

ORDINANCE NO. 22-O- 2867

AN ORDINANCE OF THE CITY OF BEVERLY HILLS APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND 468 N RODEO DRIVE LLC, A DELAWARE LIMITED LIABILITY COMPANY, 456 N RODEO DRIVE LLC, A DELAWARE LIMITED LIABILITY COMPANY, 461 N BEVERLY DRIVE LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND 449 N BEVERLY DRIVE LLC, A DELAWARE LIMITED LIABILITY COMPANY FOR DEVELOPMENT IN ACCORDANCE WITH THE CHEVAL BLANC BEVERLY HILLS SPECIFIC PLAN FOR PROPERTY AT 456 AND 468 NORTH RODEO DRIVE; 449, 451 AND 453 NORTH BEVERLY DRIVE; AND 461 THROUGH 465 NORTH BEVERLY DRIVE.

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

Section 1. 468 N Rodeo Drive LLC, a Delaware limited liability company, 456 N Rodeo Drive LLC, a Delaware limited liability company, 461 N Beverly Drive LLC, a Delaware limited liability company, and 449 N Beverly Drive LLC, a Delaware limited liability company (collectively “Developer”), propose to enter into a development agreement (herein, the “Development Agreement”), which is attached to this Ordinance as Exhibit “A,” in connection with the development of the Cheval Blanc Beverly Hills Specific Plan Project (“Project”), a comprehensive and coordinated alternative redevelopment of the approximately 1.28-acre project site located in the City of Beverly Hills central business triangle at the northern gateway to Rodeo Drive including properties at 456 and 468 North Rodeo Drive; 449, 451, and 453 North Beverly Drive; and 461 through 465 North Beverly Drive (“Project Site”).

Section 2. The Project, including the related General Plan and Master Plan of Streets, Alleys and Highways amendments, Specific Plan adoption, zone text and map

amendments, encroachment permits, vesting tentative parcel map, and development agreement approval, has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the City’s Local CEQA Guidelines. An Environmental Impact Report was prepared and the City Council, by separate Resolution No. 22-R-13429 adopted on November 1, 2022, certified the Final Environmental Impact Report, made appropriate environmental findings, and adopted a Mitigation Monitoring and Reporting Program for the Project. Resolution No. 22-R-13429 is incorporated by reference, and made a part hereof as if fully set forth herein.

The documents and other materials that constitute the record on which this recommendation was made are located in the Department of Community Development and are in the custody of the Director of Community Development. Further, the mitigation measures set forth therein are made applicable to the Project.

Section 3. The Planning Commission conducted duly noticed public hearings on October 28, 2021 (to consider the scope of the environmental impact report to be prepared for the Project); February 10, 2022; February 24, 2022; March 24, 2022; and May 26, 2022, at which time it received oral and documentary evidence relative to the proposed Project. Thereafter, on June 13, 2022, the Planning Commission concluded deliberations on the proposed entitlements and adopted Resolution No. 1988 recommending City Council certification of the Final Environmental Impact Report and adoption of findings and a mitigation monitoring and reporting program; Resolution No. 1989 recommending City Council approval of General Plan and Master Plan of Streets, Highways and Alleys amendments, zone text and zoning map amendments; Resolution No. 1990 recommending the City Council adopt the Cheval Blanc

Beverly Hills Specific Plan and approve encroachment permits for improvements located in the public right-of-way; and Resolution No. 1991 conditionally approving vesting tentative parcel map No. 82872.

Section 4. On September 20, 2022, the City Council conducted a duly noticed public hearing to consider the Project and the appeal of the Planning Commission's decision regarding vesting tentative parcel map No. 82872. The City Council continued the public hearing to October 11, 2022 (at which no substantive discussion was held) and further continued the public hearing to November 1, 2022. The City Council considered the Project, including the Development Agreement, at a continued public hearing on November 1, 2022. Notices of the time, place and purpose of the public hearing were duly provided in accordance with California Government Code Sections 65867, 65090 and 65091.

Section 5. The City Council finds that the provisions of the Development Agreement are consistent with the City of Beverly Hills General Plan as proposed to be amended, and complies with its objectives and policies for the reasons set forth in the General Plan Consistency Analysis attached as Exhibit "B" and incorporated herein by reference; Section 2.4 of the Cheval Blanc Beverly Hills Specific Plan; and Table 4.7-1 of the Final Environmental Impact Report. The Development Agreement implements the terms of the General Plan, the Cheval Blanc Beverly Hills Specific Plan and City ordinances, including General Plan Amendments processed in connection with the Project to add the land use designation of Cheval Blanc Beverly Hills Specific Plan to the Project Site and the revision to Land Use Element Policy LU 9.4: Anchor Location Design Criteria to specifically identify the policy is applicable to the Project site.


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

Section 7. No later than ten (10) days after the effective date of this Ordinance, the City Clerk shall record with the County Recorder a copy of the Development Agreement.

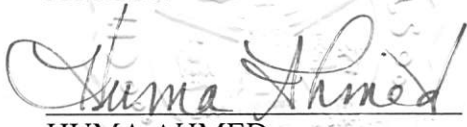
Section 8. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code; shall certify to the adoption of this Ordinance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

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

Adopted: November 15, 2022  
Effective: December 16, 2022

  
\_\_\_\_\_  
LILI BOSSE  
Mayor of the City of Beverly Hills, California

ATTEST:

 (SEAL)  
HUMA AHMED  
City Clerk



APPROVED AS TO FORM:

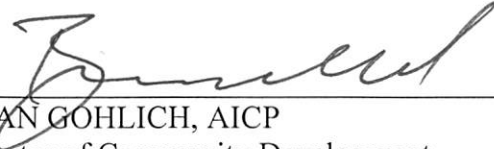


LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:



GEORGE CHAVEZ  
City Manager



RYAN GOHLICH, AICP  
Director of Community Development

Exhibits:

- A. Development Agreement
- B. General Plan Consistency Analysis

**EXHIBIT A**  
**DEVELOPMENT AGREEMENT**

RECORDING REQUESTED BY:  
CITY OF BEVERLY HILLS

WHEN RECORDED MAIL TO:

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

SPACE ABOVE THIS LINE FOR  
RECORDER'S USE

**DEVELOPMENT AGREEMENT CHEVAL BLANC  
(LIENS FOR PUBLIC BENEFIT CONTRIBUTIONS  
EMS FEES MUNICIPAL SURCHARGES AND CONSTRUCTION COVENANT)**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made by and between THE CITY OF BEVERLY HILLS, a California municipal corporation (the "City"), on the one hand, and 468 N Rodeo Drive LLC, a Delaware limited liability company, 456 N Rodeo Drive LLC, a Delaware limited liability company, 461 N Beverly Drive LLC, a Delaware limited liability company, and 449 N Beverly Drive LLC, a Delaware limited liability company, on the date hereof as listed on the signature pages hereto) (collectively "Property Owner") and LVMH MOËT HENNESSY LOUIS VUITTON INC., a Delaware corporation ("LVMH Inc.") (the term "Developer" shall collectively refer to both Property Owner and "LVMH Inc."), on the other hand. The City and Developer are individually referred to herein as a "Party" and collectively referred to as the "Parties."

**RECITALS**

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

A. Developer is the legal and beneficial owner of the real property located at 456 North Rodeo Drive (Assessor's Parcel Number 4343-016-012), 468 North Rodeo Drive (Assessor's Parcel Number 4343-016-001), 461 through 465 North Beverly Drive (Assessor's Parcel Number 4343-016-023), and 449 through 453 North Beverly Drive (Assessor's Parcel Number 4343-016-019) in the City of Beverly Hills, which constitute the "Property" (as hereafter further defined).

B. Developer desires to allow for the integrated redevelopment of the entire Property, through the adoption by the City of the Cheval Blanc Beverly Hills Specific Plan (the "Specific Plan"). The integrated development contemplated by the Specific Plan, is generally referred to as the "Project" (as hereafter further defined).

C. Developer has applied to the City for a development agreement, pursuant to the provisions of the Development Agreement Act (as hereafter defined) and other applicable laws.

D. In anticipation of the Project's development, Developer has made or will make application to the City (in its governmental capacity) for certain approvals, entitlements, findings and permits required for the development and construction of the Project, including, without limitation: (1) an amendment to the Land Use Element of the Beverly Hills General Plan; (2) the Specific Plan; (3) a Master Plan of Streets amendment to a) relocate the existing surface right-of-way for public alley purposes; b) dedicate additional surface right-of-way for public sidewalk purposes along South Santa Monica Boulevard, and c) allow the public roadway along North Rodeo Drive, South Santa Monica Boulevard and North Beverly Drive to remain in their current locations; (4) an encroachment permit to allow a) subsurface utility vaults to encroach in the public right-of-way, b) private parking spaces to extend under the public sidewalk from 10 feet below grade and up to the existing sidewalk curb, c) installation and maintenance of landscaped parkways and special paving in the public right-of-way fronting the Project Site and in portions of the relocated public alley; (5) a vesting tentative parcel map which merges the existing legal parcels and relocates and reconfigures via remapping the alley within the Property (the "Tract Map"); (6) zoning text and map amendments; (7) architectural review; (8) the certification of an "EIR (as hereafter defined) with respect to the Project and the making of certain associated findings; and (9) a Development Agreement under the Development Agreement Act (collectively, the "Project Approvals").

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

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

G. To provide such certainty in planning and orderly development, the City desires, by this Agreement, to provide Developer with assurance that Developer can proceed with development of the Project with the uses, density and other land use characteristics specified in the Project Approvals.

H. To provide the City with assurances that the corresponding benefits associated with the a higher intensity of uses in this "Anchor Location" will be realized (1) at an extraordinary level of quality and with the anticipated synergies to the Business Triangle (as hereafter defined) anticipated by the Project approved under the Specific Plan (and related approvals), and (2) the projected future economic benefits to the City from, among other matters, generally applicable tax revenues, Public Benefit Contributions, EMS Fees and Municipal Surcharges will be realized, the Developer is committing to proceed with the Project pursuant to the terms of this Agreement and as set forth in the Project Approvals.

