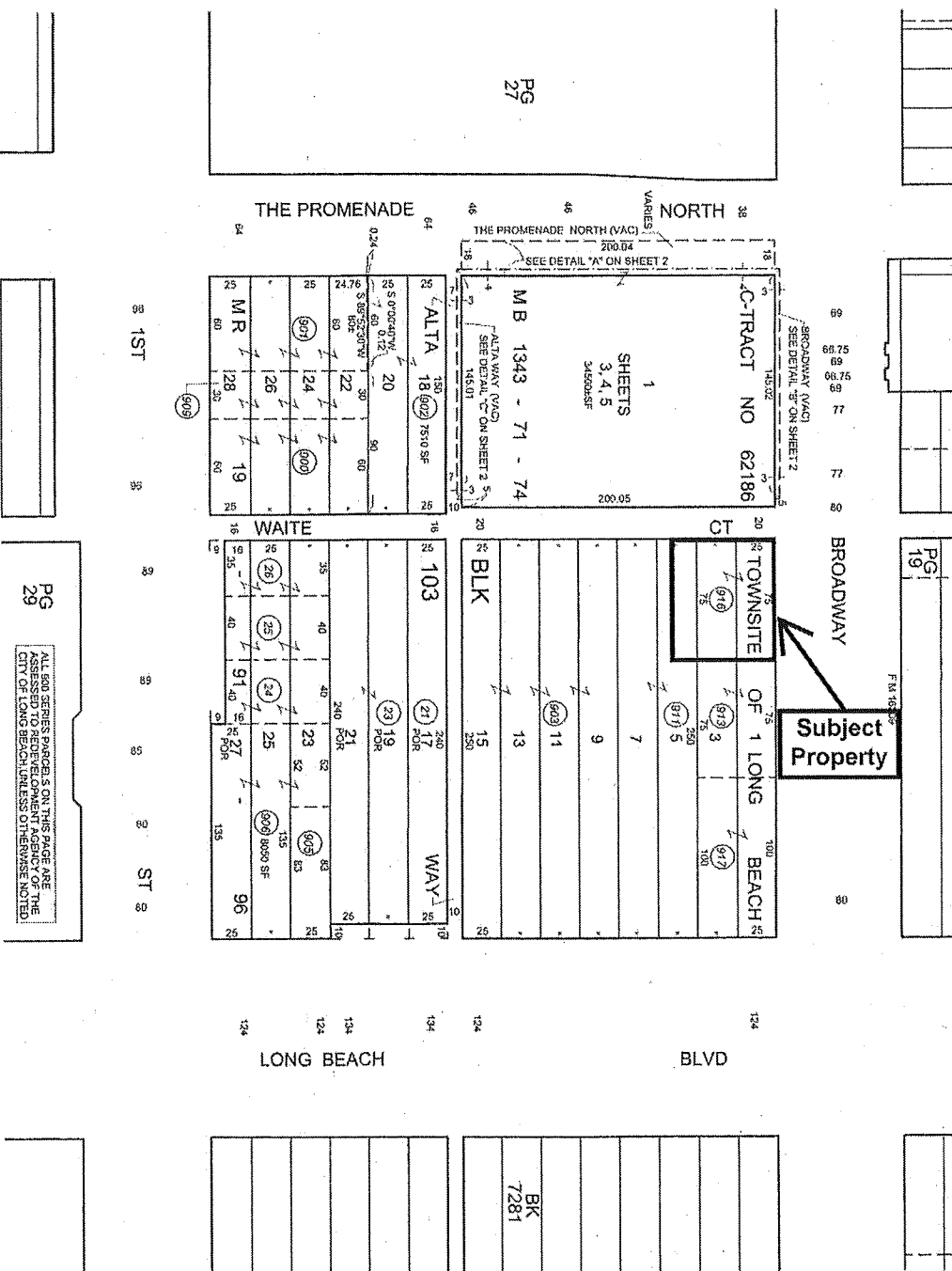
ATTACHMENT NO. 1

SITE MAP



2009

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ALL LOT SERIES PARCELS ON THIS PAGE USE THE CITY OF LONG BEACH UNLESS OTHERWISE NOTED.

ATTACHMENT NO. 2

LEGAL DESCRIPTION OF THE SITE
(AMERICAN HOTEL)

THAT CERTAIN PROPERTY SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1

THE WESTERLY 75 FEET OF LOTS 1 AND 3, BLOCK 103, TOWNSITE OF LONG BEACH, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 19, PAGE 91 ET SEQ., OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 7280-028-916

PARCEL 2

A RECTANGULAR STRIP WITHIN LOTS 1 AND 3, BLOCK 103, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT AT THE NORTH EAST CORNER OF PARCEL 1 THENCE EASTERLY ALONG THE NORTHERLY BORDER OF LOT 1 FOR 9 INCHES; THENCE SOUTHERLY PARALLEL TO THE EAST BORDER OF PARCEL 1 TO THE SOUTH BOUNDARY OF LOT 3; THENCE WESTERLY ALONG THE SOUTH BOUNDARY OF LOT 3 FOR 9 INCHES; THENCE NORTHERLY ALONG THE EASTERN BOUNDARY OF PARCEL 1 TO THE POINT OF BEGINNING, TOWNSITE OF LONG BEACH, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 19, PAGE 91 ET SEQ., OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BEING A PORTION OF APN: 7280-028-913

PARCEL 3

A RECTANGULAR STRIP WITHIN LOT 5, BLOCK 103, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT AT THE NORTH WEST CORNER OF LOT 5 THENCE EASTERLY ALONG THE NORTHERN BORDER OF LOT 5 FOR A DISTANCE OF 75 FEET 9 INCHES; THENCE SOUTHERLY PARALLEL TO THE WESTERN BOUNDARY OF LOT 5 FOR 18 FEET; THENCE WESTERLY PARALLEL TO THE NORTHERN BOUNDARY OF LOT 5 FOR 75 FEET 9 INCHES (TO THE WESTERN BOUNDARY OF LOT 5); THENCE NORTHERLY ALONG THE WESTERN

3245.0527

BOUNDARY OF LOT 5 TO THE POINT OF BEGINNING, TOWNSITE OF LONG BEACH, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 19, PAGE 91 ET SEQ., OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BEING A PORTION OF APN: 7280-028-911

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS IN, UNDER OR WHICH MAY BE PRODUCED FROM SAID LAND BUT WITHOUT THE RIGHT OF SURFACE ENTRY AS GRANTED TO C. C. ALBRIGHT, A MARRIED MAN BY DEED RECORDED NOVEMBER 30, 1966 IN BOOK M2401, PAGE 694, OFFICIAL RECORDS, AS INSTRUMENT NO. 2339, OF OFFICIAL RECORDS.

ATTACHMENT NO. 3

SCHEDULE OF PERFORMANCE

- | | |
|--|---|
| 1. <u>Submission - Preliminary Design for the Site.</u> Developer will prepare and submit to the City Preliminary Drawings for the Site. | Prior to consideration of this Agreement by City. |
| 2. <u>Payment of the Performance Deposit.</u> Developer shall pay the Performance Deposit to City. | Prior to consideration of this Agreement by City. |
| 3. <u>Submission – Preliminary Evidence of Financing.</u> Developer shall submit to City its preliminary evidence of financing. | Prior to consideration of this Agreement by City. |
| 4. <u>Execution of Agreement.</u> Agreement authorized, executed and delivered to Developer by City. | Subject to City approval, within 30 days after the Developer delivers a copy of this Agreement signed by Developer to the City. |
| 5. <u>Approval - Preliminary Drawings.</u> City will approve or disapprove the Preliminary Drawings for the Site. | Concurrent with City approval of Agreement. |

- | | |
|--|---|
| 6. <u>Approval – Preliminary Evidence of Financing.</u> City will approve or disapprove of Developer's preliminary evidence of financing. | Concurrent with City approval of Agreement. |
| 7. <u>Confirmation of Ownership.</u> City will deliver to Developer confirmation that it is the fee owner of the Site. | Prior to Close of Escrow. |
| 8. <u>Opening of Escrow.</u> City will open an escrow with Escrow Agent. | Within 10 days after receipt of written request from Developer and after satisfaction of all conditions precedent for the benefit of City for conveyance of the Site. |
| 9. <u>Submission - Final Construction Drawings of the Site.</u> The Developer will prepare and submit to the City Planning Department Final Construction Drawings. | Prior to conveyance of the Site to Developer. |
| 10. <u>Approval - Final Drawings and Plans.</u> The City will approve or disapprove the Final Construction Drawings. | In accordance with City's procedures. |
| 11. <u>Submission – Construction contract.</u> Developer shall submit to the Director an executed construction contract for construction of the Project in accordance with the Scope of Development. | Prior to conveyance of the Site. |
| 12. <u>Approval – Construction Contract</u>
The Director shall approve or disapprove the executed construction contract. | Within 10 days after receipt of the executed construction contract. |

13. Submission - Financing Documents and Insurance Certificates. The Developer will deliver to City financing documents and insurance certificates. Prior to conveyance of the Site to Developer.
14. Approval - Financing Documents and Insurance Certificates. The City will approve or disapprove financing documents and insurance certificates. Within 20 days after receipt by City of Developer's financing documents and insurance certificates.
15. Not Applicable.
16. Obtaining Permits. Developer will have obtained building, zoning and other requirements permits. Prior to conveyance of Site to Developer.
17. Satisfaction of Conditions Precedent. Developer shall have satisfied all conditions precedent for the benefit of City for conveyance of the Site. Within 30 days of City's execution of this Agreement.
18. Disclosure Statutes and Reports. City shall deliver the Reports required by the Disclosure Statutes to Developer as set forth at Section 2.12.3. At least 15 days prior to the Close of Escrow.
19. Conveyance of Site to Developer. City will convey title of the Site to Developer. Within 15 days after Developer's satisfaction of all conditions precedent.
20. Commencement of Construction on Site. Developer will commence construction of the improvements on the Site. Within 30 days after Close of Escrow.
21. Completion of Construction on Within 365 calendar days after

the Site. Developer will complete the construction of improvements on the Site.

conveyance of the Site.

22. Compliance Report. Developer shall submit to the Director a written report regarding its compliance with the requirements of Section 3.1.7.

Prior to the issuance of a certificate of occupancy.

23. Issuance of the Certificate of Completion. City shall issue a Certificate of Completion for the Project.

Upon written request of Developer after completion of all construction and issuance of a certificate of occupancy.

ATTACHMENT NO. 4

GRANT DEED

TO BE RECORDED AND WHEN
RECORDED RETURNED TO:

Temple Creative Realty, LLC
c/o InterTrend Communications, Inc.
555 E. Ocean Boulevard
9th Floor
Long Beach, California 90802
Attn: Ms. Julia Huang

Mail tax statements to return address above.

APN: _____

Documentary Transfer Tax is \$ _____

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged,

THE CITY OF LONG BEACH, a charter city ("Grantor") hereby grants to TEMPLE CREATIVE REALTY, LLC, a California limited liability company ("Grantee"), all of its right, title and interest in and to that certain real property (the "Property") and described on the attached Exhibit "A" incorporated herein by this reference. Such Property is and shall remain real property. By this Grant Deed Grantor is acting to carry out the public purposes of that certain Disposition and Development Agreement (the "Agreement"), dated _____, 2012, and entered into by and between Grantor and Grantee.

