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City Clerk
City of Glendale
613 E. Broadway, Room 110
Glendale, CA 91206

(SPACE ABOVE FOR RECORDER'S USE)

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF GLENDALE,
a California municipal corporation,

and

VISTA INVESTMENTS, LLC,
a California Limited Liability Company

THIS AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS
OF EXECUTION BY ALL PARTIES HERETO PURSUANT TO
THE REQUIREMENTS OF GOVERNMENT CODE §65868.5

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DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made in Los Angeles County, California as of _____, 2021, by and between the CITY OF GLENDALE, a municipal corporation and charter city (the "City"), and VISTA INVESTMENTS, LLC, a California limited liability company ("Developer"). Together, the City and the Developer shall be referred to as the "Parties."

RECITALS

1. This Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties:

(a) The City is authorized, pursuant to Government Code §§65864 through 65869.5 ("Development Agreement Statutes"), and under its authority as a charter city to enter into binding agreements with persons or entities having legal or equitable interests in real property for the development of such property in order to establish certainty in the development process;

(b) The Developer is the owner of the real property located at 120 West Colorado Street, in the City of Glendale, County of Los Angeles, State of California, described in **Exhibit "A"**, ("Legal Description"), and as further depicted in **Exhibit "B"** (the "Site" or "Project Site"), both Exhibits being attached hereto and incorporated herein by this reference (the "Property").

(c) Developer proposes to construct a one-hundred and thirty (130) room hotel in an eighty-one (81) foot high, six (6) story building located on an approximately 29,500 square foot lot on the Property (the "Hotel" or "Project"). The Hotel is commonly referred to as the "AC Hotel".

(d) The Property is located in the Transitional District of the Downtown Specific Plan (the "DSP") area in the City of Glendale (the "District"). The DSP encourages certain uses or development types that provide specified community benefit by providing additional stories, height and density for such uses. Hotels are identified in DSP Chapter 7.1, subsection 7.2.3, as a use that provides community benefit and is a use that is therefore eligible for additional height, stories and density above the maximum allowed in the District. Projects in this District are permitted by right to be four (4) stories, up to sixty-five feet (65') in height, and to have a maximum FAR of 2.50. Hotel projects that provide the specified community benefit are allowed an additional two (2) stories (six (6) stories maximum), an additional thirty feet (30') in height for a maximum of ninety-five feet (95'), and an additional .50 FAR for a maximum 3.00 FAR.

(e) The Hotel is proposed to be six (6) stories and approximately eighty-one (81') in height with a 3.00 FAR.

(f) On May 22, 2018, the City Council approved and determined that:

(1) An environmental review has been conducted and the Project was determined to be exempt pursuant to California Environmental Quality Act (“CEQA”) Guidelines section 15332 as a “In-Fill Development Project”.

(2) A Stage I & II Design Review for the Project;

(3) A variance allowing 38% of the required parking to be in a tandem and/or stacked arrangement in lieu of the 25% maximum otherwise applicable; and

(4) Execution of an Instrument Imposing Covenants – Hotel Incentive; however, the Developer did not execute the Instrument.

(g) On November 22, 2019 the City administratively approved a one-year time extension of the May 22, 2018 Design Review approval (PDR 1721930), and the standards variance to allow 38% of the required parking spaces to be in a tandem and/or vertically stacked (PVAR 1721927) where a maximum of 25% is allowed (collectively, the “Project Approvals”; based on the approved time extension the Project Approvals are valid until May 22, 2021.

(h) Due to the various impacts from the global COVID-19 pandemic and economic downturn significantly impacting the hotel industry, on August 20, 2020, Developer requested approval of a Development Agreement in order to preserve for a six (6) year term the Project entitlements and freeze Development Impact Fees applicable to the Project as of the Effective Date.

(i) The six (6) year term of this Agreement is intended to preserve the Project entitlements that constitute the Approved Project, and development rights for a time period that will allow for the resolution of the pandemic and subsequent economic recovery that will be necessary to support building a new hotel.

(j) Pursuant to the DSP, Chapter 7, applicants using the height and density bonuses must enter into either a statutory development agreement or an instrument imposing covenants with the City. Accordingly, to ensure that the City receives the benefit specified in the DSP in exchange for Developer receiving one additional story and additional FAR (the “DSP Incentive”), the Developer is required to enter into this Agreement, which contains covenants that will run with the land.