I. Developer desires to provide the City with assurances that it will (as further provided below) timely construct, equip and staff the Project and open the same to the public, Club Members and Hotel guests in the allocated densities of uses provided under the full build-out of the Project as contemplated by the Specific Plan and at the initial level of quality generally described in the Specific Plan and Project Approvals as further supplemented by the Minimum Luxury Standard (as hereafter

defined) and other provisions in this Agreement. The foregoing includes, without limitation the completion and opening of the Hotel component without material reduction in size and in accordance with the design referenced in Section 4.8.F of the Specific Plan, and as approved by the Architecture Commission, and having a quality of interior design, materials and finishes consistent with the world class standards of other Cheval Blanc properties as more fully described herein in connection with the definition of the Minimum Luxury Standard below.

J. Neither Developer nor City would enter into this Agreement, or agree to provide the public benefits and improvements described herein, without the agreement that the Project can and will be developed, during the Term (as hereafter defined) of this Agreement, with the uses, density and other land use characteristics specified in the Project Approvals.

K. The City has determined that, as a result of the development of the Project in accordance with the Project Approvals and this Agreement, substantial benefits will accrue to the public, including but not limited to (i) the Developer making a Public Benefit Contribution (as hereafter defined) to offset the fiscal, environmental, and other impacts of development of the Project and (ii) increased City revenues from the payment of substantial transient occupancy taxes, the Municipal Surcharge (as hereafter defined), the EMS Fee (as hereafter defined) and other economic benefits from the Project.

L. On September 20, 2022 and November 1, 2022, pursuant to the requirements of the Development Agreement Act, the City Council of the City of Beverly Hills (the "City Council") conducted a hearing on Developer's application for this Agreement.

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

N. By Resolution No. 22-R-13429 adopted by the City Council on November 1, 2022, the City Council reviewed and certified, after making appropriate findings, the EIR (as hereafter defined) that contemplates this Agreement.

O. On November 15, 2022, the City Council adopted Ordinance No. 22-O-2867 approving this Agreement, and such ordinance became effective on December 16, 2022.

### **AGREEMENT**

NOW THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, and in consideration of the mutual promises and covenants herein contained and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. For all purposes of this Agreement, except as otherwise expressly provided herein, or unless the context of this Agreement otherwise requires, the following words and phrases shall be defined as is set forth below:

(a) "Additional Arts and Cultural Contribution" means the \$2,000,000 payment due under Section 10 (h) below.

(b) “All or any portion of the Property” means the entire Property or any portion of the entire Property, including, without limitation, a subdivided parcel which is a portion thereof, any co-tenancy interest in all or any portion thereof and any condominium or air-space parcel from all or any portion of the Property.

(c) “Applicable Rules” means the rules, regulations, ordinances, resolutions, codes, guidelines, and officially adopted procedures and official policies of the City governing the use and development of real property, including, but not limited to, the City’s Zoning Regulations and building regulations, adopted as of the Effective Date. Among other matters, the Applicable Rules set forth and govern the permitted uses of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, parking requirements, setbacks, and development standards, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction guidelines, standards and specifications applicable to the development of the Property.

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

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

(f) “Business Triangle” means the area of the City bounded by Wilshire Boulevard, Santa Monica Boulevard South Roadway and the alley westerly of Crescent Drive

(g) “Club Members” is defined in the Specific Plan.

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

(i) “Certificate of Occupancy” means any of the following with respect to any part of the Project: (i) a permanent Certificate of Occupancy or (ii) a temporary Certificate of Occupancy; provided, however, that a Certificate of Occupancy or a Certificate of Completion as to underground parking components being utilized prior to the completion of vertical improvements shall not be deemed to be included within the definition of a “Certificate of Occupancy.”

(j) “Conditions of Approval” shall mean the conditions of approval imposed by the City upon the Project Approvals.

(k) “Commencement of Construction” shall mean that date upon which all of the following have occurred: (i) issuance of a demolition permit, (ii) the issuance of a foundation permit and (iii) the commencement of demolition.

(l) “Developer Fees” shall mean those fees established, adopted, or imposed by the City pursuant to Section 66000-66008, of the Government Code of the State of California or the California Subdivision Map Act to offset the impact of development on the City’s capital facilities. Such fees may include impact fees, linkage fees, exactions, assessments, fair share charges, or other

similar impact fees imposed by the City on or in connection with new development. Developer Fees do not mean or include Processing Fees.

(m) “Development Agreement” or “Agreement” means this Agreement.

(n) “Development Agreement Act” means Article 2.5 of Chapter 4 of Division I of Title 7 (Sections 65864 through 65869.5) of the California Government Code (as the same may be amended and/or re-codified from time to time).

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

(p) “Effective Date” shall mean the date this fully executed Agreement is recorded in the official records of the Los Angeles County Recorder.

(q) “EIR” shall mean the final Environmental Impact Report (SCH No. 2020110223) that addresses the Project and was prepared, circulated and certified in accordance with applicable law, including, without limitation, CEQA.

(r) “EMS” Fee(s) means the fee(s) paid pursuant to the provisions of Section 10(e) of this Agreement, which payments shall be used by the City for various public projects and programs, as determined by the City in its sole discretion.

(s) “Final Approval Date” or “Final Approval” means that date when all of the following matters have been satisfied (i) any period for administrative appeal of each of the Project Approvals has expired with no such appeal having been filed; (ii) if any administrative appeal has been filed, any administrative appeals of any Project Approval(s) has been denied and such denial becomes final; (iii) if any administrative appeal has been filed, there is no further right to administrative appeal or to seek any other administrative relief from such Project Approval after any appeal has been denied and such denial becomes final; (iv) the time for legal challenge (including referendum petition or lawsuit) to any Project Approval has expired with no legal challenge being filed; or (v) if any petition, lawsuit, or other legal challenge has been filed, such lawsuit or legal challenge shall have been resolved by a final decision, which includes discharge of any applicable writ, which does not revoke or alter the Project Approvals, including this Agreement or the EIR, in a manner that imposes changes to the Project or additional conditions, obligations or liabilities on the Developer, or alters the Developer’s rights under this Agreement, and with no further right to appeal; and (vi) if a referendum petition relating to any Project Approval or this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measures are certified by the City Council in the manner provided by applicable State and City laws reflecting the approval by voters of the Project Approval subject to referendum or this Agreement. Notwithstanding the foregoing, if any lawsuit or legal challenge is resolved by a settlement with all opposing parties to the matter described in clause “(v)” above which is approved by both the City and the Developer, each acting in their sole, absolute and unrestricted discretion, then the date of such settlement.



(t) “Final Approval Period” means the time period which elapses between the Effective Date and the Final Approval Date.

(u) “Force Majeure” means shall mean and include:

(i) Any delay(s) caused by an event beyond the reasonable control of the Party claiming the delay (and despite the good faith efforts of such Party and the lack of such Party’s fault) that may prevent the Party from fulfilling the obligations for which it seeks excuse including without limitation all of the following events to the extent that they may prevent the Party claiming delay from fulfilling the obligation from which it seeks to be excused: acts of God; civil commotion; riots; strikes; picketing or other labor disputes; shortages or delayed delivery of materials or supplies; pandemic; damage to work in progress by reason of fire, floods, earthquake or other casualties; failure, delay or inability of the other Party to act; or terrorism, and litigation brought by a third party attacking the validity of this Agreement, the Project Approvals or the EIR or other litigation (including without limitation any litigation seeking injunctive relief attempting to slow or interrupt construction of the Project) which may interfere with the performance of the subject obligation.

(ii) Force Majeure shall not include any delay attributable to economic hardships or conditions or financial wherewithal.

(iii) If the impacts of two or more of such events shall occur during the same time period, no more than one day of delay shall be attributed to any day which is impacted by two or more such events.

(iv) If a Party believes that an event has occurred which would constitute a Force Majeure event as to an obligation or time period, the affected Party shall be required to give prompt written notice to the other Party of the commencement of the event and its anticipated impact, but in no event later than thirty (30) days after the occurrence of same and the affected Party will use commercially reasonable efforts to minimize the impact of the event and the duration of any associated delay in performance. If Developer fails to provide timely notice as required above, Developer shall not have the right to assert Force Majeure as to the occurrence for which it has failed to provide timely notice as required above. If the City disagrees with any asserted Force Majeure in a notice from the Developer, it shall give written objection to the Developer’s notice within thirty (30) days of the City’s receipt of the same. If the City fails to timely provide such written objection, the City shall not have the right to later assert that the event did not occur, but the City’s failure to object to Developer’s assertion that the event occurred shall not limit the City’s right to dispute the duration of the impact of that event.

(v) “General Plan” means the General Plan of the City, as it exists as of the Effective Date.

(w) “Gross Room Revenue” means revenue that is or would be subject to the transient occupancy tax imposed by the City pursuant to Title 3, Chapter 1, Article 3 or the Beverly Hills Municipal Code as that Article exists on the Effective Date.

(x) “Hotel” shall have the meaning specified therefor in the Specific Plan.



(y) “Minimum Luxury Standard” means: (i) with respect to the initial construction, opening and operations of the Hotel, Restaurants and ancillary uses contemplated by the Project Approvals, conformity with the design referenced in Section 4.8.F of the Specific Plan, and as approved by the Architecture Commission, and such quality of interior design, materials and finishes consistent with the world class standards of other Cheval Blanc properties and (ii) with respect to all Hotel operations, maintenance, repair and alterations after the 180-day period described in Section 6(a) hereof, conformity with all continuing requirements of the Specific Plan, commensurate with the standards of the top four (4) full-service luxury hotels in the City, as those properties may change from time to time.