1. Grantee, its successors, assigns, and any successor in interest to the Property shall develop, use and maintain the Property subject to the following:
 - (a) During construction and thereafter, the Grantee, its successors and assigns shall devote the Property to the uses specified in this Grant Deed.
 - (b) Grantee, its successors, assigns, and any successor in interest to the Property, covenants and agrees to maintain the improvements and

landscaping on the Property in accordance with the Agreement Containing Covenants Affecting Real Property recorded in the official records concurrently herewith.

2. Title to the Property is conveyed subject to all those exceptions to title of record or apparent.
3. Grantee shall construct those improvements as set forth in the Scope of Development to the Agreement (the "Improvements") on the Property.
4. Grantee hereby covenants for itself, its successors, its assigns and every successor in interest to the Property or any part thereof that prior to recordation of the Certificate of Completion for the Improvements:
 - (a) Grantee shall have no power to make any total or partial sale, transfer, conveyance, encumbrance, lease (excluding tenant leases) or assignment of the Property or any part thereof without the prior written consent of Grantor, except to a mortgagee or trustee under a mortgage or deed of trust or other conveyance permitted by paragraph 4(b) of this Grant Deed or by a purchaser on foreclosure or to municipal corporations or public utilities or others as owner of easements or permits to facilitate development of the Property, or except for the leasing of space for occupancy or except as otherwise permitted in the Agreement. In the absence of specific written agreement by Grantor, no such unauthorized sale, transfer, conveyance or assignment of the Property shall be deemed to relieve Grantee or any other party from any obligations under this Grant Deed.
 - (b) Grantee shall not place or suffer to be placed on the Property any lien or encumbrance other than mortgages, deeds of trust, sale and lease-back or other methods of financing to finance the Improvements to be constructed on the Property. Grantee shall not enter into any such conveyance or financing without the prior written approval of the City.
 - (c) Grantee shall pay prior to delinquency all real property taxes and assessments assessed and levied on or against the Property subsequent to the conveyance of the Property.
 - (d) Grantee shall remove, or shall have removed, any levy or attachment made on the Property or shall assure the satisfaction thereof within a reasonable time but in any event prior to a sale thereunder.

Grantee shall cure any violation of the provisions of this paragraph 4 within thirty (30) days after the date of receipt of written notice of such violation by Grantor to Grantee.

Nothing herein contained shall be deemed to prohibit Grantee from contesting the validity or amounts of any levy, attachment, tax assessment, encumbrance or lien, nor to limit the remedies available to Grantee in respect thereto.

5. Prior to recordation of the Certificate of Completion for the Improvements:
- (a) Grantor shall have the additional right at its option to re-enter and take possession of the Property hereby conveyed with all Improvements thereon, and to terminate and re-vest in Grantor the Property hereby conveyed to Grantee if Grantee (or its successors in interest) shall:
 - (1) Fail to proceed with the construction of the Improvements as required by the Agreement for a period of three (3) months after written notice thereof from Grantor, which notice may be given only after expiration of all extensions and postponements to which Grantee may be entitled or permitted under Section 7.5 (re: Force Majeure), the Schedule of Performance and elsewhere in the Agreement;
 - (2) Abandon or substantially suspend construction of the Improvements without cause or valid reason for a period of three (3) months after written notice of such abandonment or suspension from Grantor which may be given only after expiration of all extensions and postponements to which Grantee may be entitled pursuant to Section 7.5 (re: Force Majeure), the Schedule of Performance, and elsewhere in the Agreement; or
 - (3) Assign or attempt to assign the Agreement (or any rights therein), or transfer, or suffer any involuntary transfer of the Property or any part thereof, in violation of this Grant Deed and the Agreement and such violation shall not be cured within thirty (30) days after the date of receipt of written notice thereof by Grantor to Grantee.
 - (b) The right to reenter, repossess, terminate and re-vest shall be subject to and be limited by and shall not defeat, render invalid, or limit:
 - (1) Any mortgage or deed of trust or other security instrument permitted by the Agreement or approved by Grantor;
 - (2) Any rights or interests provided in the Agreement for the protection of the holders of such mortgage, deed of trust, or other security interest.
 - (c) The right to reenter, repossess, terminate and re-vest with respect to the Property as set forth in this paragraph 5 shall terminate when the Certificate

of Completion regarding the Improvements to be constructed on the Property under paragraph 4.4 of the Agreement has been recorded by Grantee.

- (d) In the event title to the Property or any part thereof is revested in Grantor as provided in this paragraph 5, Grantor shall, pursuant to its responsibilities under California law, use its best efforts to resell the Property or part thereof as soon and in such manner as Grantor shall find feasible and consistent with the objectives of such law to a qualified and responsible party or parties (as determined by Grantor) who will assume the obligation of making or completing the Improvements or such other improvements in their stead as shall be satisfactory to Grantor. Upon such resale of the Property, the proceeds thereof shall be applied:

(1) First, to reimburse the City for (1) all costs and expenses incurred by the City, including but not limited to salaries to personnel, in connection with the recapture, management, and resale of the Property, or part of it (but less any income derived by the City from the Property, or part of it in connection with such management); (2) all taxes, assessments, and water and sewer charges with respect to the Property or part of it (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership as determined by the County assessing official as would have been payable if the Property were not so exempt); (3) any payments made or necessary to be made to discharge, or prevent from attaching or being made, any subsequent encumbrances or liens due to obligations, defaults, or acts of the Grantee, its successors or transferees; (4) any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part of them; and (5) any amounts otherwise owing the City by the Grantee and its successor or transferee;

(2) Second, to reimburse the Grantee, its successor or transferee, up to the amount equal to (1) the costs incurred for the development of the Property and for the improvements existing on the Property at the time of the reentry and repossession, less (2) any gains or income withdrawn or made by the Grantee from the Property or the improvements; and

(3) Third, any balance remaining after the reimbursements will be retained by the City as its property.

- (e) This right of reverter is to be interpreted in light of the fact that Grantor hereby conveys the Property to Grantee for development and not for speculation in undeveloped land.

6. Grantee covenants and agrees for itself, its successors, assigns, and every

successor in interest to the Property or any part thereof that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, national origin, sex, sexual orientation, AIDS, AIDS-related condition, age, marital status, disability or handicap, or Vietnam Era veteran status in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of their Property, nor shall Grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees in their Property. The foregoing covenants shall run with the land.

- (a) Grantee herein covenants by and for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, and this Grant Deed is made and accepted upon and subject to the following conditions: There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the Property.

- (b) Grantee, its successors and assigns, shall refrain from restricting the rental, sale, or lease of the Property or any portion thereof, on the basis of race, color, creed, religion, sex, sexual orientation, marital status, national origin, or ancestry of any person. Every deed, lease, and contract entered into with respect to the Property, or any portion thereof, after the date of this Agreement shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:
 - (1) In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or

permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.”

(2) In leases: “The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.”

(3) In contracts: There shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee itself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of the land.”

7. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other security instrument permitted by this Grant Deed and made in good faith and for value; provided, however, that any subsequent owner of the Property shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner's title was acquired by foreclosure, trustee's sale or otherwise.
8. Following completion of the Improvements on the Property, and Grantor's determination that the completed Improvements comply with the Agreement and the

covenants contained herein, Grantor shall record the Certificate of Completion. Following the recording of said Certificate of Completion, the only on-going obligation of Grantee, and its successors and assigns, shall be the obligations as set forth in paragraph 1 hereof, which covenants shall cease and terminate at such time as the improvements constructed pursuant to the Agreement are no longer maintained on the Property, and those covenants in paragraph 6 hereof, which covenants against discrimination shall remain in perpetuity.

9. All covenants without regard to technical classification or designation shall be binding on Grantee, its successors and assigns, and for the benefit of Grantor and such covenants shall run in favor of Grantor for the entire period during which such covenants shall be in force and effect, without regard to whether Grantor is or remains an owner of any land or interest therein to which such covenants relate. Grantor, in the event of any breach of any such covenant, shall have the right to exercise all the rights and remedies, and to maintain any action at law or suits in equity or other proper proceedings to enforce the curing of such breach.
10. All covenants contained in this Grant Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, except for the covenant and condition contained in paragraph 5 of this Grant Deed.
11. None of the terms, covenants, agreements, or conditions heretofore agreed upon in writing in other instruments between the parties to this Grant Deed with respect to obligations to be performed, kept or observed in respect to the Property after this conveyance of the Property shall be deemed to be merged with this Grant Deed.
12. Both before and after recording of the Certificate of Completion, only Grantor, its successor, and assigns, and Grantee and the successor and assigns of Grantee in and to all or any part of the fee title to the Property, shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or other restrictions contained in this Grant Deed or to subject the Property to additional covenants, easements, or other restrictions without the consent of any tenant, lessee, easement holder or licensee. The covenants contained in this Grant Deed without regard to technical classification or designation shall not benefit or be enforceable by any person, firm, or corporation, public or private, except Grantor and Grantee and their respective successors and assigns.
13. In the event of an express conflict between this Grant Deed and the Agreement, this Grant Deed shall prevail.

IN WITNESS WHEREOF, Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers thereunder duly authorized, as of this _____ day of _____, 201__.

THE CITY OF LONG BEACH, a charter city

By: _____
Name: _____
Its: _____

Approved as to form this _____ day of _____, 201__.

ROBERT E. SHANNON, City Attorney of the City of Long Beach.

By: _____
Assistant

Grantee hereby accepts and approves each of the covenants, conditions and restrictions set forth in this Grant Deed.

GRANTEE

TEMPLE CREATIVE REALTY, LLC, a California limited liability company

By: _____
Name: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

(AMERICAN HOTEL)

Real property in the City of Long Beach, County of Los Angeles, State of California, described as follows:

PARCEL 1

THE WESTERLY 75 FEET OF LOTS 1 AND 3, BLOCK 103, TOWNSITE OF LONG BEACH, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 19, PAGE 91 ET SEQ., OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 7280-028-916

PARCEL 2

A RECTANGULAR STRIP WITHIN LOTS 1 AND 3, BLOCK 103, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT AT THE NORTH EAST CORNER OF PARCEL 1 THENCE EASTERLY ALONG THE NORTHERLY BORDER OF LOT 1 FOR 9 INCHES; THENCE SOUTHERLY PARALLEL TO THE EAST BORDER OF PARCEL 1 TO THE SOUTH BOUNDARY OF LOT 3; THENCE WESTERLY ALONG THE SOUTH BOUNDARY OF LOT 3 FOR 9 INCHES; THENCE NORTHERLY ALONG THE EASTERN BOUNDARY OF PARCEL 1 TO THE POINT OF BEGINNING, TOWNSITE OF LONG BEACH, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 19, PAGE 91 ET SEQ., OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BEING A PORTION OF APN: 7280-028-913

PARCEL 3

A RECTANGULAR STRIP WITHIN LOT 5, BLOCK 103, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT AT THE NORTH WEST CORNER OF LOT 5 THENCE EASTERLY ALONG THE NORTHERN BORDER OF LOT 5 FOR A DISTANCE OF 75 FEET 9 INCHES; THENCE SOUTHERLY PARALLEL TO THE WESTERN BOUNDARY OF LOT 5 FOR 18 FEET; THENCE WESTERLY PARALLEL TO THE NORTHERN BOUNDARY OF LOT 5 FOR 75 FEET 9 INCHES (TO THE WESTERN BOUNDARY OF LOT 5); THENCE NORTHERLY ALONG THE WESTERN BOUNDARY OF LOT 5 TO THE POINT OF BEGINNING, TOWNSITE OF LONG

EXHIBIT A

BEACH, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 19, PAGE 91 ET SEQ., OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BEING A PORTION OF APN: 7280-028-911

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS IN, UNDER OR WHICH MAY BE PRODUCED FROM SAID LAND BUT WITHOUT THE RIGHT OF SURFACE ENTRY AS GRANTED TO C. C. ALBRIGHT, A MARRIED MAN BY DEED RECORDED NOVEMBER 30, 1966 IN BOOK M2401, PAGE 694, OFFICIAL RECORDS, AS INSTRUMENT NO. 2339, OF OFFICIAL RECORDS.