(k) The community benefits of this Project that qualify this Project to use the allowable bonus include, but are not limited to, the following:

(1) A new hotel near downtown in conformance with the DSP at the time of approval of the Project entitlements in 2018;

(2) An expanded economic base for the City by generating additional property tax revenues, transient occupancy tax revenues, and incidental sales tax revenues;

(3) High quality design that contributes to the downtown’s unique sense of

place, and provides an important component to a thriving downtown and city;

(4) An increase in the population staying, working and recreating downtown, which will help reduce commuter traffic and other impacts on quality of life;

(5) Employment opportunities for City residents during and after Project construction; and;

(6) A public art contribution, made pursuant to the DSP art requirement, for use and enjoyment by downtown residents, visitors, and the general public.

(l) On _____, the Planning Commission of the City held a duly noticed public hearing on the Developer's application for a Development Agreement and by Motion recommended to the City Council approval of this Agreement.

(m) On _____, the City Council held a duly noticed public hearing on the Developer's application for this Agreement and introduced an ordinance to implement this Agreement, in addition, the City Council adopted design review consistency findings pursuant to Glendale Municipal Code Chapter 30.47, in relation to modifications to the Project design review approval to comply with the current DSP Hotel Community Benefit standards.

(n) On _____, the City Council determined that the Project still qualifies for a Class 32 In-Fill Development Project exemption (14 CCR §15332) and introduced an ordinance approving this Agreement.

(o) On _____, the City Council adopted Ordinance No. _____ approving this Agreement.

(p) Pursuant to Government Code §65867.5, the City Council of the City of Glendale ("City Council") finds that: (i) this Agreement, the Applicable Rules and any Future Approvals (as defined herein) of the Project implement the goals and policies of the City of Glendale's General Plan ("General Plan") and the DSP, provide balanced and diversified land uses and impose appropriate standards and requirements with respect to land development and usage in order to maintain the overall quality of life and the environment within the City; (ii) this Agreement, and the Project as depicted in the approved Stage I& II Project design, as shown on **Exhibit "C"** hereto, and incorporated herein by this reference, is in the best interests of, and not a detriment to, the public health, safety and general welfare of the residents of the City and the surrounding region; (iii) this Agreement is compatible with the uses authorized in the zoning district and planning area in which the Project Site is located; (iv) adopting this Agreement is consistent with the General Plan and DSP, and constitutes a present exercise of the City's police power and in accordance with its authority as a charter city; and (v) this Agreement is being entered into pursuant to and in compliance with the requirements of Government Code §65867.

2. **Definitions.** In this Agreement capitalized terms shall have the meanings set forth below, or if not defined in this Section 2, shall have the meaning ascribed thereto when such terms are first used herein:

(a) “**Agreement**” means this Development Agreement by and between the City and Developer, including all exhibits attached hereto and all amendments and modifications thereto.

(b) “**Applicable Rules**” are as defined in Section 7(a).

(c) “**Approved Project**” means the May 22, 2018 Design Review approval (PDR 1721930), and the standards variance to allow 38% of the required parking spaces to be in a tandem and/or vertically stacked (PVAR 1721927) where a maximum of 25% is allowed, as shown on **Exhibit “C”** hereto and incorporated herein by this reference.

(d) “**Construction Period**” shall mean the time period during which the Project is being constructed pursuant to the Approved Project attached hereto as **Exhibit “C”**.

(e) “**Developer**” means Vista Investments, LLC, a California limited liability company, as developer of record, and any of their successors or assigns.

(f) “**Developer Covenants**” means those covenants imposed on the real property upon which the Project is being developed to ensure this Project complies with the DSP use as a hotel in exchange for the incentives shown in the Approved Project, as defined herein, and shown on **Exhibit “C”** hereto and incorporated herein by this reference.

(g) “**Developer Property**” means property with a legal and equitable ownership held by Developer, and as identified on Site Map attached hereto as **Exhibit “A”** hereto and incorporated herein by this reference, and described more particularly in the Legal Description attached hereto as **Exhibit “B”** hereto and incorporated herein by this reference.

(h) “**Development Impact Fee(s)**” means those impact fees, linkage fees, exactions, or fair share charges or other similar impact fees or charges (collected as a condition to issuance of demolition, grading and/or building permits, or other permits) imposed by the City on and/or in connection with new development. Development Impact Fees do not include (i) Filing or Processing Fees; or (ii) other City-wide fees or charges of general applicability, provided that such City-wide fees or charges are not imposed on impacts of new development; (iii) impact fees, linkage fees, exactions, assessments or fair share charges or other similar fees or charges imposed by other governmental entities and which the City is required to collect or assess pursuant to applicable law (e.g., school district impact fees pursuant to Government Code Section 65995).