(z) “Ministerial Permit(s),” or “Ministerial Approval(s)” means a permit or approval, including, but not limited to, building permits, demolition permits, foundation permits, grading permits, zone clearances, and certificates of occupancy, which requires the City, including any board, agency, commission or department or any officer or employee thereof, to determine whether there has been compliance with applicable rules, statutes, ordinances, conditions of approval, and/or regulations, as distinguished from an activity which is included in the definition of Discretionary Action or Discretionary Approval.

(aa) “Mortgage” means any mortgage, deed of trust, encumbrance, sale leaseback or other security interest encumbering all or any portion of the Property, whether now or hereafter existing, given by Developer for the purpose of securing funds to be used for financing or refinancing the Property or any portion thereof, financing or refinancing the construction of improvements thereon and/or any other expenditures reasonably necessary and appropriate to develop the Project.

(bb) “Mortgagee” means the holder of the beneficial interest under any Mortgage.

(cc) “Municipal Surcharge” means five percent (5.0%) of the Gross Room Revenue payable to the City. As to longer stays pursuant to Section 7(b) below (in the event of any holding over by guests, whether or not intended by the Developer), the “Municipal Surcharge shall be five percent (5.0%) of the Gross Room Revenue for days one (1) through thirty (30) and nineteen percent (19%) of the Gross Room Revenue commencing on day thirty-one (31).

(dd) “Specific Plan” shall be defined as set forth in Recital B.

(ee) “Owner” shall be defined as the Developer as of the Effective Date, and following any Transfer, the beneficial and legal owner(s) of the Project, collectively, from time to time.

(ff) “Penthouse” shall have the meaning specified therefor in the Specific Plan.

(gg) “Processing Fees” means all processing fees and charges required by the City that are applied uniformly to all construction or development related activity including, but not limited to, fees for land use applications, Building Permit applications, Building Permits, demolition permits, foundation permits, grading permits, hauling permits, encroachment permits, subdivision or parcel maps, lot line adjustments, street vacations, inspections, certificates of occupancy and plan check. Processing Fees shall not mean or include Developer Fees. In addition, any and all fees payable under the current Applicable Rules shall be deemed to be included within the term “Processing Fees” and

not to be included within the term “Developer Fees,” whether the same are payable upon issuance of a Building Permit, upon connection of a utility or upon issuance of a Certificate of Occupancy or other Ministerial Approval.

(hh) “Project” means the development project as described in the final EIR (as hereinafter defined), as modified by the Project Approvals.

(ii) “Project Approvals” shall be defined as set forth in Recital D and shall include any Subsequent Project Approvals (as hereafter defined).

(jj) “Property” means the real property described in Exhibit A attached hereto.

(kk) “Public Benefit Contribution” means the payment from the Developer to the City pursuant to Section 10(d) of this Agreement, which payment may be used by the City for various public projects and programs.

(ll) “Reserved Powers” means the power and authority of the City to enact regulations and/or take Discretionary Action if the same is expressly found by the City to be necessary to protect residents of the City, those employed in the City, or visitors to the City, from a condition that is dangerous to public health or safety or if the same is required to comply with California or federal laws (whether enacted previous or subsequent to the Effective Date of this Agreement). Reserved Powers also include the power and authority of the City to enact regulations which apply within the Business Triangle of the City, including without limitation, regulations of hotels, retail uses, private members clubs and parking, provided that such regulations do not impact the permitted density, height, or square footage of the Project permitted by the Specific Plan.

(mm) “Subsequent Land Use Regulations” means any change in or addition to the Applicable Rules adopted after the Effective Date of this Agreement, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building regulation, including, without limitation, any such change by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever by the Mayor, City Council, Planning Commission or any other board, agency, commission or department of the City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project.

(nn) “Subsequent Project Approvals” shall mean further Discretionary Actions or Discretionary Approvals, Building Permit, Ministerial Permits and Ministerial Approvals required to carry out the Project as approved on November 1, 2022, including, without limitation, any tentative subdivision map, whether vesting or non-vesting. Following adoption or approval, a Subsequent Project Approval shall become a Project Approval.

(oo) “Transfer” means any transaction that directly or indirectly conveys all or any portion of the Property, and which conveyance would be subject to, and not exempt from, documentary transfer tax pursuant to California Revenue and Taxation Code Sections 11911 through 11933, including Los Angeles County Documentary Transfer Tax (Los Angeles County Code, Chapter 4.60), as those taxes existed on the Effective Date of this Agreement. A transaction whereby the possession of all or any portion of the Property is transferred but the seller retains the title as security for the

payment of the price shall be deemed a Transfer. For the purposes of triggering the EMS Fee only, a Transfer shall also include any sale, assignment, or transfer (but excluding pledges) of fifty percent (50%) or more of the beneficial ownership interest in Owner, whether in one transaction or a series of transactions.

(pp) “Zoning Regulations” shall mean the official zoning regulations of the City adopted as of the Effective Date of this Agreement.

2. Recitals of Premises, Purpose and Intent.

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

“The Legislature finds and declares that:

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

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

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties.

(b) The Project. The Developer intends to develop the Property as described in the Project Approvals and the final Building Permit plans submitted to the City, subject to the Applicable Rules, the Project Approvals, and the Conditions of Approval. The Parties hereby agree that, for the term of this Agreement, the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, parking requirements, setbacks, and development standards, provisions for reservation or dedication of land for public purposes and location of public improvements, and the design, improvement, construction and other guidelines, standards and specifications applicable to the development of the Property shall be those set forth in the Project Approvals, the Applicable Rules and this Agreement, including the Conditions of Approval.

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

4. Application of Agreement. This Agreement shall apply to the development and use of the Property. Such development shall be in accordance with the Project Approvals as the same may lawfully be amended from time to time, other than by initiative, and this Agreement.

5. Term of Agreement.

(a) Initial Term and Extensions. The initial term of this Agreement shall commence on the Effective Date and shall continue for five (5) years plus the duration of any Final Approval Period ("Term"), subject to extension for the duration of one or more Force Majeure event(s) occurring after the Final Approval Date. At any time, the Term may be extended by Developer for one year or more, as set forth below, provided that the initial term and any extensions, do not exceed nine (9) years plus any extensions as a result of an extension of the term of a Tract Map for the Project. An extension of the Term by Developer shall be effective only upon written request of Developer provided to the City at least ten (10) days before the expiration of the Term (including any previous extension) and a concurrent payment to the City of One Million Dollars (\$1,000,000) for each one-year extension period. If a tract map is approved by the City for the Project, the term of the Development Agreement shall be at least equal to the term of a tract map, even if such requirement imposes an obligation on Developer to exercise an extension to the Development Agreement (and, unless the Agreement is terminated in accordance with the provisions herein, to pay the applicable Extension Fees in connection therewith) and even if such extension extends the Development Agreement term to a duration of more than nine (9) years. If there is an extension of the term of the Tract Map by applicable law, the Developer shall be obligated to exercise an extension of the term of this Agreement (and, unless this Agreement is terminated in accordance with the provisions herein, to pay the applicable Extension Fees in connection therewith) so that the Tract Map's term does not exceed the Term of this Agreement.

(b) Early Termination For Delay in Final Approval Date. In the event the Final Approval Date has not occurred within four (4) years of the Effective Date despite Developer's best efforts to achieve the Final Approval Date, either Party may elect, in its sole discretion, to terminate this Agreement. The Party exercising its right to terminate pursuant to this Section 5(b) shall deliver to the other Party written notice of its election to terminate the Agreement, and this Agreement shall automatically terminate thirty (30) days following the receipt of such termination notice. In the event this Agreement is terminated, the Specific Plan and other Project Approvals shall also be automatically terminated and the Property shall then be subject to the General Plan land use designation and zoning in the same manner as other properties in the City. For the avoidance of doubt, it is agreed that upon a termination pursuant to this Section 5(b), the following shall apply: (i) Developer shall have no obligation to construct the Project or otherwise perform any obligations under Section 6, below; (ii) Developer shall have no obligation to pay the Public Benefit Contribution or Additional Arts and Culture Contribution, and if the same have been paid they shall be refunded pursuant to Section 10(e) below; (iii) Developer shall have no obligation to pay Project Approval costs arising after the date of such termination under Section 10(b), but if the same have been earned and paid they shall not be refundable; and (iv) Developer shall remain responsible for any indemnification obligations under Section 17 below, but City and Developer shall cooperate to resolve any pending claims, actions or proceedings as quickly and inexpensively as possible in light of the City's and Developer's changed objectives.

6. Construction Pursuant to Project Approvals: Opening; Design.

(a) Covenant to Construct, Open and Initially Operate to Minimum Luxury Standard. Developer shall cause the Project to be (1) constructed, equipped and furnished and (2) to be opened for business with all inventories and employees reasonably required for the opening and on-going operation of each element of the Project, including without limitation the Hotel and facilities ancillary thereto for a continuous period of not less than one hundred and eighty (180) days. The foregoing (i) construction, equipment, furnishing and initial operation for a period of one hundred and eighty (180) days shall be substantially in accordance with the Specific Plan and (ii) such initial operation shall be in accordance with the Minimum Luxury Standard. It is agreed, however, that the foregoing shall not require the completion of interior improvements to the ground floor space which is not a part of the Hotel if a Certificate of Occupancy has been issued for the Hotel and the Hotel and facilities ancillary thereto have opened for business in accordance with the Minimum Luxury Standard.

(b) Commencement of Construction of Improvements. Developer shall cause the Commencement of Construction of the Project on the Property to occur no later than twelve (12) months from the Final Approval Date ("Commencement Deadline"), subject to extension for the duration of one or more Force Majeure event(s) occurring after the Final Approval Date. For the avoidance of doubt, the Commencement of Construction may occur following the issuance of Building Permits for the foundations of the Project (only) and may precede the issuance of Building Permits for vertical construction.