ATTACHMENT NO. 5

SCOPE OF DEVELOPMENT

The Scope of Development includes all engineering, design work and construction for the restoration and repair of the façades, site improvements, structural retrofit and interior improvements required to meet current building codes and to facilitate the restoration and activation of the "American Hotel".

1. Civil Engineering
 - a. ALTA Survey
 - b. Adjustment of property lines and easements
 - c. Street improvement plan
 - d. Hydrology report (if required)
2. Architectural & Design
 - a. As-built drawings
 - b. Demolition plan
 - c. Documentation for Cultural Heritage Certificate of Appropriateness
 - d. Construction documents necessary for core and shell improvements
3. Structural Design
 - a. Evaluation of sheer wall and other structural tests
 - b. Engineering and design of sidewalk repair
 - c. Structural retrofit of structure as required to meet current building code
4. Mechanical Engineering
 - a. Design of mechanical systems and ducting
5. Electrical Engineering
 - a. Design from Southern California Edison for the connection to service panel
 - b. Coordination to provide transformer from Southern California Edison

ATTACHMENT NO. 5

6. Plumbing Engineering

- a. Design sewer ejection system
- b. Evaluate Drainage

7. Testing and Inspection

- a. Shear test and other structural tests as required
- b. Fire hydrant flow test
- c. Soils testing (if required)

8. Fire and Life Safety

- a. Design fire and life safety system

9. City of Long Beach Planning and Building

- a. Submittal and approval of Certificate of Appropriateness by Cultural Heritage Commission
- b. Submittal and approval of construction documents by City of Long Beach Planning and Building departments

10. Project Management

- a. Provide oversight, cost controls, budgeting and supervision for the duration of this phase

11. Demolition

- a. Remove black tile on façade
- b. Remove all interior plaster, drywall, electrical, mechanical, and plumbing and expose all structural elements
- c. Provide temporary protection for sidewalk and any exposed openings.

12. Mechanical, Electrical and Plumbing

- a. Installation of plumbing infrastructure
- b. Installation of electrical infrastructure (switch gear) and house panel

13. Structural Retrofit

- a. Installation of shear walls and moment frames
- b. Interior stairs
- c. Elevator pit and shaft
- d. Repair of existing wood and brick structure as necessary

14. Roofing and Waterproofing

- a. Installation of new insulated roof
- b. Installation of skylights
- c. Installation of mechanical equipment curbs

15. Exterior Restoration

- a. Restoration of North façade (Broadway façade) per approved Certificate of Appropriateness
- b. Restoration of East, West and South facing elevations
- c. Repair and restoration of existing windows on North façade
- d. Replacement of existing windows on East, West and South elevations
- e. Installation of steel exit stairs on South facade

16. Site Work

- a. Repair and restore public sidewalk and all associated work
- b. Pave and restripe easement on South side
- c. Trash enclosures

17. Utility Services

- a. Coordinate with LB Water Department for fire and domestic water connection
- b. Provide service for future sewer connection

- c. Provide service for future gas connection
- d. Provide service for future telephone and cable connections
- e. Coordinate with LB Water and Health Department for grease trap (if required)

18. Mechanical, Electrical and Plumbing

- a. Installation of HVAC system per tenant improvement plans
- b. Installation of interior plumbing and fixtures per tenant improvement plans
- c. Installation of electrical distribution and trim per tenant improvement plans

19. Interior Tenant Improvements

- a. Interior sandblasting of exposed elements
- b. Framing and build-out of tenant improvement plans

EXHIBIT A

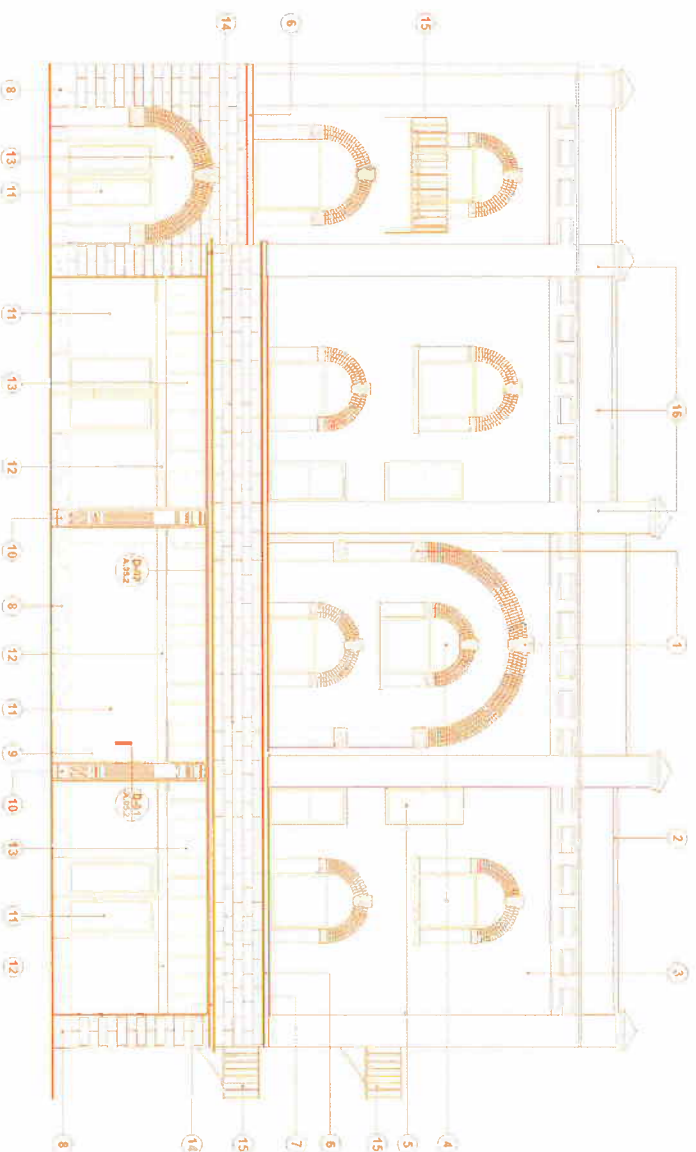
FAÇADE IMPROVEMENT PLANS APPROVED
BY THE CHC ON NOVEMBER 8, 2010

EXHIBIT A TO
ATTACHMENT NO. 5

American Hotel

Certificate of Appropriateness

November 2010



AMERICAN HOTEL

CULTURAL HERITAGE COMMISSION—OCTOBER 11, 2010

Name and Address

American Hotel
224 E. Broadway Avenue
Long Beach, CA 90802

Executive Summary

Originally constructed in 1905 as the home of the “Society of New or Practical Psychology” and more commonly called the “Psychic Temple” the building at 224 E. Broadway has seen numerous changes in its 105 years.

From its grand beginning to its more humble use as a day-rate hotel, the building has been in almost constant flux since. Our proposal envisions revitalizing the American from its current derelict state into a vibrant part of the community.

We are proposing the ground floor and basement to be used as restaurant/bar space and the upper two floors to be four live/work offices.

Overall Description of Building

The American Hotel is a three story, unreinforced brick building with a full basement that extends under the city sidewalk.

The current state of the structure is poor; however, many of the buildings original exterior elements remain, and are in good condition.

The exterior of the building retains enough original elements that a fairly accurate assessment of the original design can be determined. The interior of the structure however is in very poor condition, with the only elements of value being the structural frame itself.

Years of neglect, water damage, mold, lead paint and necessary seismic upgrades will require the complete removal of all remaining interior plaster and finishes.

American Hotel—Certificate of Appropriateness
November 2010

Project Summary

2

AMERICAN HOTEL

CULTURAL HERITAGE COMMISSION—OCTOBER 11, 2010

Historical Designation

The subject property was originally listed on the State of California, Department of Parks and Recreation’s Historic Resources Inventory in 1988.

The City of Long Beach declared the American Hotel a Historical Landmark by Ordinance No. C-6672 on December 14, 1989.

Current Zoning

The building is currently zoned in the City of Long Beach Downtown Planned Development District PD-30 in the downtown core district.

Significant Historical Elements

The original Broadway facade uses a tan colored facing brick which provides a colonnade design and varied relief elements surrounding the upper story windows. There are also prominent decorative granite keystones on the North facade.

Selective demolition of non-original exterior elements revealed two decorative cast iron columns bordering one of the central bays on the ground floor. Also exposed during the selective demolition was a plaster veneer with a brick pattern and capped with an Ogee style cornice. Under the non-original fire escape an egg and dart cornice can also be seen.

American Hotel—Certificate of Appropriateness
November 2010

Historical and Zoning Designations

3

PROXIMITY PLAN

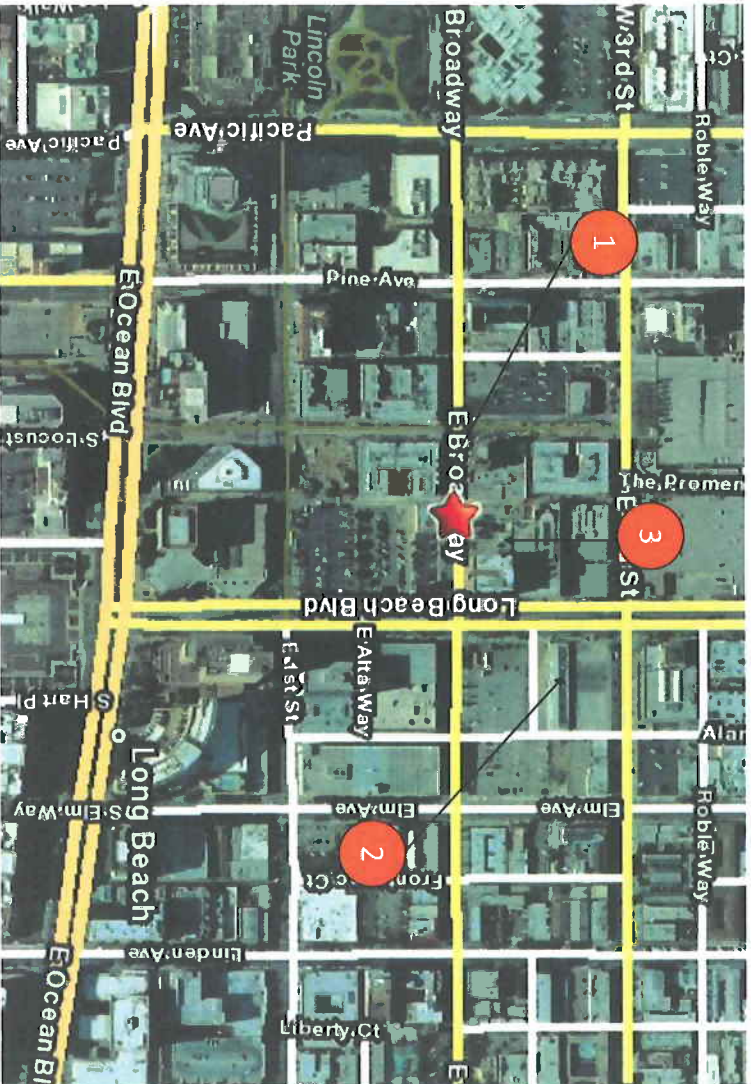
The American Hotel is located on the South side of Broadway near Long Beach Boulevard.

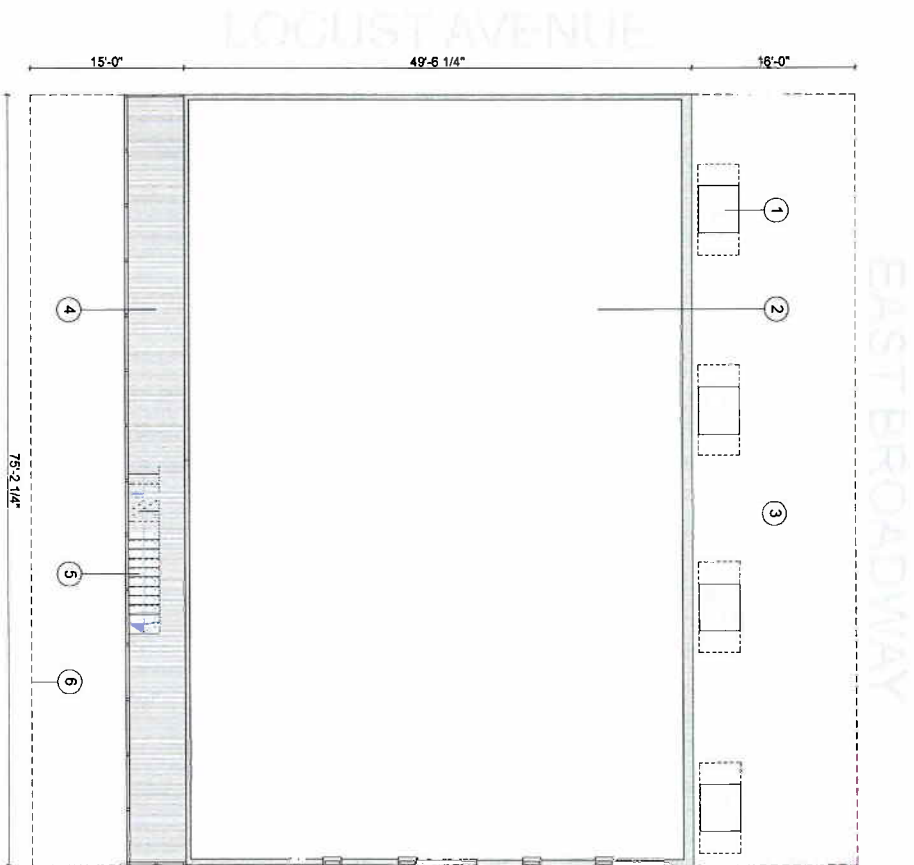
This is an emerging cultural corridor for downtown Long Beach

The site is in close proximity to Pine Avenue, the Long Beach Boulevard Blue Line Station, the proposed Art Exchange, the Edison Theatre and the East Village Arts District.

KEYNOTES

- 1 American Hotel
224 East Broadway
Long Beach, CA 90802
- 2 Proposed Art Exchange Project
Broadway & Long Beach Boulevard
- 3 Edison Theatre
213 East Broadway
Long Beach, CA 90802





- ① Patterned sidewalk with blue glass light well inserts
- ② Existing building @ 224 E Broadway Avenue
- ③ Sidewalk
- ④ Exterior steel landing
- ⑤ Steel exterior stairs to second floor landing
- ⑥ Property line

SITE PLAN
 1/4" = 1'-0"

Site Plan

PRECEDENT IMAGES

Former "Z Gallery" Building

230 Pine Ave, Long Beach, CA 90802

Originally designed as a Masonic Temple by Henry F. Starbuck, this is one of the oldest buildings in downtown Long Beach. The building is a three-story (with basement) rectangular brick building. The decorations at the top of the roof line gives the building its Romanesque look. The central-front of the building shows a block with Masonic Temple written in it and the Masonic symbol by the center gable.

KEYNOTES

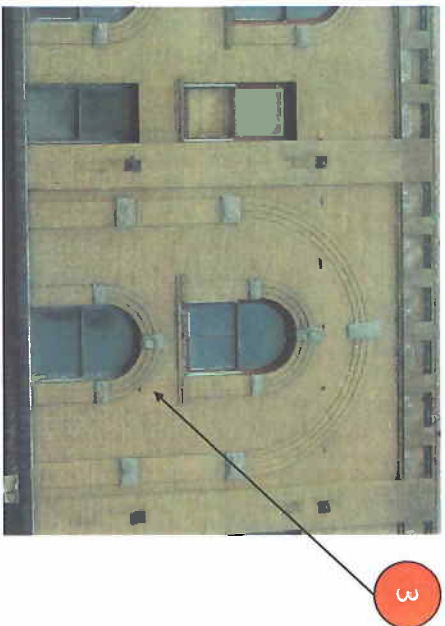
- 1 Original Pre-Formed Steel Columns with similar coloring to the ones uncovered at the American Hotel.
- 2 Concrete Base elements in the design concept for the American are reminiscent of the original bases seen here.
- 3 Plaster venner akin to the one uncovered at the American Hotel. Notice not only the size and scale similarities but also the juxtaposition to the 2nd floor windows.
- 4 Original Brick Façade on upper stories similar in material shape and coloring to that of the American Hotel.



HISTORICAL ELEMENTS

KEYNOTES

- 1 Selective demolition revealed two decorative cast iron columns bordering one of the central bays on the ground floor.
- 2 The two columns are identical in design with detail work running from top to bottom adding a unique element to the restored facade.
- 3 The original exposed facade uses a tan colored facing brick installed in a colonnade design seen here in the field, and varied relief designs surrounding the upper story windows. Also note the prominent decorative granite keystones.
- 4 Also exposed during the selective demolition was this plaster veneer stamped with a brick pattern and capped with an Ogee style cornice. Under the non-original fire escape an egg and dart cornice can also be seen.





NORTH ELEVATION

KEYNOTES

- 1 Original facing brick and stone details on 1st and 2nd floors
- 2 Existing double-hung windows on the Broadway facade
- 3 Original cornice elements between plaster and brick facade
- 4 Plaster brick pattern detailing above clearstory windows
- 5 Original cast-iron support columns
- 6 Patterned sidewalk with blue glass light well inserts.



1



3



2

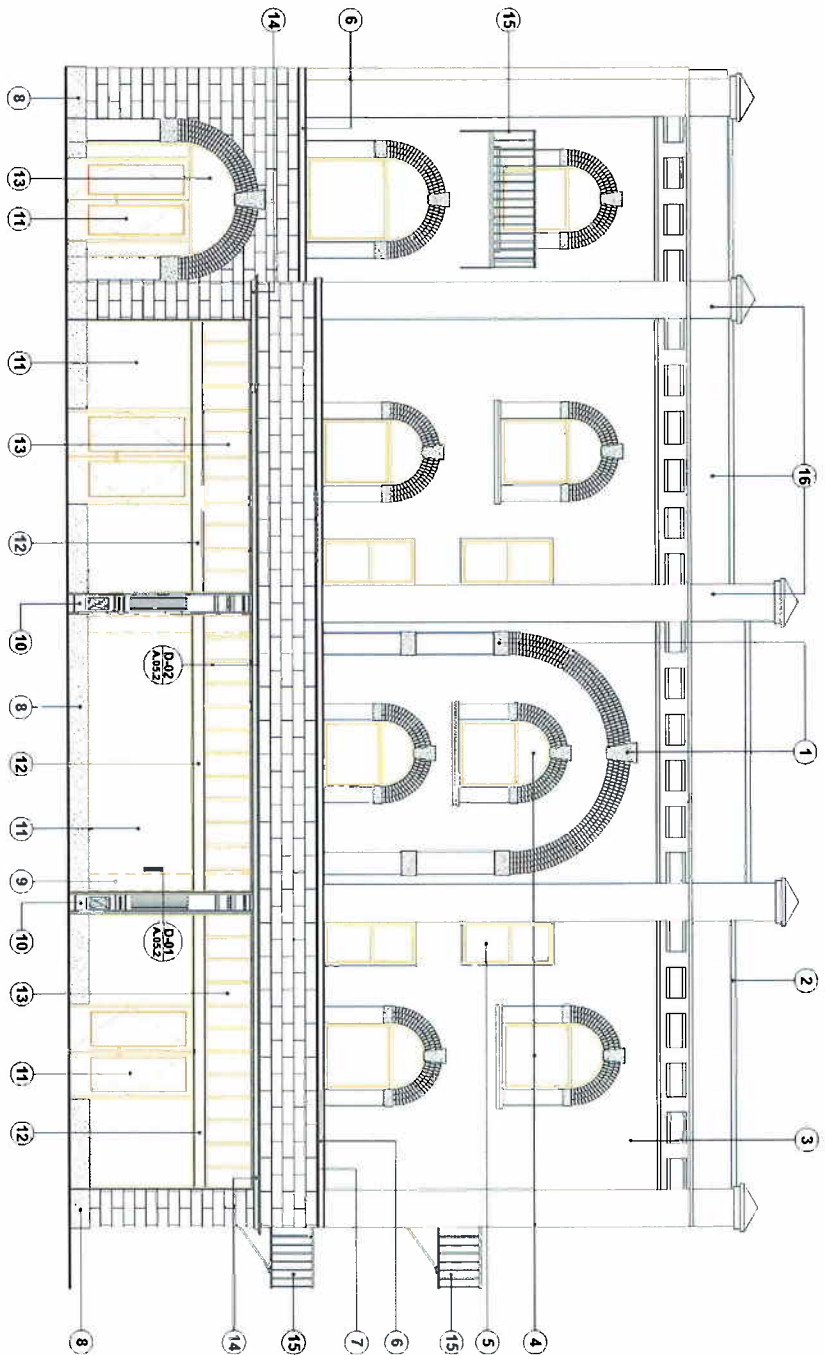
EAST, SOUTH AND WEST ELEVATIONS

KEYNOTES

- 1 **East Elevation of Building**
Masonry block repair to remain.
- 2 **South Elevation of Building**
New steel exterior stairs to be installed as second point of egress.
- 3 **West Elevation of Building**
Non-functioning vent system to be removed. Fire escape balconies to stay. Ladders to be removed.

Demo and Repair Notes

- Repair and replace deteriorated brick in kind with salvage or new brick and mortar that matches original. Clean surface using the gentlest method possible such as low pressure water and detergents using natural bristled brushes.
- Remove deteriorated mortar by carefully hand raking the joints to prevent damage. Duplicate old mortar in strength, composition, color and texture.
- Remove any deteriorated paint and patch concrete and plaster as needed.
- All windows on East, South and West elevations to be replaced with new double hung windows.