(c) Completion of Construction of Improvements. Developer shall diligently prosecute completion of the Project and shall complete the Project (as evidenced by a Certificate of Occupancy for the Hotel) and open the Hotel for business, as provided in Section 6(a) above, no later than five (5) years from the Final Approval Date ("Completion Deadline"), subject to extension for the duration of one or more Force Majeure event(s) occurring after the Final Approval Date.

(d) Permitted Extensions of Commencement and Completion Deadlines. During the Term of this Agreement including any extensions of the Term permitted under Section 5, Developer may, at its sole election, extend the Commencement Deadline and/or the Completion Deadline, on a month-to-month basis, provided that such extension by Developer shall be effective only upon the payment to the City of Two Hundred Fifty Thousand Dollars (\$250,000.00) for each one-month extension period; provided, however, that the maximum aggregate period for any extensions under this Section 6(d) shall not exceed a period of three (3) years. An extension of the Commencement or the Completion Deadline by Developer shall be effective only upon written notice by Developer provided to the City at least ten (10) days before the expiration of the Commencement or the Completion Deadline (as applicable, and including any previous extension) and a concurrent payment to the City of Two Hundred Fifty Thousand Dollars (\$250,000.00) for each one-month extension period.

(e) Liquidated Damages.

IF DEVELOPER DEFAULTS ON ANY OF ITS OBLIGATIONS SET FORTH IN SECTION 6(a) THROUGH SECTION 6(d), SUBJECT TO EXTENSIONS PERMITTED UNDER SECTION 6(d) AND SUBJECT TO EXTENSION FOR THE DURATION OF ONE OR MORE FORCE MAJEURE EVENTS OCCURRING AFTER THE FINAL APPROVALS DATE, THEN THE CITY SHALL



HAVE THE RIGHT, AT ITS ELECTION IN ITS SOLE, ABSOLUTE AND UNRESTRICTED DISCRETION, TO DECLARE A DEFAULT UNDER THIS SECTION 6, AND TO RECOVER FROM DEVELOPER, AS LIQUIDATED DAMAGES AND NOT AS A PENALTY, THE SUM OF FIFTY MILLION DOLLARS (\$50,000,000.00), CONSISTING OF THE PAYMENT BY DEVELOPER TO THE CITY OF THE \$26,000,000 PUBLIC BENEFIT CONTRIBUTION AND AN ADDITIONAL \$24,000,000. EXCEPT FOR THE ADDITIONAL REMEDIES PROVIDED BELOW IN THIS SECTION 6(e), THE LIQUIDATED DAMAGES SET FORTH IN THIS SECTION SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT THAT DEVELOPER DEFAULTS ON ANY OF THE OBLIGATIONS SET FORTH IN SECTION 6(a) THROUGH SECTION 6(d).

THE PARTIES HERETO ACKNOWLEDGE THAT SUCH LIQUIDATED DAMAGES ARE FAIR AND REASONABLE IN LIGHT OF ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, INCLUDING THE PARTIES' ESTIMATION OF THE POSSIBLE RANGE OF DAMAGE TO THE CITY IN THE EVENT OF SUCH DEFAULT OR BREACH BY DEVELOPER, IT BEING AGREED THAT THE DAMAGES TO THE CITY IN SUCH EVENT WOULD BE IMPOSSIBLE TO DETERMINE WITH ACCURACY AND THAT PROOF OF THE AMOUNT OF DAMAGES WOULD BE COSTLY AND INCONVENIENT.

EXCEPT FOR THE CITY'S RIGHT TO TERMINATE THIS AGREEMENT, THE CITY'S RIGHT TO REVOKE THE PROJECT APPROVALS, THE CITY'S RIGHT TO INDEMNITY AND DEFENSE UNDER SECTION 17 BELOW, AND THE CITY'S RIGHT TO REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS UNDER SECTION 25 BELOW, THE CITY AGREES TO LOOK SOLELY TO SUCH LIQUIDATED DAMAGES AS COMPLETE SATISFACTION OF ANY CLAIM WHICH THE CITY MIGHT OTHERWISE HAVE AGAINST DEVELOPER ARISING OUT OF OR DUE TO ANY DELAY IN COMPLETION OR OPENING OR ANY FAILURE OF DEVELOPER TO BUILD AND OPEN THE HOTEL AND TO OPERATE THE SAME FOR THE FOREGOING 180-DAY PERIOD, AND THE CITY IRREVOCABLY WAIVES ANY OTHER REMEDIES FOR SUCH FAILURE OR DELAY. BY SIGNING THIS SECTION WHERE INDICATED BELOW, THE PARTIES EXPRESSLY AFFIRM THEIR AGREEMENT TO THE PROVISIONS OF THIS SECTION.

THE LIQUIDATED DAMAGES UNDER THIS SECTION 6(e) SHALL BECOME DUE UPON WRITTEN NOTICE FROM THE CITY AS PROVIDED IN SECTION 12 BELOW.

FOR THE AVOIDANCE OF DOUBT, IT IS ACKNOWLEDGED, THAT THE LIQUIDATED DAMAGES UNDER THIS SECTION 6(e) ARE NOT APPLICABLE TO, AND DO NOT LIMIT THE RIGHTS AND REMEDIES OF THE PARTIES FOR, THE BREACH OF ANY OBLIGATIONS UNDER THIS AGREEMENT OTHER THAN THE OBLIGATIONS UNDER THIS SECTION 6.

CITY'S SIGNATURE

DEVELOPER'S SIGNATURE

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

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

(f) Net Worth of LVMH Inc. LVMH Inc. and Developer represent and warrant that as of September 30, 2022, LVMH Inc. had a tangible net worth of not less than Five Hundred Million and No/100 Dollars (\$500,000,000.00).

7. Permitted Uses; Density; Building Heights and Sizes; Required Dedications.

(a) Specific Plan Uses. The City and Developer hereby agree that the permitted uses of the Property, the density and intensity of such uses, the maximum heights and sizes of the buildings and improvements to be constructed on the Property, and the reservation and dedication of land for public purposes, if any, required in connection with the development of the Property shall be as set forth in and consistent with the Project Approvals, as they may be lawfully amended from time to time other than by initiative. Developer shall not cause or permit any use of the Property that is not permitted by the Project Approvals, and shall not cause or permit the construction of any building or improvement that exceeds the maximum density, building heights and/or building sizes set forth in or otherwise required by the Project Approvals, as they may be lawfully amended from time to time other than by initiative.

(b) Residential Use Limitation. Except to the extent, if any, that the Specific Plan and other Project Approvals shall have been amended to allow such use, no portion of Project, including, without limitation, the Hotel or Penthouse, may be used for any “Prohibited Residential Uses.” The term “Prohibited Residential Uses” shall mean any residential use other than transient occupancy by Hotel guests including, without limitation, any condominium units, primary or secondary residences, rental apartments or any residential use or occupancy utilized for more than a thirty (30) day period, and the aforesaid restriction against any such uses shall be applicable to any ownership structure, including, without limitation any condominium, cooperative, interval or fractional ownership structure.

In the event that any revenues from any room, suite, Penthouse or other space or service within the Project would be subject to any transient occupancy tax or five percent (5%) Municipal Surcharge if occupied for 30-days or less, but is exempt therefrom because the applicable occupancy exceeds thirty (30) days, the revenues from any such room, suite, Penthouse or other space or service shall be subject to a Municipal Surcharge of nineteen percent (19%) applicable on and after day thirty-one (31) of any continuous occupancy and subsequent days of continuous occupancy, without regard to whether such revenues are exempted from the term “Gross Room Revenues” because the applicable occupancy is in excess of thirty (30) days. For the avoidance of doubt, the imposition of said Municipal Surcharge as to occupancies exceeding thirty (30) days is intended to avoid any unfair benefit which might otherwise arise from hold-overs by Hotel guests or errors in reservations. Any Hotel stays over the generally applicable thirty (30) day limitation shall be subject to the notice and cure period under Section 12 below and the only remedy which shall occur automatically (without the requirement of notice and opportunity to cure under Section 12) is the imposition of the above-described Municipal Surcharge.

(c) Anchor Use Contemplation; Minimum Luxury Standard. The intent and purposes of the approval of the higher densities permitted by the Specific Plan include the anchor role of the Project in the City’s Business Triangle. Accordingly, at any and all times after the 180-day

period referred to in Section 6(a) that the Project is operated to include a hotel, the Owner shall cause the Hotel portion of the Project to be operated in accordance with the Minimum Luxury Standard.

8. Developer's Rights and Obligations; Relationship to Certain Other Agreements and Entitlements.

(a) Vested Rights. Subject to Section 9 below, Developer shall have and is hereby vested with the rights, during the Term of this Agreement, to develop the Project in accordance with this Agreement, the Specific Plan and related Project Approvals, as they may be lawfully amended by Developer from time to time, other than by initiative, all of which are hereby incorporated in this Agreement by reference.

(b) Effect of Failure to Perform. Nothing contained in this Section 8 shall limit the terms of Section 6(e) above or of Section 12 of this Agreement.

9. Changes in Applicable Rules.

(a) Non-Application of Changes in Applicable Rules. The adoption of any Subsequent Land Use Regulations after the Effective Date of this Agreement, or any change in, or addition to, the Applicable Rules (other than changes in Processing Fees and taxes), including, without limitation, any changes in the General Plan or the Zoning Regulations (including any regulation relating to the timing, sequencing, or phasing of the Project or construction of all or any part of the Project), and any changes in Developer Fees (which expression "changes in Developer Fees" includes under this Agreement new or additional Development Fees), adopted after the Effective Date of this Agreement, including, without limitation, any such change by means of ordinance, initiative, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by any board, agency, commission or department of the City, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project shall not be applied to the Project during the term of this Agreement unless such changes represent an exercise of the City's Reserved Powers. Notwithstanding the foregoing, if within four (4) years of the Final Approval Date, the Developer has not caused the Commencement of Construction to occur, the Project shall be subject to all changes in Developer Fees adopted by the City between the Effective Date and the occurrence of the Commencement of Construction of the Project.

(b) Changes in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time in the provisions of the City's building, mechanical, plumbing, electrical regulations and similar regulations which are based on the recommendations of a multi-state professional organization and become applicable throughout the City, including, but not limited to, the California Building Code, and other similar or related uniform codes.

(c) Changes Mandated by Federal or California Laws or Regulations. Changes in, or additions to, the Applicable Rules adopted or made operative on or after the Effective Date shall apply to the Project, if such changes or additions are specifically mandated to be applied to developments such as the Project, irrespective of vested rights, by applicable California or federal laws or regulations, provided however that if the City or Developer believes that such a change or addition exists, that Party shall provide the other Party hereto with a copy of such California or federal law or



regulation and a statement of the nature of its conflict with the provisions of the Applicable Rules and/or of this Agreement. The City's determination as to the applicability of the change or addition to California or federal laws to the Project shall be final and conclusive; provided, however, that nothing in this Agreement shall deprive Developer of the rights possessed by any other property owner, absent vested rights, to judicially challenge the applicability of the change, the addition to California or federal laws to the Project, or the appropriateness of the application to the Project of the change or addition.

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

10. Developer's Obligations.

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

(b) Reimbursement of Project Approval Costs. No later than forty-five (45) days after the later of (i) the date all parties have executed this Agreement (the "Execution Date"), and (ii) the date the City delivers to Developer an invoice of costs subject to reimbursement pursuant to this Section, Developer shall reimburse the City for all of its costs, to the extent that the Developer has not already advanced the same, to process the Project Approvals and this Agreement, including, without limitation, legal, economic consulting and environmental processing costs related to the Project Approvals and this Agreement and the City's actual costs for the City's outside negotiator, Greenberg Glusker, in an amount not to exceed Seven Hundred Thousand Dollars (\$700,000).

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

(d) Public Benefit Contribution. Developer shall pay to the City a Public Benefit Contribution of Twenty-Six Million Dollars (\$26,000,000). Developer shall pay to the City the Public Benefit Contribution no later than thirty (30) days after the earlier of (i) the Final Approval Date, or (ii) the issuance of any Building Permit for the Project.

(e) Potential Refund of Contributions. If the Public Benefit Contribution and/or the Additional Arts and Cultural Contribution shall have been paid prior to the Final Approval Date and any of the following events shall occur, the City shall refund the Public Benefit Contribution and Additional Arts and Cultural Contribution (to the extent previously paid) to Developer upon Developer's request therefor: (i) the entry of a final judgment or issuance of a final order or discharge of a writ, after all appeals have been exhausted, directed to the City as a result of any lawsuit filed against City to set aside, withdraw or abrogate the approval of the City Council of this Agreement, the Specific Plan or any other Project Approvals or (ii) if a referendum petition relating to the Specific Plan, any Project Approval or this Agreement is timely and duly circulated and filed, certified as valid and the City holds an election, the date the election results on the ballot measures are certified by the City Council (in the manner provided by applicable State and City laws) reflecting the disapproval by voters of the Project Approval subject to referendum or this Agreement. If the Developer requests the refund of the Public Benefit Contribution: (1) the City shall have the right to terminate this Agreement

and to revoke any Project Approvals or Building Permits which remain in effect and (2) Developer shall be deemed to have waived and relinquished any vested rights to develop the Project it may hold or may acquire under any Project Approvals, Building Permits or this Agreement with respect to all or any portion of the Project.

(f) Environmental Mitigation and Sustainability Fee. Unless otherwise stated herein, the following EMS Fees shall apply to the Property.

(i) *Amount of EMS Fee.* Concurrent with the close of each Transfer, without limitation, the seller of such shall pay or cause to be paid to the City a General EMS Fee, as detailed herein. The amount of the General EMS shall be \$30.00 for each \$1,000 of the consideration or value, whichever is higher, of the interest or property conveyed (without regard to the value of any lien or encumbrance remaining thereon at the time of sale).

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

(g) Municipal Surcharge. Developer shall pay the Municipal Surcharge as follows:

(i) *Imposition of Municipal Surcharge.* Upon the commencement of rental of Hotel rooms, the Municipal Surcharge shall apply to all Hotel rooms (which shall include the Penthouse suite and all other suites).

(ii) *Timing of Payment.* The Municipal Surcharge shall be payable monthly, based on the actual Gross Room Revenue received during the month for which payment is to be made, at the same time and in the same manner as is required for payment of the City's transient occupancy tax imposed pursuant to Title 3, Chapter 1, Article 3 of the Beverly Hills Municipal Code, or its successor; provided, however, that the Municipal Surcharge applicable to any amounts actually paid by any guest holding-over beyond thirty (30) days or other occupancies exceeding thirty (30) days under Section 7(b) above shall be paid in the same time and manner as if the revenues therefrom were Gross Room Revenues.

(iii) *Lien to Secure Municipal Surcharge.* Developer hereby grants to the City, with power of sale, a lien on the Property to secure the payment of the Municipal Surcharge. In the event that the Municipal Surcharge is not timely paid, then the City may enforce such lien by sale of the property subject to the Municipal Surcharge by the City, its attorney or any other person or entity authorized by the City Manager to conduct the sale. Any such sale shall be conducted in accordance with California Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h, or in any other manner permitted or provided by law. The City, through its agent authorized by the City Manager, shall have the power to bid on the encumbered property at the sale, using as a credit bid the amounts secured by such lien, its own funds, or funds borrowed for such purpose. The City is hereby granted in trust, the Property, and is appointed as trustee for purposes of noticing and effecting any sale pursuant to the provisions of this Section and is hereby expressly granted a "power of sale" in connection therewith. The City shall be entitled to collect its actual and reasonable out-of-pocket costs associated with any effort to enforce any such lien.

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

(v) *Late Charges, Interest.* If Developer fails to pay the Municipal Surcharge within ten (10) days after its due date, Developer shall pay a late charge in the amount equal to the lesser of (i) \$2,000 increased on the first day of each calendar year by the increase, if any, during the immediately preceding calendar year in the Consumer Price Index – All Urban Consumers for Los Angeles-Riverside-Orange County California as published by the U.S. Department of Labor, Bureau of Labor Statistics (or any successor thereto), or (b) one percent (1%) of the Municipal Surcharge payment due but not paid. The Parties acknowledge and agree that the amount of the costs and expenses that City will incur in the event the Municipal Surcharge is not paid when due is extremely difficult to calculate, and that the late charge set forth in the immediately preceding sentence is a reasonable, good faith estimate of such costs and expenses, but payment of such late charge shall not limit the City's remedies following any default by Developer under this Agreement. If any Municipal Surcharge, including any late charge, is not paid within ten (10) days after the date on which the Surcharge is due, then such Municipal Surcharge (including any late charge) shall bear interest, from the due date until paid, at the rate that is the lesser of (i) eighteen and one-half percent (18.5%), or (ii) the highest rate permitted by applicable law.

(h) Additional Arts and Cultural Contribution. In acknowledgement of the importance of art and culture to the City and its residents, LVMH, Inc. will make a contribution to the City of Two Million Dollars (\$2,000,000), to be paid no later than thirty (30) days after the earlier of (i) the Final Approval Date, or (ii) the issuance of any Building Permit for the Project, to be used by the City for such arts and cultural purposes as the City's City Council shall elect. Said \$2,000,000 payment is in addition-to and shall not be a credit-against, any fees or other obligations under the Applicable Rules or under any Processing Fees or taxes.

(i) Construction, Opening and Initial Operation. These obligations are described in Section 6 above.

(j) Minimum Luxury Standard. These obligations are described in Section 7(c).

11. Issuance of Building Permit; Expedited Permit Processing.

(a) Building Permit Issuance. The City shall be under no obligation to issue any Building Permit for the Project until: (i) the Public Benefit Contribution has been paid and all the fees and other obligations set forth in Section 10 and due before issuance of such Building Permit have been fully paid or otherwise fulfilled; and (ii) any lender whose lien is prior and superior to the lien created by this Agreement or any conveyance or covenant required by this Agreement shall have agreed to subordinate its lien to the lien, conveyances and covenants created and required by this Agreement.

(b) Expedited Processing. The City shall accept the Project's Building Permit applications for expedited processing, including but not limited to expedited plan check review, provided that Developer pays the applicable Processing Fee and the actual costs to the City, plus fifteen percent (15%) of the cost of any internal or external expeditor directly employed or engaged by the City.

12. Default.

(a) Notice and Cure.

(i) With the exception of a Developer default under Sections 6(a) through (d), which default shall be governed by Section 6(e) and as to which no cure period shall be applicable prior to City's exercise of its rights and remedies, failure by the City or Developer to perform any other term or provision of this Agreement for a period of thirty (30) days from the receipt of written notice thereof from the other shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Each notice under this Section 12(a)(i) shall specify in detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

(b) Termination. Subject to the foregoing, after notice and expiration of the 30-day cure period under Section 12(a) above, without cure, the notifying party, at its option, shall have all rights and remedies provided by law, subject to any applicable express provisions of this Agreement,



and/or may give notice of intent to terminate this Agreement pursuant to Government Code Section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days in the manner set forth in Government Code Sections 65867 and 65868. Following consideration of the evidence presented in said review before the City Council and a determination that a default exists, the Party alleging the default by the other Party may give written notice of termination of this Agreement to the other Party. Upon any such termination, the respective rights, duties and obligations of the Parties hereto shall without further action cease as of the date of such termination except as to duties and obligations that arose prior to the date of such termination and except that if the Hotel shall be constructed pursuant to the Specific Plan, then the obligations provided or referenced in Section 13 shall survive such termination.