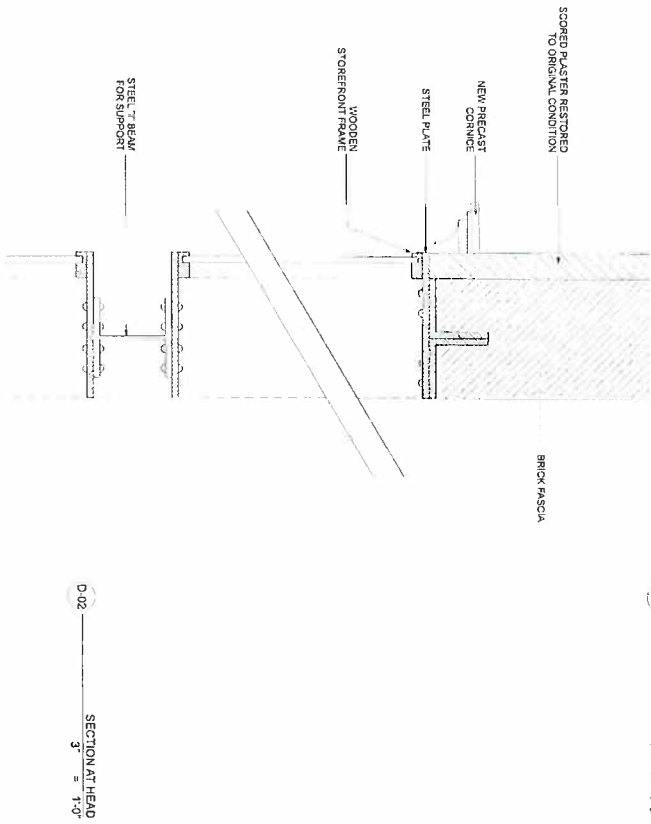
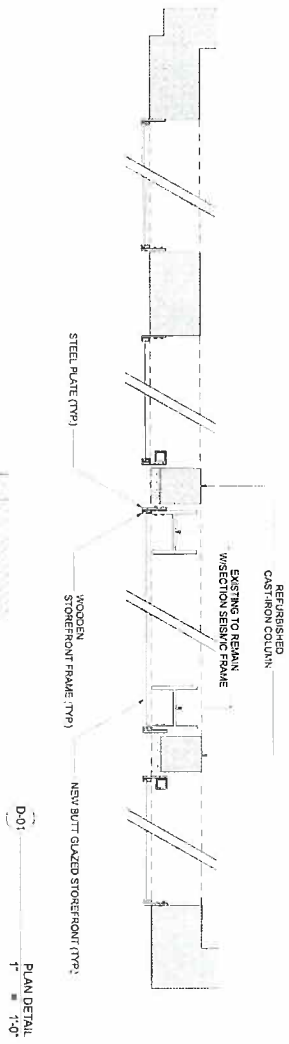


KEYNOTES

- ① Existing rough stone keystone and springblock to remain
- ② New pre-cast concrete cornice
- ③ Clean and repair existing brick cladding. (TYP)
- ④ Restore all existing wood framed double hung arched windows. (TYP)
- ⑤ Replace all wood double hung rectangular windows to match existing.
- ⑥ Existing concrete cornice to be repaired
- ⑦ Existing scored plaster to be restored to original condition
- ⑧ Stone base to match existing keystones above
- ⑨ Existing steel frame to be painted (behind)
- ⑩ Existing cast iron columns to be restored
- ⑪ New built glazed storefront
- ⑫ New painted steel "I" BEAM for support. (TYP)
- ⑬ New detersory windows. (TYP)
- ⑭ Repair/replace existing plaster cornice
- ⑮ Existing fire escape to be retained. Remove existing vertical ladders.
- ⑯ New plaster caps on top. (TYP)

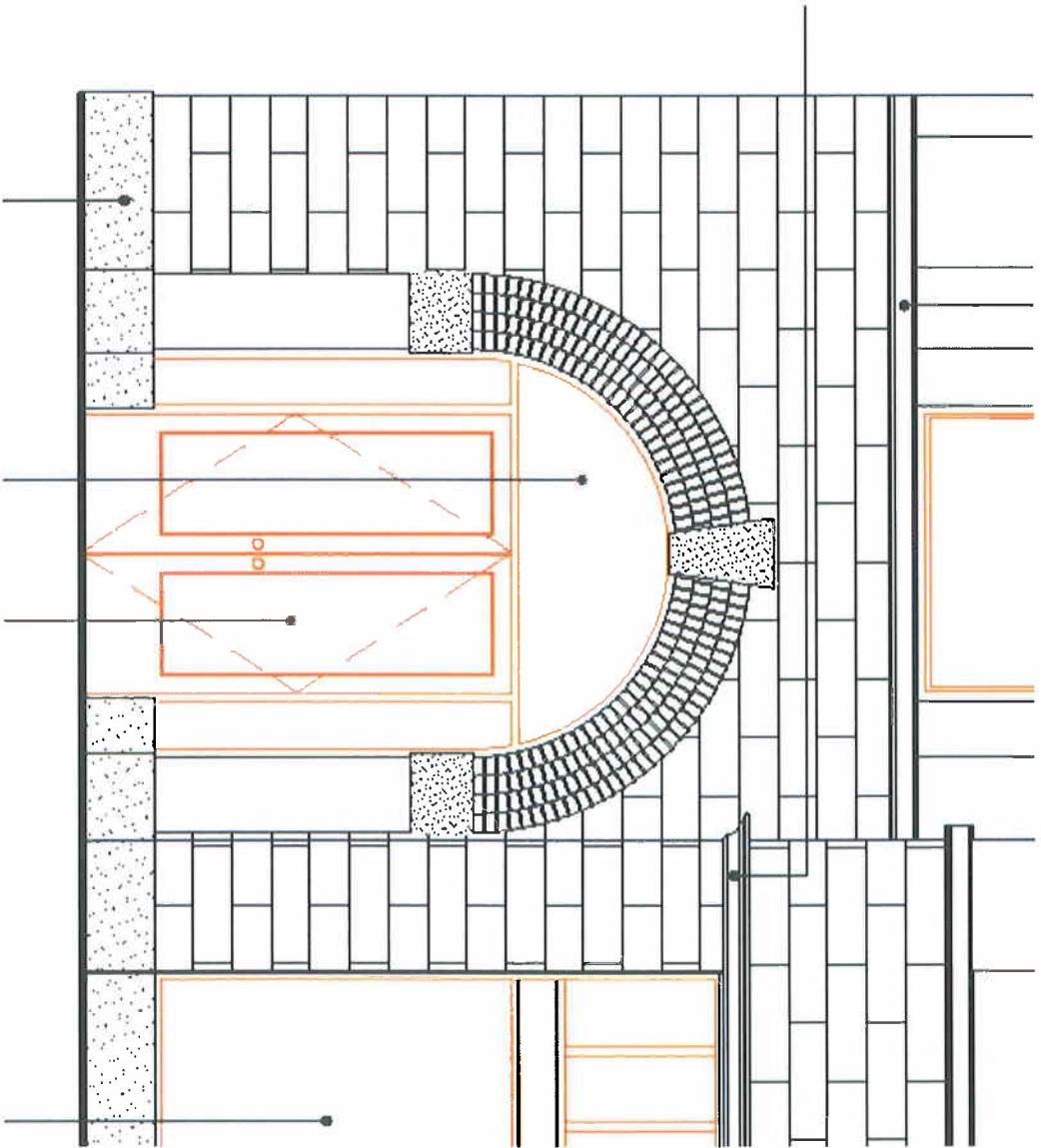


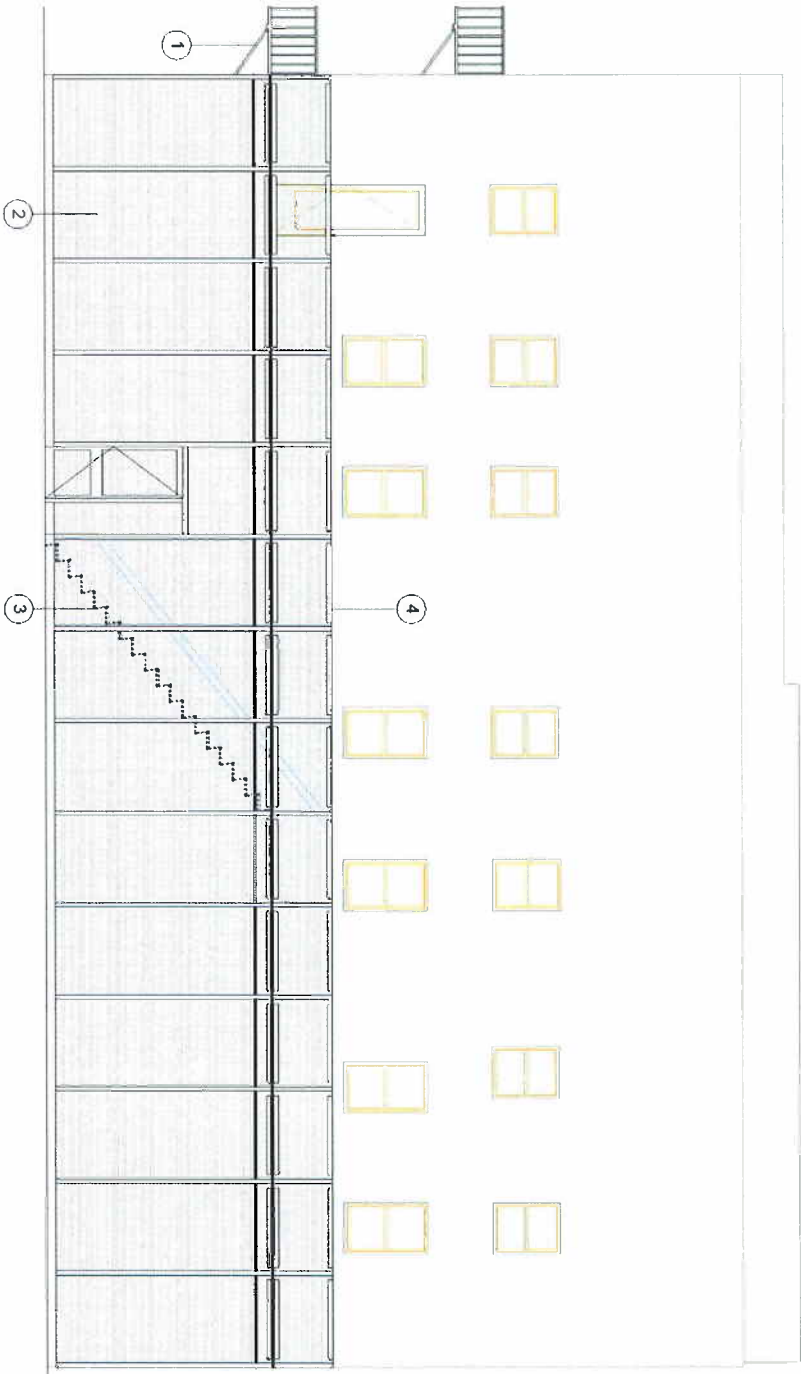






Precedent Image – Storefront and Doors Façade Details





SOUTH FACE EXTERIOR STAIR DETAILS
3/8" = 1'-0"