(c) Monetary Damages Limitation. In no event: (i) shall monetary damages be available against the City for any alleged default or breach by the City, and (ii) shall consequential damages (other than the liquidated damages under Section 6(e) which are a negotiated alternative thereto) be available against Developer or Owner, except in the event that the remedy of specific performance is found by a court of competent jurisdiction to be unavailable to the City for a violation of the covenants with respect to the Prohibited Residential Uses provided in Section 7(b) or the Minimum Luxury Standard provided in Section 7(c).

(d) Specific Performance as to Prohibited Residential Uses and Minimum Luxury Standard. The parties acknowledge and agree that irreparable damage to the City would occur in the event that the provisions of this Agreement as to Prohibited Residential Uses as provided in Section 7(b) or the failure of the Hotel to meet the Minimum Luxury Standard as provided in Section 7(c) (if open) were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the City shall be entitled to an injunction or injunctions to prevent breaches of this Agreement as to such matters and to enforce specifically such terms and provisions hereof. The Parties agree that the remedies at law for any breach or threatened breach, including monetary damages, may be inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived by the Parties to this Agreement. Notwithstanding the foregoing, the Parties have agreed that the remedy of specific performance shall not be applicable to the obligations of the Developer under Section 6(a) through (d).

### 13. Certain Perpetual Provisions Extending Beyond the Term.

(a) Obligations and Liens Relating to EMS Fees and Municipal Surcharges. The provisions with respect to EMS Fees and Municipal Surcharges, including, without limitation, any liens with respect to the EMS Fees and Municipal Surcharges (as provided in Sections 10(f) and 10(g) above) shall run with the land and be perpetual in duration. The City's remedies for the failure to pay the same shall include enforcement of the liens with power of sale provided for in Sections 10(f) and 10(g).

(b) Compliance with Minimum Luxury Standard and Residential Use Limitations. The obligations with respect to the Minimum Luxury Standard provided in Section 7(c) and Prohibited Residential Uses provided in Section 7(b) shall run with the land and be of perpetual duration, but the same shall not be enforceable by a lien with power of sale and the remedies for a violation of the same shall include specific performance under Section 12(d).

14. Transfers of Interests in Property or Agreement.

(a) Prior to completion of construction of the Project and expiration of the 180-day period referenced in Section 6(a), Developer shall have no right to Transfer any interest in the Property or in this Agreement, without the written consent of the City, which may be given or withheld in its sole, absolute and unrestricted discretion and

(b) After the completion of construction of the Project and expiration of the 180-day period referenced in Section 6(a), Developer may freely Transfer any or all of its interest in the Property and this Agreement, without requirement that the City consent, provided that the transferee assumes all obligations of Developer arising or accruing on and after the transfer date under this Agreement, pursuant to an assignment and assumption agreement reasonably acceptable to the City Attorney.

(c) Upon any Transfer under Section (b) of this Section 14, Developer shall remain liable for all obligations under this Agreement arising or accruing before the date of Transfer, but shall be discharged from any liability and responsibility for obligations arising or accruing on and after the date of Transfer.

15. Mortgagee Protection.

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

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

(c) Right of Mortgagee to Cure. Any Mortgagee shall have the right, but not the obligation, to cure any failure or default by Developer during the cure period allowed Developer under this Agreement (provided, such lender shall receive a day by day extension to such cure period for each day a notice of default is not delivered to Mortgagee in accordance with Section 15(b)), plus an additional one hundred twenty (120) days in order to cure such failure or default, if it is reasonably necessary for the Mortgagee to obtain possession of the property to cure, such as by seeking the appointment of a receiver or other legal process. Any Mortgagee that undertakes to cure or attempt to cure any such failure or default shall provide written notice to the City that it is undertaking efforts of

such a nature; provided that no initiation of any such efforts by a Mortgagee shall obligate such Mortgagee to complete or succeed in any such curative efforts.

(d) Liability for Past Defaults or Obligations. Subject to the foregoing, any Mortgagee, including the successful bidder at a foreclosure sale, who comes into possession of the Project or the Property or any portion thereof pursuant to foreclosure, deed-in-lieu of foreclosure, shall take such property subject to the terms of this Agreement and in no event shall any such property be released from any obligations associated with its use and development under the provisions of this Agreement, including, without limitation, the payment of any sums due before or after any such actions. Nothing in this Section shall prevent the City from exercising any remedy it may have for a default under this Agreement, provided, however, that in no event shall such Mortgagee or purchaser at a foreclosure sale be personally liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of such property by such Mortgagee, but any such defaulted obligations shall continue to run with the land.

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

17. Indemnification.

(a) Developer agrees to and shall indemnify, hold harmless, and defend, the City and its respective officers, officials, members, agents, employees, and representatives, from liability or claims for death or personal injury and claims for property damage which may arise from the acts, errors, and/or omissions of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf in relation to the Project and/or in any manner arising from this Agreement. The foregoing indemnity applies to all deaths, injuries, and damages, and claims therefor, suffered or alleged to have been suffered by reason of the acts, errors, and/or omissions referred to in this Section 17, regardless of whether or not the City prepared, supplied, or approved plans or specifications, or both. In the event of litigation, the City agrees, at no cost to the City, to cooperate with Developer. This indemnification hold harmless and defense requirement shall survive the termination or expiration of this Agreement. The City reserves the right, in cases subject to this indemnity, to reasonably approve the attorney selected by Developer to defend Developer and the City in any such action.

(b) In the event of any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals or the EIR prepared and certified for the Project, Developer shall defend, at its own expense, the action or proceeding. In addition, Developer shall reimburse the City for the City's costs in defending any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals or the EIR and Developer shall also pay any award of costs, expenses and fees that the court having jurisdiction over such challenge makes in favor of any challenger and against the City. Developer shall cooperate with the City in any such defense as the City may reasonably request and may not resolve such challenge without the agreement of the City. In the event Developer fails or refuses to reimburse the City for its cost to defend any challenge to this

Agreement, the Project Approvals or the EIR, the City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 12 above. In all events, the City shall have the right to resolve any challenge in any manner, in its sole discretion, provided, however, Developer's consent shall be required if the resolution of the challenge shall require a payment by Developer or limit Developer's rights under this Agreement.

In order to ensure compliance with this Section 17(b), within twenty (20) days after notification by the City of the filing of any claim, action or proceeding to attack, set aside, void or annul this Agreement, any of the Project Approvals or the EIR prepared and adopted for the Project, Developer shall deposit with the City cash or other security in the amount of Two Hundred Thousand Dollars (\$200,000), satisfactory in form to the City Attorney, guaranteeing indemnification or reimbursement to the City of all costs related to any action triggering the obligations of this Section. If the City is required to draw on that cash or security to indemnify or reimburse itself for such costs, Developer shall restore the deposit to its original amount within fifteen (15) days after notice from the City. Additionally, if at any time the City Attorney determines that an additional deposit or additional security up to an additional One Hundred Thousand Dollars (\$100,000) is necessary to secure the obligations of this Section, Developer shall provide such additional security within fifteen (15) days of notice from the City Attorney. The City shall promptly notify Developer of any claim, action or proceeding within the scope of this Section and the City shall cooperate fully in the defense of any such claim or action, but shall have the right to resolve any challenge, in any manner, in its sole discretion, provided, however, Developer's consent shall be required if the resolution of the challenge shall require a payment by Developer or limit Developer's rights under this Agreement.

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

19. Recordation. The City Clerk shall record a copy of this Agreement with the Registrar-Recorder of the County of Los Angeles no later than ten (10) days after the effective date of the ordinance approving this Agreement. Developer shall reimburse the City for all costs of such recording, if any.

20. No Third-Party Beneficiaries. The only signatories to this Agreement are the City and Developer. There are no third-party beneficiaries and this Agreement is not intended and shall not be construed to benefit or be enforceable by any other person whatsoever other than the successors in interest of the signatories.

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

22. Certificate of Compliance. At any time during the term of this Agreement, any Party or Mortgagee may request any Party to this Agreement to confirm that (i) this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full



force and effect as modified and stating the date and nature of such modifications) and that (ii) to the best of such Party's knowledge, no defaults exist under this Agreement or if defaults do exist, to describe the nature of such defaults and (iii) any other information reasonably requested. Each Party hereby agrees to provide a certificate to such lender or other Party within ten (10) Business Days of receipt of the written request therefor.

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

24. Periodic Reviews.

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

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

(c) Procedure for Review. The City's Director of Community Development (the "Community Development Director") shall conduct the review contemplated by this Section 24 to ascertain whether Developer has complied in good faith with the terms and conditions of this Agreement during the period for which the review is conducted. The Community Development Director shall give Developer written notice that any such review has been commenced, and shall give Developer at least twenty (20) days after Developer's receipt of such notice to provide to the Community Development Director such information as Developer deems relevant to such review. In addition, upon the written request of the Community Development Director, Developer shall furnish such documents or other information as requested by the Community Development Director.

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

If, following such a review, the Community Development Director finds that Developer has not complied in good faith with the terms and conditions of this Agreement, the Community Development Director shall specify in writing the respects in which Developer has failed to so comply. The Community Development Director shall provide Developer with written notice of such noncompliance as provided in Section 12 and the City may follow the default procedures as set forth in Section 12.

(e) Effect on Default. Nothing in this Section 24 shall be interpreted to prevent the City from providing Developer with a notice of default hereunder at any time, including any time other than during a periodic review under this Section 24, or from terminating this Agreement pursuant to the provisions of Section 12 following any event of default by Developer.

25. Future Litigation Expenses.

(a) Payment of Prevailing Party. If the City or Developer brings an action or proceeding (including, without limitation, any motion, order to show cause, cross-complaint, counterclaim, third-party claim or arbitration proceeding) by reason of default, breach, tortious act, or act or omission, arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit including, but not limited to, reasonable attorneys' fees and expert witness fees.

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

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

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

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

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

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

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

30. Severability. If any article, section, subsection, term or provision of this Agreement, or the application thereof to any party or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of the article, section, subsection, term or provision of this Agreement, or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, except that if any provision of Section 6 or Section 10 is held invalid or unenforceable before a Certificate of Occupancy is issued for the Project, then this entire Agreement shall be void and unenforceable and of no further force and effect except that the liquidated damages under Section 6 and the perpetual liens under Section 13 shall survive, except to the extent that such provisions have been found to be invalid or unenforceable.

31. Extensions of Time: Force Majeure. Performance by any Party of its obligations hereunder (other than for payment of money) shall be excused or extended, as the case may be, during any period of Force Majeure as defined in Section 1 above, except as otherwise expressly provided in this Agreement.

32. Notices. All notices, disclosures, demands, acknowledgments, statements, requests, responses and other communications (each, a "Communication") to be given under this Agreement shall be in writing, signed by a signatory hereto (or an officer, agent or attorney of such party) giving such Communication, and shall be deemed effective (i) upon receipt if hand delivered or sent by overnight courier service; or (ii) upon delivery or the date of refusal if sent by the United States mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To Developer: 468 N Rodeo Drive LLC,  
456 N Rodeo Drive LLC,  
461 N Beverly Drive LLC,  
449 N Beverly Drive LLC,  
c/o: Dennis A. Ferrazzano, Manager  
Barack Ferrazzano Kirshbaum & Nagelberg, LLP  
200 W. Madison, Suite 3900  
Chicago, IL 60606

With Copy to: General Counsel  
LVMH Inc.  
19 East 57th Street  
New York, New York 10022

To LVMH Inc: Chairman  
LVMH Inc.  
19 East 57<sup>th</sup> Street  
New York, New York 10022

With Copy to: General Counsel  
LVMH Inc.  
19 East 57th Street  
New York, New York 10022

To the City: City Manager  
City of Beverly Hills  
455 North Rexford Drive  
Fourth Floor  
Beverly Hills, CA 90210

With Copy to: City Attorney  
City of Beverly Hills  
455 North Rexford Drive  
Room 230  
Beverly Hills, CA 90210

Any signatory hereto may from time to time, by notice given to the other signatories hereto pursuant to the terms of this Section 32 change the address to which communications to such signatory are to be sent or designate one or more additional persons or entities to which communications are to be sent.

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

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

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

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

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

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

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the 15<sup>th</sup> day of November, 2022

CITY OF BEVERLY HILLS,  
a municipal corporation

\_\_\_\_\_  
LILI BOSSE  
Mayor of the City of  
Beverly Hills, California

ATTEST:

\_\_\_\_\_(SEAL)  
HUMA AHMED  
City Clerk

LVMH MOËT HENNESSY LOUIS VUITTON  
INC., a Delaware corporation

By: \_\_\_\_\_  
Name: ANISH MELWANI  
Its: Chairman and Chief Executive Officer

468 N Rodeo Drive LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Its: \_\_\_\_\_

456 N Rodeo Drive LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Its: \_\_\_\_\_

461 N Beverly Drive LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Its: \_\_\_\_\_

449 N Beverly Drive LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
GEORGE CHAVEZ  
City Manager

**ACKNOWLEDGMENT**

State of California )

)

County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_

(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

Signature of Notary Public



## ACKNOWLEDGMENT

State of California )  
 )  
County of \_\_\_\_\_ )

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

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

EXHIBIT A  
LEGAL DESCRIPTION

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**449 N. Beverly**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF BEVERLY HILLS,  
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT 21 IN BLOCK 2 OF BEVERLY, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES,  
STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGE 94 OF MAPS, IN THE  
OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

COMMONLY KNOWN AS 449 NORTH BEVERLY DRIVE, BEVERLY HILLS, CALIFORNIA, 90210.

APN: 4343-016-019

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**461 N. Beverly**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOTS 22, 23 AND 24 IN BLOCK 2 OF BEVERLY, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11 PAGE 94 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THAT PORTION OF LOT 24 IN BLOCK 2 OF BEVERLY, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11 PAGE 94 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID LOT 24; THENCE SOUTH 50° 29' 33" WEST, ALONG THE NORTHWESTERLY LINE OF SAID LOT 24, A DISTANCE OF 112.64 FEET; THENCE SOUTH 39° 30' 27" EAST 5.00 FEET; THENCE NORTH 52° 55' 57" EAST 105.17 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 10.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE, AN ARC DISTANCE OF 8.84 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 24; THENCE NORTH 39° 31' 30" WEST, ALONG SAID NORTHEASTERLY LINE, 13.47 FEET TO THE POINT OF BEGINNING.

COMMONLY KNOWN AS 461 NORTH BEVERLY DRIVE, BEVERLY HILLS, CALIFORNIA, 90210.

APN: 4343-016-023

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**456 N. Rodeo**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF BEVERLY HILLS,  
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOT 3 IN BLOCK 2 OF BEVERLY, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES,  
STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11 PAGE 94 OF MAPS, IN THE OFFICE  
OF THE COUNTY RECORDER OF SAID COUNTY.

COMMONLY KNOWN AS 456 NORTH RODEO DRIVE, BEVERLY HILLS, CALIFORNIA, 90210.

APN: 4343-016-002

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**468 N. Rodeo**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF BEVERLY HILLS,  
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

LOTS 1 AND 2 IN BLOCK 2 OF BEVERLY, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS  
ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGE 94 OF MAPS, IN  
THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

COMMONLY KNOWN AS 468 NORTH RODEO DRIVE, BEVERLY HILLS, CALIFORNIA, 90210.

APN: 4343-016-001



**ALLEY PARCEL 1:**

THAT PORTION OF THE SOUTHWESTERLY HALF OF THE ALLEY (20 FEET WIDE), IN BLOCK 2 OF BEVERLY, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON THE MAP RECORDED IN BOOK 11 PAGE 94 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHEASTERLY OF AND ADJACENT TO LOTS 1 AND 2 IN BLOCK 2 OF SAID BEVERLY, THAT WOULD PASS WITH A LEGAL CONVEYANCE OF SAID LOTS.

**ALLEY PARCEL 2:**

THAT PORTION OF THE SOUTHWESTERLY HALF OF THE ALLEY (20 FEET WIDE), IN BLOCK 2 OF BEVERLY, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON THE MAP RECORDED IN BOOK 11 PAGE 94 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHEASTERLY OF AND ADJACENT TO LOT 3 IN BLOCK 2 OF SAID BEVERLY, THAT WOULD PASS WITH A LEGAL CONVEYANCE OF SAID LOT.

**ALLEY PARCEL 3:**

THAT PORTION OF THE NORTHEASTERLY HALF OF THE ALLEY (20 FEET WIDE), IN BLOCK 2 OF BEVERLY, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON THE MAP RECORDED IN BOOK 11 PAGE 94 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING SOUTHWESTERLY OF AND ADJACENT TO LOTS 22, 23 AND 24 IN BLOCK 2 OF SAID BEVERLY, THAT WOULD PASS WITH A LEGAL CONVEYANCE OF SAID LOTS.

**EXHIBIT B**

**GENERAL PLAN CONSISTENCY ANALYSIS**

## General Plan Consistency Analysis

The Cheval Blanc Beverly Hills Specific Plan Project proposes comprehensive redevelopment of the approximately 1.28-acre Project site and includes the properties addressed 456 and 468 North Rodeo Drive; 449, 451 and 453 North Beverly Drive; and 461 through 465 North Beverly Drive. The proposed Specific Plan could include up to 220,950 SF in floor area and up to 115 hotel guest rooms in a single multiple use building that includes a hotel with private dining areas and other appurtenant uses, restaurants open to the public, a private club, and retail uses. A portion of the existing public alley bisecting the Project Site would be relocated to the southern portion of the Project Site. The proposed Specific Plan identifies a total floor area ratio (FAR) maximum of 4.2:1 and an above ground maximum of 3.91:1. The submitted Conceptual Plan includes 212,034 SF of floor area and 109 hotel rooms. The total FAR calculation for the submitted conceptual plan is 4.03:1, with an above ground FAR of 3.75:1.

The City of Beverly Hills City Council finds the requested General Plan Amendment, Specific Plan, Zone Text Amendment, Zoning Map Amendment, Master Plan of Streets, Alleys, and Highways Amendment, Vesting Tentative Parcel Map, and Encroachment Permits consistent with the City of Beverly Hills General Plan based upon the analysis provided below, the General Plan consistency analysis provided in Table 4.7-1 of the Cheval Blanc Beverly Hills Specific Plan Project Final Environmental Impact Report (SCH document # 2020110223), and the 'Relationship to the General Plan' discussion contained in Section 2.4 of the Cheval Blanc Beverly Hills Specific Plan, both of which are incorporated herein by reference.

### GOALS AND POLICIES:

- **LU 2 Community Character and Quality.** A built environment that is distinguished by its high level of site planning, architecture, landscape design, and sensitivity to its natural setting and history.
- **LU 2.1 City Places: Neighborhoods, Districts and Corridors.** Maintain and enhance the character, distribution, built form, scale, and aesthetic qualities of the City's distinctive residential neighborhoods, business districts, corridors, and open spaces.
- **LU 2.4 Architectural and Site Design.** Require that new construction and renovation of existing buildings and properties exhibit a high level of excellence in site planning, architectural design, building materials, use of sustainable design and construction practices, landscaping, and amenities that contribute to the City's distinctive image and complement existing development.
- **LU 11.2 Site Planning and Architectural Design.** Require that commercial and office properties and buildings are planned and designed to exhibit a high level of site and architectural design quality and excellence.