Proposed South Face Rendering

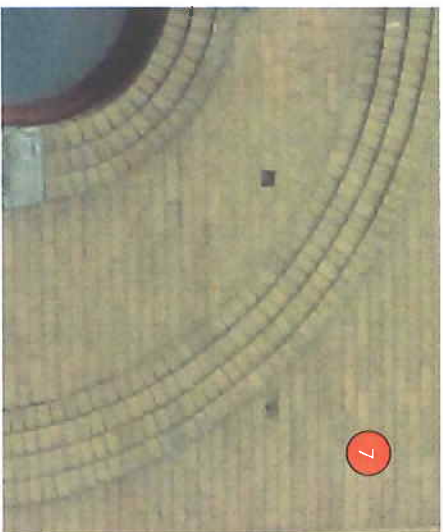
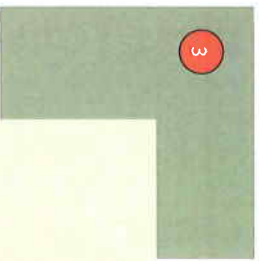
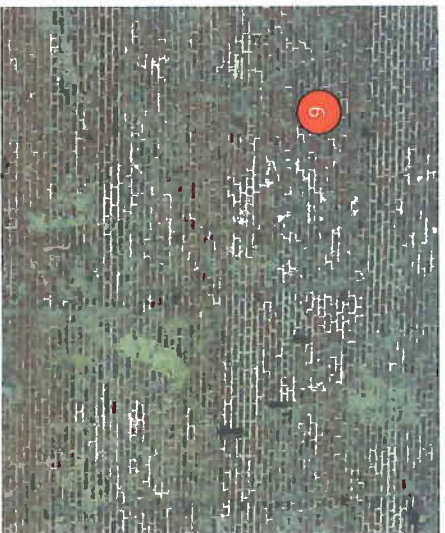
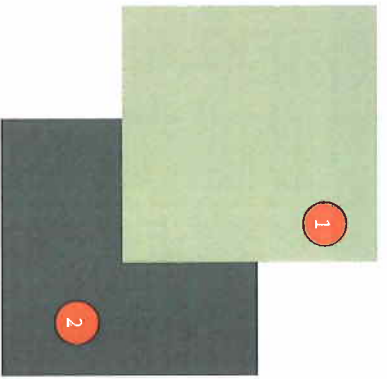




Precedent Image – South Face Exterior Stairs Details

Exterior Finish Schedule

- 1 Sherwin-Williams SW7044 Amazing Gray Plaster Field
- 2 Sherwin-Williams SW7048 Urbane Bronze Steel Work
- 3 Sherwin-Williams SW7045 Intellectual Gray Mullions
- 4 Sherwin-Williams SW7042 Shoji White Cornice Work
- 5 Grey Stone Base Stone and Skirting
- 6 Original Brick East, South and West Facades
- 7 Original Brick Facing North Façade



ATTACHMENT NO. 6

[Reserved]

ATTACHMENT NO. 7

[Reserved]

ATTACHMENT NO. 8

AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY

Recording Requested By)
and When Recorded Return to:)
)
The City of Long Beach)
333 West Ocean Blvd., 4th Floor)
Long Beach, California 90802)
Attention: Director Development)
Services)

AGREEMENT CONTAINING COVENANTS AFFECTING
REAL PROPERTY

THIS AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY ("Covenants") is entered into this ___ day of _____, 201__ (the "Effective Date"), by and between TEMPLE CREATIVE REALTY, LLC, a California limited liability company ("Owner") and THE CITY OF LONG BEACH, a charter city ("City"), with reference to the following:

- A. Owner is the owner of the real property in the City of Long Beach, County of Los Angeles, State of California (hereinafter referred to as the "Property"), described in Exhibit A, attached hereto and incorporated herein by this reference; as used herein, "Owner" refers to Owner, its successors and assigns; and
- B. The Property is situated within the downtown area of City; and
- C. The Owner has agreed to maintain the Property and the improvements thereon (the "Improvements") pursuant to the terms and provisions of that certain Disposition and Development Agreement entered into between the City and the Owner dated _____, 2012 (the "Agreement") and these Covenants.

NOW, THEREFORE, CITY AND OWNER COVENANT AND AGREE AS FOLLOWS:

1. Maintenance of the Property. Owner, its successors, assigns, and any successor in interest to the Property, covenants and agrees to maintain the Improvements and landscaping on the Property in accordance with the "Reasonable Standards," as hereinafter defined. Said Improvements shall include, but not be limited to, buildings, sidewalks, pedestrian lighting, landscaping, irrigation of landscaping, and any and all Improvements on the Property. To accomplish the maintenance, the Owner shall either staff or contract with qualified and if required by law, licensed personnel to perform the maintenance work, including the provision of labor, equipment, materials, support facilities, and any and all other items necessary to comply with the requirements of this Agreement. The obligations of Owner regarding maintenance of the Property in accordance with this Paragraph 1 are referred to herein as the "Owner Obligations."

(a) Reasonable Standards. The following standards ("Reasonable Standards") shall be complied with by the Owner and its maintenance staff, contractors or subcontractors:

(1) Landscape maintenance shall include, but not be limited to: watering/irrigation; fertilization; mowing; edging; weeding; removal and replacement of dead landscaping material; trimming of grass; tree and shrub pruning.

(2) Clean-up maintenance shall include, but not be limited to: maintenance of all sidewalks, paths and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from Improvements and landscaping located on the Property.

(3) The Improvements shall be maintained in conformance and in compliance with the approved construction and architectural plans and design scheme, as the same may be amended from time to time with the approval of the City, and in accordance with Exhibit B hereto.

(b) Failure to Maintain Improvements. In the event the Owner does not maintain the Property and Improvements in the manner set forth herein and in accordance with Reasonable Standards, the City shall have the right to enter the Property and maintain such Improvements, or to contract for the correction of such deficiencies, after written notice to the Owner. However, prior to taking any such action, the City agrees to notify the Owner in writing if the condition of said Improvements does not meet with Reasonable Standards and to specify the deficiencies and the actions required to be taken by the Owner to cure the

ATTACHMENT NO. 8

deficiencies. Upon notification of any maintenance deficiency, the Owner shall have thirty (30) days within which to commence, and thereafter diligently correct, remedy or cure the deficiency. If the written notification states the problem is urgent and relates to public health and safety, the Owner shall have forty-eight (48) hours to commence to rectify the problem.

- (c) Right to Enter and Maintain. In the event the Owner fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such maintenance deficiency after notification and after the period of correction has lapsed, then the City shall have the right to enter the Property and maintain such Improvements. The Owner agrees to pay the City such charges and costs incurred by the City in curing such maintenance deficiency. Until so paid, the City shall have a lien on the Property as provided by these Covenants for the amount of such charges or costs.

2. Lien for Owner's Obligations. If City exercises its right to maintain such improvements, the then-Owner agrees to pay City such reasonable charges and costs incurred for such maintenance. Until so paid, the City shall have a lien on the Property for the amount of such charges or cost, which lien shall be perfected by the recordation of "Notice of Claim of Lien" against the Property.

- (a) Upon recordation of a Notice of a Claim of Lien against the Property, such lien shall constitute a lien on the fee estate in and to the Property prior and superior to all other monetary liens except; (i) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto and (ii) the lien or charge of any mortgage, deed of trust, or other security interest then of record made in good faith and for value, it being understood that the priority of any such lien for costs incurred to comply with these covenants shall date from the date of the recordation of the Notice of Claim of Lien.
- (b) Any such lien shall be subject and subordinate to any lease or sublease of the interest of Owner in the Property or any portion thereof and to any easement affecting the Property or any portion thereof entered into at any time (either before or after) the date of recordation of such a Notice.
- (c) Any lien created pursuant to this Paragraph 2 may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted by the trustee named in the Notice of Claim of Lien or by a trustee substituted pursuant to Paragraph 2934a of the California Civil Code, in accordance with the provisions of Paragraphs 2924, 2924b and 2924c of the California Civil Code.

- (d) If the sums specified in the Notice of Claim of Lien are paid before the completion of any judicial or nonjudicial foreclosure, the City shall record a notice of satisfaction and release of the lien. Upon receipt of a written request by the Owner, the City shall also record a notice of rescission of the Notice of Claim of Lien.
- (e) Upon foreclosure of any mortgage of deed of trust made in good faith and for value and recorded prior to the recordation of any unsatisfied notice of Claim of Lien, the foreclosure-purchaser shall take title to the Property free of any lien imposed by the City that has accrued up to the time of the foreclosure sale, and upon taking title to the Property, such foreclosure-purchaser shall only be obligated to pay reasonable costs associated with these covenants accruing after the foreclosure-purchaser acquires title to the Property.
- (f) If the Property is ever legally divided with the written approval of the City (if required pursuant to the Agreement), and fee title to various portions of the Property is held under separate ownerships, then the burdens of the maintenance obligations set forth herein and in these covenants and the charges levied by the City to reimburse the City for the cost of undertaking such maintenance obligations of Owner, and its successors and assigns, and the lien for such charges shall be apportioned among the fee owners of the various portions of the Property under different ownerships according to the square footage of the floor area contained in the respective portions of the Property owned by them. Upon apportionment, no separate owner of a portion of the Property shall have any liability for the apportioned liabilities of any other separate owner of another portion of the Property, and the lien shall be similarly apportioned and shall only constitute a lien against the portion of the Property owned in fee by the owner who is liable for the apportioned charges levied by the City and secured by the apportioned lien and against no other portion of the Property.
- (g) Owner acknowledges and agrees City may also pursue any and all other remedies available in law or equity in the event Owner fails to remedy any maintenance deficiency after notice and within the period of correction.
- (h) Owner shall be liable for any and all attorneys' fees, and other legal costs or fees incurred in collecting said maintenance costs.

3. Operating Covenant. The Property shall be used for commercial uses only; residential and "live/work" uses are not permitted.

4. Promenade Maintenance District. Owner hereby agrees that it will participate in the Promenade maintenance district and will contribute into a fund to be used by the City to pay for the maintenance and repair of the Promenade, all as set forth in Exhibit C hereto.

5. Mortgagee Protections. The provisions of these Covenants do not limit the right of any mortgagee or beneficiary under a deed of trust which secures construction or permanent financing to foreclose or otherwise enforce any mortgage, or other encumbrance upon the Property or any portion thereof, or the right of any mortgagee or beneficiary under a deed of trust to exercise any of its remedies for the enforcement of any pledge or lien upon the Property, provided, however, that in the event of any foreclosure, under any such mortgage or other lien or encumbrance, or a sale pursuant to any power of sale included in any such mortgage, the purchaser or purchasers and their successors and assigns and the Property shall be, and shall continue to be, subject to all of the conditions, restrictions and covenants contained herein.

6. Duration of Covenants. The covenants contained in Paragraphs 1 and 2 of these Covenants (regarding maintenance), and the covenants contained in Paragraph 3 (regarding the Operating Covenant), shall remain in effect for the life of the Improvements.

7. Beneficiaries. City, its successors and assigns, are deemed the beneficiaries of the covenants contained herein, without regard to technical classification and designation. The covenants shall run in favor of the City, its successors and assigns, without regard to whether the City has been, remains, or is an owner of any land or interest therein.

8. Covenants Running with the Land. The provisions contained herein are covenants running with the land and not the Improvements thereon, and shall bind the Owner and the successors and assigns of the Owner to the Property.

9. Notices. All notices under this Agreement shall be in writing and shall be effective upon receipt whether delivered by personal delivery or recognized overnight delivery service or sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the respective parties as follows:

If to Owner: Temple Creative Realty, LLC
c/o InterTrend Communications, Inc.
555 E. Ocean Boulevard, 9th Floor
Long Beach, California 90802
Attn: Ms. Julia Huang

ATTACHMENT NO. 8

With a copy to: _____

Attn: _____

If to City: The City of Long Beach
333 West Ocean Boulevard, 4th Floor
Long Beach, California 90802
Attn: Director, Development Services

With a copy to: Office of the City Attorney
City of Long Beach
333 West Ocean Boulevard, 11th Floor
Long Beach, California 90802
Attn: Assistant City Attorney

Any party can notify the other party of their change of address by notifying the other party in writing of the new address.