*The project exhibits a high level of excellence in site planning and unique architecture that is responsive and complementary to its Business Triangle location. The Project's varied building heights and massing respond to directly adjacent existing physical development surrounding the Project site. Retail frontages and lower building heights are located on the Rodeo Drive portion of the building. Taller portions of the building are located on Beverly Drive with a height consistent with the existing commercial structure directly to the east. The building incorporates façade modulation and articulation on all elevations including varied window sizing to provide visual interest. The Project incorporates features such as a widened sidewalk and a pedestrian plaza with art to improve the streetscape and promote pedestrian activity along the Project's three street frontages.*

- LU 9.1 Uses for Diverse Customers.** Accommodate retail, office, entertainment, dining, hotel, and visitor-serving uses that support the needs of local residents, attract customers from the region, and provide a quality experience for national and international tourists.

*The retail component of the Project is designed as a continuation of the Rodeo Drive pedestrian oriented commercial corridor and the ground floor publicly accessible restaurant interfaces with the street at the corner of Beverly Drive and South Santa Monica Boulevard. The street facing orientation of both the retail spaces and ground floor restaurant are complementary to the established pedestrian oriented retail environment that exists within the Business Triangle and is attractive to local and regional visitors. The high quality hotel and appurtenant amenities, including spa use, are hospitality uses centrally located in the City that will provide a quality experience for national and international tourists.*
- LU 9.3 Anchor Locations.** It is also recommended that certain anchor locations be set aside to permit development of a higher intensity type of development which is not otherwise provided in the community. These areas should be located so as to be accessible from the City's major shopping areas and close to the City's major streets. These anchor locations should include those large parcels that are located at the gateways to the City, such as the site at 9850, 9876, 9900, and 9988 Wilshire Boulevard where additional building height is appropriate. A variety of land uses such as commercial, hotel, residential, and mixed use should be considered for the gateway locations. A change of use from commercial to residential, hotel or mixed use should be allowed only if such change provides an adequate transition to adjacent single family neighborhoods.
- LU 9.4 Anchor Location Design Criteria (as revised).** The anchor location should encourage unified development oriented towards and along Wilshire Boulevard and at the intersection of North Rodeo Drive and South Santa Monica Boulevard planned to complement the scale and character of adjacent residential areas. In addition, development of the anchor locations should incorporate measures to enhance streets, sidewalks, and roadways in order to encourage pedestrian circulation between these areas and the Business Triangle.

*Consistent with these two anchor location General Plan Land Use Element policies, the Project is a unified multiple use (hotel, retail, and club uses) building with a higher intensity of development (both density and height) at an anchor location (the northern end of the City's luxury retail shopping street within the City's Business Triangle). The hotel/retail/club Project would demarcate the entry to the northern end of the Rodeo Drive luxury retail corridor and would mirror existing anchor development at the southern end of Rodeo Drive: the existing taller hotel (Beverly Wilshire Hotel) and adjacent unified retail development (Two Rodeo). The Project incorporates measures to encourage pedestrian circulation in the Business Triangle, including a widened sidewalk on South Santa Monica Boulevard, uniform landscaping and enhanced sidewalk paving material in the public right-of-way surrounding the Project, and a publicly accessible pedestrian plaza at the corner of Rodeo Drive and South Santa Monica Boulevard.*
- LU 11.3 Retail Street Frontages.** Require that development and street frontages in districts containing retail uses be designed and developed to promote pedestrian activity including (a) location and orientation of the building to the sidewalk; (b) transparency of and direct access to the ground floor elevation from the sidewalk; (c) articulation of street-facing elevations to promote interest and sense of quality; (d) inclusion of uses and public spaces that extend interior functions to the sidewalk such as cafes and plazas; and (e) use of pedestrian-oriented signage and lighting.

*Both the 150 linear feet of Rodeo Drive retail frontage and approximately 200 linear feet of South Santa Monica Boulevard and Beverly Drive ground floor restaurant frontage are consistent with*

*the specific characteristics listed in General Plan Land Use Policy LU 11.3. Both the retail and ground floor restaurant spaces are designed to: a) maintain the commercial streetwall that exists in the City's Business Triangle; b) provide ample pedestrian level fenestration between the commercial spaces and public sidewalk and have direct pedestrian entrances from Rodeo Drive and Beverly Drive respectively; c) include upper story articulation along all street-facing sides of the building and provide a 20' by 35' building inset on Rodeo Drive for a publicly accessible pedestrian plaza; d) provide the plaza at the corner of Rodeo Drive and South Santa Monica Boulevard as a public space and include large building openings on South Santa Monica Boulevard and Beverly Drive to provide connection between the interior dining areas of the ground floor restaurant with the adjacent public sidewalks; and e) include distinct ground level retail spaces with retail signage consistent with the pedestrian oriented retail signage pattern found within the Business Triangle.*

- **LU 11.5 Retail Streetscapes.** Maintain and, where deficient, improve street trees, plantings, furniture, signage, public art, and other amenities that promote pedestrian activity.
- **CIR 7 Pedestrians.** A safe and comfortable pedestrian environment that results in walking as a desirable travel choice, particularly for short trips, within the City.  
*The Project includes improvements to beautify the public right-of-way that surrounds the Project site and thus promote pedestrian activity and create a safer and more comfortable pedestrian environment that is integrated into the City's walkable Business Triangle. These improvements include: a) replacement street trees around the new building that are planted at a spacing consistent with the current street tree configuration located in the immediate vicinity and are tree species consistent with those planted within the Business Triangle; b) additional 3' wide landscaped areas in the public right-of-way that will be maintained by the Project operator; and c) widened sidewalks on South Santa Monica Boulevard as well as a publicly accessible pedestrian plaza that will include art.*
- **LU 14.4 New Construction of Private Buildings.** Require that new and substantially renovated buildings be designed and constructed in accordance with the City's sustainability programs such as the City's Green Building Ordinance or comparable criteria to reduce energy, water, and natural resource consumption, minimize construction wastes, use recycled materials, and avoid the use of toxics and hazardous materials.  
*The Project's new building is required to meet the City of Beverly Hills Green Building Code and CALGreen as well as be designed to meet a minimum rating of 'Gold' under the Leadership in Energy and Environmental Design (LEED) Green Building Rating System. LEED-consistent features are identified in Section 4.9 of the Project's Specific Plan and require the Project to be designed in a manner to reduce energy, water and natural resource consumption when compared with standard construction techniques, as well as require minimizing construction waste, and reduce the use of toxic and hazardous materials.*
- **LU 15.2 Priority Businesses.** Retain and build upon the key business sectors contributing to the City's identity, economy, and revenue for resident services, such as entertainment-related Class-A offices, high end retail and fashion, restaurant, hotel, technology, and supporting uses.
- **ES 1.4 Retain Existing Industries.** Consistent with future economic sustainability plans, encourage existing industries such as luxury retail, tourism, hoteling, finance, entertainment and media businesses and services to remain and expand within the City.

*The luxury retail businesses located on Rodeo Drive are closely identified with commercial identity of the City of Beverly Hills. The Project is an anchor development at the north end of Rodeo Drive that includes luxury retail and high end hotel uses. This development expands both luxury retail and luxury hotel offerings located in the City and builds upon the City's identity as an international destination for high end retail, hotels, and services.*

- **LU 16.4 Public Places.** Provide plazas, open spaces, and other outdoor improvements that are accessible to and used for public gatherings and activities, either through capital improvement or as a development requirement.
- **OS 8.5 Urban Parks.** Encourage and allow opportunities for new development to provide small plazas, pocket parks, civic spaces, and other gathering places that are available to the public to help meet recreational demands.

*The Project is a new development that includes a publicly accessible plaza directly accessible from the sidewalks surrounding the building. The plaza will provide an additional public space along Rodeo Drive that will add interest to the pedestrian environment on this highly visited street.*

- **CIR 4.1 Parking Provisions.** Ensure that adequate parking is provided for existing and future uses while considering shared parking opportunities. Travel Demand Management (TDM) plans, and availability of alternative modes of travel, based on the site's proximity to transit.

*A parking demand analysis that quantified the shared parking opportunities of the multiple use Project was completed. The parking requirements of the Specific Plan will ensure that the number of parking spaces provided by the Project is adequate to meet parking needs for the included uses, including any additional parking needs for special events at the Project site. In addition, a portion of the parking for the retail component of the Project is provided offsite through participation in the in lieu parking program. Thus this portion of the retail parking is provided through the use of public parking structures that are shared with other uses located within the City's Business Triangle. The Specific Plan also requires that TDM measures, such as providing transit passes to employees and guests and on-site bicycle facilities, are incorporated. The Project is located in close proximity to existing (North Santa Monica Boulevard rapid bus line) and future (Wilshire Boulevard Westside subway extension) transit.*

- **CIR 8.5 Bikeway Amenities.** Require that new development projects (e.g. employment centers, educational institutions, and commercial centers) provide bicycle racks, personal lockers, showers, and other bicycle support facilities.

*The Specific Plan requires the Project to include secure bicycle parking spaces within the building, at-grade bicycle parking spaces for short-term visitors, and provide charging facilities for e-bicycles. The Project includes lockers and showers for use by employees who commute by bicycle.*

- **CIR 11.2c (portion of Role of Alleys).** In commercial areas, however, there is the additional concern for alley relocation and/or closure, which may be desirable in conjunction with specific development proposals. As important as they are, the existence of the alleys should not preclude consideration of proposals which would alter them if satisfactory alternate services would be provided. In certain instances, development proposal which would utilize the alley may provide a type or quality of development or access which better serves the City's objectives and as such, should be considered. Such development proposals might include alley closure which would permit unified development across an entire block or permit safer street access, or use the alley as part of a landscaped pedestrian plaza or mall, or relocation of an alley of a more functional



arrangement of structures or possible consideration of the space above or below the alley for parking purposes.

*The Project is an anchor development located at the north end of the City's Business Triangle that spans four existing parcels between Rodeo Drive and Beverly Drive. The relocation of the alley is required in order to consolidate the site and allow the unified development of a single building across an entire block. The alley relocation thus helps facilitate a project that serves the City's objective of a high quality multiple use anchor commercial development at a key location within the City's Business Triangle.*