10. General Provisions

(a) Attorneys Fees. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of these Covenants, then in that event, the prevailing party in such action or dispute, whether by final judgment or out of court settlement, shall be entitled to have and recover of and from the other party all costs and expenses of suit, including actual attorneys' fees. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including actual attorneys' fees (collectively "Costs") incurred in enforcing, perfecting and executing such judgment. For the purposes of this paragraph, Costs shall include, without limitation, attorneys' fees, costs and expenses incurred in (i) postjudgment motions, (ii) contempt proceeding, (iii) garnishment, levy, and debtor and third party examination, (iv) discovery, and (v) bankruptcy litigation.

(b) No Public Dedication. Nothing in these Covenants is intended or shall be construed to be a dedication to the public of any portion of the Owner's Property.

(c) Breach Shall Not Permit Termination. It is expressly agreed that no breach of these Covenants shall entitle Owner or City to cancel, rescind or otherwise terminate these

Covenants, but such limitation shall not affect, in any manner, any other right or remedies which the parties may have hereunder by reason of any breach of these Covenants.

(d) No Third Party Beneficiaries. Nothing in these Covenants, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies under or by reason of these Covenants.

(e) Force Majeure. Owner shall not be in breach or default hereunder, or liable to the City, for failure or delay in performance of any of its obligations under these Covenants caused by war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of the other party; acts or failure to act of the City or any other public or governmental agency or entity (other than the acts or failure to act of the City, which will not excuse performance by the City) or any other causes beyond the control or without the fault of the party claiming an extension of time to perform.

(f) Severability. If any term(s) or provision(s) of these Covenants or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of these Covenants or the application of such term(s) or provision(s) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each and every term of these Covenants shall be valid and enforced to the fullest extent permitted by law.

(g) Interpretation. These Covenants is to be deemed to have been prepared jointly by the parties hereto and if any inconsistencies exist herein they shall not be interpreted or construed against any party as the drafter.

(h) No Partnership. The relationship of Owner to City is that of an independent contractor, and not of an employee or agent. Neither party shall hold itself out or act as an employee or agent of the other, nor shall either party have, nor represent to any person or entity that it has, any right or authority whatsoever to bind the other party to or incur any obligations or liability of any kind on behalf of the other party. Nothing herein contained shall be construed to create a joint venture or partnership nor to create the relationship of principal and agent or of any association between the City and Owner. Owner is not authorized to make any representations whatsoever on behalf of City. Owner shall be and is solely responsible for and has control over the performance of Owner's services to be rendered under these Covenants.

(i) Further Cooperation. Each party hereto agrees to execute any and all documents and writings which may be necessary or expedient and do such other acts as will further the purposes hereof.

(j) Successors and Assigns. As used herein, Owner means Temple Creative Realty, LLC, or any subsequent fee owner of the Property. These Covenants shall inure to the benefit of and shall be binding upon the parties hereto and their assigns and successors.

11. Amendments. Only City, its successor, and assigns, and Owner and the successor and assigns of Owner in and to all or any part of the fee title to the Property, shall have the right to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants or other restrictions contained in these Covenants or to subject the Property to additional covenants, easements, or other restrictions without the consent of any tenant, lessee, easement holder or licensee. The covenants contained in these Covenants without regard to technical classification or designation shall not benefit or be enforceable by any person, firm, or corporation, public or private, except City and Owner and their respective successors and assigns.

IN WITNESS WHEREOF, the City and the Owner have executed this Agreement Containing Covenants Affecting Real Property.

THE CITY OF LONG BEACH, a charter city

By: _____
Name: _____
Its: _____

Approved as to form this ____ day of _____, 2012.

ROBERT E. SHANNON, City Attorney of the City of Long Beach.

By: _____
Assistant

OWNER

TEMPLE CREATIVE REALTY, LLC, a California
limited liability company

By: _____

Name: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

(AMERICAN HOTEL)

Real property in the City of Long Beach, County of Los Angeles, State of California, described as follows:

PARCEL 1

THE WESTERLY 75 FEET OF LOTS 1 AND 3, BLOCK 103, TOWNSITE OF LONG BEACH, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 19, PAGE 91 ET SEQ., OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 7280-028-916

PARCEL 2

A RECTANGULAR STRIP WITHIN LOTS 1 AND 3, BLOCK 103, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT AT THE NORTH EAST CORNER OF PARCEL 1 THENCE EASTERLY ALONG THE NORTHERLY BORDER OF LOT 1 FOR 9 INCHES; THENCE SOUTHERLY PARALLEL TO THE EAST BORDER OF PARCEL 1 TO THE SOUTH BOUNDARY OF LOT 3; THENCE WESTERLY ALONG THE SOUTH BOUNDARY OF LOT 3 FOR 9 INCHES; THENCE NORTHERLY ALONG THE EASTERN BOUNDARY OF PARCEL 1 TO THE POINT OF BEGINNING, TOWNSITE OF LONG BEACH, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 19, PAGE 91 ET SEQ., OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BEING A PORTION OF APN: 7280-028-913

PARCEL 3

A RECTANGULAR STRIP WITHIN LOT 5, BLOCK 103, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT AT THE NORTH WEST CORNER OF LOT 5 THENCE EASTERLY ALONG THE NORTHERN BORDER OF LOT 5 FOR A DISTANCE OF 75 FEET 9 INCHES; THENCE SOUTHERLY PARALLEL TO THE WESTERN BOUNDARY

OF LOT 5 FOR 18 FEET; THENCE WESTERLY PARALLEL TO THE NORTHERN BOUNDARY OF LOT 5 FOR 75 FEET 9 INCHES (TO THE WESTERN BOUNDARY OF LOT 5); THENCE NORTHERLY ALONG THE WESTERN BOUNDARY OF LOT 5 TO THE POINT OF BEGINNING, TOWNSITE OF LONG BEACH, IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 19, PAGE 91 ET SEQ., OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

BEING A PORTION OF APN: 7280-028-911

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS IN, UNDER OR WHICH MAY BE PRODUCED FROM SAID LAND BUT WITHOUT THE RIGHT OF SURFACE ENTRY AS GRANTED TO C. C. ALBRIGHT, A MARRIED MAN BY DEED RECORDED NOVEMBER 30, 1966 IN BOOK M2401, PAGE 694, OFFICIAL RECORDS, AS INSTRUMENT NO. 2339, OF OFFICIAL RECORDS.

EXHIBIT B

MAINTENANCE ITEMS

All maintenance and repairs will be the responsibility of the property owner.

Building

The building skin and trim shall be kept in good condition. Any deterioration or damage to the building shall be repaired immediately. Any painting accomplished to repair deterioration or damage, or to cover graffiti, shall match the existing paint color. Any proposed repainting of the building with a color other than the existing shall be approved by the City prior to the painting being completed. No wires, piping or other items shall be allowed to be installed on the building faces.

Sidewalks and Alleyways

Sidewalks and alleyways (to the center line) adjacent to the Site shall be maintained in a clean and weed-free condition; clear of dirt, mud, trash, litter, debris or other matter which is unsafe or unsightly; and removal of all graffiti.

Windows and doors

All windows and doors shall be kept in good working order. Any damaged glazing shall be replaced immediately. Door and window mullions will be maintained free from deterioration and repaired or replaced if damaged.

Lighting

All lighting will be kept in good working order at all times. Any worn out light bulbs will be replaced immediately. Lighting standards will be repaired or replaced with identical lighting in case of deterioration or damage.

Awnings

All awnings shall be cleaned with soap and water every six months to remove dirt, grime and dust. Awnings shall be repaired as necessary or replaced with identical awnings of the same fabric and color to match existing awnings in case of deterioration or damage. Any deterioration of or damage to the awning supports shall be repaired or replaced immediately.

Signage

All permanent building signage shall be kept in good working order at all times. Any non-working light bulbs shall be replaced immediately. Permanent building signage shall be repaired as necessary or replaced with identical materials as constructed due to deterioration or damage. No temporary signs or banners shall be allowed to be placed on the building fronts. No signage will be painted on any doors, windows or building surface. Any signs that are removed must have the wall patched and painted to match the existing surface.

Screening (Grille Doors)

All door and trash enclosure screening shall be kept in good working order at all times. The screening shall be repaired as necessary or replaced with identical materials and paint color as installed. No security bars or screening shall be allowed to be placed on the exterior of the building or over the doors or windows except as expressly approved by the Executive Director.

Trash

The sidewalks and gutters in front of the structure shall be cleaned consistently and kept free from trash and debris. Sidewalks shall be washed down a minimum of once per month.

EXHIBIT C

AGREEMENT REGARDING PROMENADE MAINTENANCE DISTRICT

This Exhibit is an attachment to the Agreement Containing Covenants Affecting Real Property (the "Covenants") between Temple Creative Realty, LLC as "Owner" and the City of Long Beach as "City." Capitalized terms when used herein shall have the meanings ascribed to them in the Covenants unless defined otherwise in this Exhibit.

Promenade Maintenance District. Owner, together with the other Promenade Parcel Owners, shall contribute into a fund to be used by the City to pay for the maintenance and repair of the Promenade in accordance with this Exhibit.

(a) Definitions. Unless the context clearly indicates otherwise, the following definitions shall apply:

"Assessment" shall mean the amount which is to be paid by each Promenade Parcel Owner for its pro rata share of the Promenade Expenses.

"Floor Area" shall mean all areas within the building(s) constructed on a Parcel measured from the exterior surface of exterior walls (and, in the case of openings, from extensions thereof), including, but not limited to, residential apartments or condominiums, common areas, commercial space, restrooms, mezzanines and storage areas (but excluding parking areas).

"Parcel" shall mean each of the separate legal parcels participating in the Promenade Maintenance District, which Parcels include the Property and the properties developed along the Promenade by Olson 737 – Long Beach 2, LLC, Lyon Promenade, LLC and Lennar Long Beach Promenade Partners, LLC. City reserves the right, without any obligation to do so (except as expressly provided below at subsection (c)(v)), to add property as a Parcel from time to time.

"Promenade" shall mean that portion of the public right of way known as the Promenade in the City of Long Beach between Ocean Avenue and 3rd Street and all of the improvements thereon.

"Promenade Expenses" shall mean and refer to the actual and estimated costs of:

(i) maintenance and repair of the Promenade including sidewalks, roadways, hardscape, street furnishings, landscaping, lighting, signs and public art;

(ii) the costs of utilities, irrigation, gardening, trash collection and disposal and other services for the Promenade;

(iii) on-site security staffing services; provided that the cost of such security services shall not exceed thirty percent (30%) of the total Promenade Expenses;

(iv) security cameras and monitors, alarms and similar one-time capital improvements;

(v) third party costs to administer the maintenance of the Promenade, including, but not limited to, compensation paid by City, in the City's reasonable discretion, to managers, accountants (including the costs of audits and related financial statements and reports with respect to the applicable portion of the City's books and records), attorneys and employees and to any individual or entity retained by the City for the purposes of performing and discharging the duties and obligations of the City solely in connection with the maintenance of the Promenade, as set forth in Subparagraph (c) hereof;

(vi) other third party expenses incurred by the City in connection with the discharge of its duties set forth in this Exhibit;

(vii) 10% of the sum of items (i) through (vi) above to reimburse City for its overhead and administrative costs incurred to perform its duties under this Exhibit; and

(viii) a customary and reasonable reserve for capital replacements.

"Promenade Parcel Owner" shall mean and refer to the person(s) or entity(ies) who is (are) the record owner of a fee simple title to a Parcel, including Owner. The Promenade Parcel Owner for a building consisting of separate condominium units shall be the homeowner's association for that building.

(b) Effective Date; Term. The terms and provisions of this Exhibit shall take effect commencing on January 1, 2006 and shall terminate on December 31, 2100 (the "Term"). The Term of this Exhibit may be extended upon the consent of Promenade Parcel Owners owning at least 66.66% of the Floor Area within all of the Parcels. The obligation of each Promenade Parcel Owner to pay its pro rata share of the Assessments shall commence on the date which is the later of (i) issuance of a temporary or permanent certificate of occupancy for the improvements on such owner's

Parcel and (ii) the first year the Promenade is completed.

(c) Duties and Powers of the City.

(i) Authority to Establish, Fix and Levy Assessments. The parties hereto covenant and agree that City shall have the exclusive power to establish, fix and levy Assessments against the Promenade Parcel Owners in accordance with Subparagraph (d). Enforcement of payment of such Assessments shall be in accordance with Subparagraph (e).

(ii) Authority to Contract. The City shall have the power to employ a manager or other persons and contract with independent contractors or managing agents who have professional experience in the management and maintenance of public areas similar to the Promenade, for the performance of all or any part of the duties and responsibilities of the City, provided that the fees for such services are reasonable in amount, and to undertake such other activities as are convenient to implement the purposes of this Exhibit.

(iii) Repair and Maintenance. The City shall have the duty, to the extent of available funds, to maintain, repair, restore, replace and improve the Promenade and all improvements thereon following the completion of the original construction and installation of the Promenade by the City. City may accomplish the forgoing activities in such manner and at such times as City determines, in its reasonable discretion, to be appropriate. Such maintenance and repair shall include, without limitation:

(A) maintenance of the Promenade in a clean and safe condition in accordance with all applicable laws and ordinances of the City, including the paving and repairing or surfacing and resurfacing of such areas when necessary with the type of material originally installed therein, or such substitute therefor as shall in all respects be equal thereto in quality, appearance and durability; the removal of debris and waste materials and the washing or sweeping of paved areas as required; and the painting and repainting of striping, markers and directional signs as required;

(B) cleaning, maintaining and relamping of any external lighting fixtures and related fixtures located within the Promenade; and

(C) maintenance and replacement of all landscaping as required anywhere within the Promenade, following the initial installation of such landscaping, including, without limitation, the trimming, watering and fertilization of all grass, ground cover, plants, shrubs and trees, removal of dead or waste material and replacement of any dead or diseased grass, ground cover, plants, shrubs or trees.

(iv) Payment for the Services and Materials. The Promenade Expenses shall be paid solely from the Assessments. City shall have no obligation to pay for any of the Promenade Expenses from its own funds.

(v) Additional Promenade Parcel Owners. City shall require the developer of the parcels on the west side of the Promenade between Broadway and Third Street (currently referred to as the "D'Orsay Site") and the developer of the parcels on the west side of Long Beach Boulevard between First Street and Broadway (currently referred to as the "MTA Site") to participate in the Promenade Maintenance District on similar terms as contained in this Exhibit, except that the developer of the MTA Site will contribute at a lower rate (50% of the per square foot assessment for projects fronting on the Promenade). City shall use its reasonable, good faith efforts to require other property owners adjacent to the Promenade between Ocean Avenue and Third Street to contribute their pro rata portion of the Promenade Expenses to the maintenance district at such time as those property owners require a discretionary approval from City to construct major improvements. City makes no representation that it will be able to enlist the participation of such owners in the maintenance district.

(d) Assessments

(i) Covenant to Pay the Assessments. Owner hereby covenants and agrees that it will pay its pro rata share of the Promenade Expenses.

(ii) Allocation of Assessments. For the first five (5) years of the Term, each Promenade Parcel Owner and City shall each pay 25% of the Promenade Expenses. Thereafter, each Promenade Parcel Owner's pro rata share shall be determined by dividing the Floor Area on that Promenade Parcel Owner's Parcel by the total Floor Area on all of the Parcels. If additional property owners participate in the maintenance district, each owner's pro rata share will be re-determined by the Executive Director.

(iii) Payment of Assessments. Initially, each Promenade Parcel Owner shall pay to City, on the first day of each calendar quarter (*i.e.*, January 1, April 1, July 1 and October 1) its share of the Promenade Expenses. During the first five (5) years of the Term, City shall pay its pro rata share of the Promenade Expenses. City may adjust the billing cycle for payment of the Assessments as reasonable and practical, but not more often than monthly.

(iv) Late Payment Fees. All Assessments shall be due and payable within twenty (20) days after the Promenade Parcel Owner's receipt of an invoice therefore. Any Assessments not paid when due shall bear interest at the maximum

legal rate. In addition, the City shall impose a ten percent (10%) late charge on all past-due amounts.

(v) Adjustment. The amount of the Assessment may be adjusted by City within sixty (60) days following the end of each calendar year to reflect actual Promenade Expenses. If a Promenade Parcel Owner's pro rata share of the actual Promenade Expenses exceeds that Promenade Parcel Owner's Assessment payments made, that Promenade Parcel Owner shall pay City the deficiency within ten (10) days after receipt of such statement. If the Assessments paid by a Promenade Parcel Owner exceed that Promenade Parcel Owner's pro rata share of the Promenade Expenses, that Promenade Parcel Owner shall be entitled to offset the excess against the next Assessment payment due.

(vi) Annual Statement. Within sixty (60) days following the end of each calendar year, City shall furnish to each Promenade Parcel Owner a statement covering the calendar year just expired, certified as correct by the City or an authorized representative of City, showing (i) the total of the Promenade Expenses, (ii) the amount of each Promenade Parcel Owner's share of the Promenade Expenses and (iii) the payments made by each Promenade Parcel Owner.

(vii) Annual Adjustments to the Assessments. As the full length of the Promenade is improved and for the first full calendar year thereafter, City shall establish the Assessments based upon its reasonable estimate of the Promenade Expenses for that year. During the two calendar years following the calendar year in which the Promenade is completed City may increase the Assessments to reflect actual and reasonable Promenade Expenses. Annually thereafter, City may adjust the Assessment to an amount not more than the product of (A) the most recent year's Assessment times (B) a fraction equal to the Consumer Price Index [All Urban Consumers] (base year 1982-1984 = 100) for Los Angeles-Anaheim-Riverside CMSA, published by the United States Department of Labor, Bureau of Labor Statistics ("Index") which is published most immediately preceding the new year ("Extension Index") divided by the Index published one year prior to the Extension Index, but not more than one hundred five percent (105%). If the Department of Labor ceases to publish the Index, the City shall select, in its reasonable discretion, a comparable index measuring the rate of inflation from year to year.

(e) Nonpayment of Assessments.

(i) Lien for Unpaid Assessments. The payment of Assessments shall be an obligation of Owner secured by the lien created in the Covenants at Paragraph 3, Lien for Owner's Obligations, except that such lien shall not be subject and subordinate to any lease or sublease of the interest of Promenade Parcel Owner in the Property or

any portion thereof (either before or after) the date of recordation of the Notice of Claim of Lien; provided that City shall disturb any such lease or sublease. The lien for payment of past due Assessments shall be perfected by the recordation in the official records of a "Notice of Claim of Lien" against the Property.

(ii) Personal Obligation of Owner. Each obligation to pay any Assessments, together with interest thereon, late charges, collection costs and reasonable attorneys' fees, shall be a separate, distinct, and personal debt and obligation of Owner during its period of ownership of a parcel and shall bind its heirs, legatees, devisees, administrators, executors, successors and assigns.

(iii) Remedies. Any lien created pursuant to this Exhibit may be enforced in any manner permitted by law, including judicial foreclosure or nonjudicial foreclosure. Each remedy provided for in these Covenants is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver thereof.

ATTACHMENT NO. 9

CERTIFICATE OF COMPLETION

Please record at the
request of, and when
recorded, return to:

Temple Creative Realty, LLC
c/o InterTrend Communications, Inc.
555 E. Ocean Boulevard
9th Floor
Long Beach, California 90802
Attn: Ms. Julia Huang

Free recording in accordance with
Section 6103 of the Cal Codes, Gov't. Code.

CITY OF LONG BEACH

CERTIFICATE OF COMPLETION

WHEREAS, by Grant Deed (the "Grant Deed") recorded _____, 201__, as Instrument Number ___ - _____, records of the County Recorder, County of Los Angeles, California, THE CITY OF LONG BEACH, CALIFORNIA, a chartered city ("City"), imposed certain restrictions against real property owned by TEMPLE CREATIVE REALTY, LLC, a California limited liability company ("Owner") situated in the City of Long Beach, California, and described as set forth in Exhibit A attached hereto and incorporated herein as though fully set forth ("Property"); and

WHEREAS, as referenced in the Grant Deed and in Section 3.6 of that certain Disposition and Development Agreement dated _____, 201__, by and between the City and Owner (the "Agreement"), upon written request, if the Owner is not in default under the Agreement, the City shall furnish the Owner with a Certificate of Completion for the Improvements upon the Property when they are properly completed, which certificate shall be in form suitable for recording in the Recorder's Office of Los Angeles County; and

WHEREAS, such certificate shall be conclusive determination of satisfactory completion by Owner of the construction and development required by the Agreement and the Grant Deed.

NOW, THEREFORE

1. As provided in the Agreement and the Grant Deed, the City does hereby certify that the construction and development of the Improvements on the Property has been fully and satisfactorily performed and completed.

2. After the recordation of this Certificate of Completion,

(a) any party acquiring any interest in the Property from the named Owner (such acquiring party and its successors and assigns, and all other parties claiming any interest in the Property by or through such party or its successors and assigns, all of whom are referred to hereafter as the "Acquiring Party") shall not incur or be deemed to have assumed any obligation or liability under the Agreement or be bound thereby;

(b) City shall not as against Acquiring Party have any rights, remedies or controls that it would otherwise have or be entitled to exercise under the Agreement as a result of a default in or breach of any provision of the Agreement;

(c) Acquiring Party shall not be deemed to have any actual or constructive notice or knowledge of any duty, obligation, liability, undertaking, covenant, promise or agreement of Owner in the Agreement, and Acquiring Party shall not have any obligation or duty to refer to or read, or otherwise obtain knowledge of, the contents of the Agreement;

(d) Paragraphs 3, 4 and 5 of the Grant Deed are hereby terminated and of no further force or effect with respect to the Property, and Acquiring Party shall not be bound by the covenants contained in Paragraphs 3, 4 and 5; and

(e) Acquiring Party shall be bound by all other covenants contained in the Grant Deed (the "Surviving Covenants"), and the respective rights and obligations of Acquiring Party to City with reference to the Property shall be limited hereafter to the Surviving Covenants.

3. This Certificate shall not constitute evidence or compliance with or satisfaction of any obligation of the Owner to any holder of a mortgage or any insurer of a mortgage, securing money loaned to finance the improvements or any part thereof.

4. This Certificate is not a Notice of Completion as referred to in California Civil Code Section 3093.

5. Nothing contained in this instrument shall modify in any way any other provisions of the Grant Deed, or any other provisions of the documents incorporated therein, including the Agreement; nor shall this instrument release Owner under the Agreement from any obligation contained therein except for those obligations deemed satisfied or released under the provisions of Paragraphs 1 and 2 of this instrument.

IN WITNESS WHEREOF the City has executed this Certificate this ____ day of _____, 201__.

CITY OF LONG BEACH, CALIFORNIA, a chartered city

By: _____
Name: _____
Its: _____

Approved as to form this ____ day of _____, 201__.

ROBERT E. SHANNON, City Attorney of City of Long Beach

By: _____
Assistant

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

ATTACHMENT NO. 9