(i) “**Effective Date**” is the date the Ordinance approving this Agreement becomes effective.

(j) “**Enforced Delay**” is defined in Section 24 below.

(k) “**Filing or Processing Fees**” means those fees uniformly charged by various City departments to cover the administrative costs of, among other things, reviewing and analyzing permit applications and similar requests for ministerial and/or discretionary approvals.

(l) “**Future Approvals**” means any action approved by the City which implement development of the Project, including, without limitation, parcel maps, tentative subdivision

maps, development plan, any applicable specific plan, and Project site plan reviews, and conditional use permits. Future Approvals, as they may be granted from time to time, shall become part of the Applicable Rules.

(m) **“Hazardous Materials”** means any toxic substance, materials, or waste which is now regulated by any local governmental authority, the State of California, or the United States Government under any Environmental Law including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117, or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) a petroleum or refined petroleum product, including without limitation petroleum-based paints and solvents, (vi) asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether (MTBE), (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (x) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, (xii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*, (xiii) any flammable or explosive materials, (xiv) a radioactive material, or (xv) lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds and including any different products and materials which have been found to have adverse effects on the environment or the health and safety of persons.

(n) **“Improvements”** means those improvements to be constructed by Developer or by its tenants, pursuant to the Approved Project and the Applicable Rules and the Plans submitted by Developer and approved by the City.

(o) **“Indemnitees”** is defined in Section 12(d) below.

(p) **“Minor Change”** is defined in Section 11(a) below.

(q) **“Mortgagee”** is defined in Section 19 below.

(r) **“Municipal Code”** means the Glendale Municipal Code and all amendments thereto.

(s) **“Periodic Review”** is defined in Section 13(a) below.

(t) **“Plans”** shall mean plans, specifications, drawings and other information required for the construction of the Improvements, which may include as applicable: (a) designs,

locations and dimensions of Improvements, (b) site plans, (c) street level plans, (d) typical building floor plans, (e) key elevations and key building cross sections, (f) features in public areas, (g) landscape features, materials and sizes, (h) locations for signs and signage designs, (i) parking facilities with spaces indicated, (j) general construction techniques, (k) detailed tabulation of floor area by use, (l) structural dimensions and elevations, (m) building materials and colors, all of which shall be consistent with the Approved Project, and (n) written requirements for materials, equipment, systems, standards and workmanship, and/or working drawings.

(u) “**Project**” is defined in Recital 1(c) herein above.

(v) “**Project Site**” is defined in Recital 1(b) herein above.

(w) “**Reserved Powers**” means the rights and authority excepted from the restrictions of this Agreement on the City's police powers and which are instead reserved to the City. The Reserved Powers include the power to enact and implement rules, regulations, ordinances and policies after the Effective Date that are not in conflict with the Applicable Rules or that may be in conflict with the Applicable Rules but are permitted by Section 7 (b) of this Agreement.

(x) “**Specific Plan**” means the Glendale Downtown Specific Plan applicable to this Project.

(y) “**Term**” means the applicable period of time during which this Agreement shall be in effect and shall bind the City and Developer, as described in Section 15.

(z) Other terms not specifically defined in this Agreement shall have the same meaning as set forth in the Municipal Code or applicable Specific Plan.

3. **Binding Effect.** This Agreement, and all of the terms and conditions of this Agreement shall, to the extent permitted by law, constitute covenants which shall run with the land comprising the Project Site for the benefit thereof, and the benefits and burdens of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective assigns, heirs, or other successors in interest.

4. **Negation of Agency.** The Parties acknowledge that, in entering into and performing under this Agreement, each is acting as an independent entity and not as an agent of the other in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers, partners, agents of the other, or employer/employee.

5. **Development Impact Fees.** Hotel Projects are currently exempt from payment of the Development Impact Fees for parks and libraries required by Glendale Municipal Code (“GMC”) Chapter 4.20 (“Parks & Library DIFs”), and Hotel Project are also exempt from payment of the Affordable Housing Commercial Development Impact Fee as defined in GMC Chapter 4.11 (“Affordable Housing DIFs”). This Agreement freezes this Project’s exemption from payment of Parks & Library DIFs and Affordable Housing DIFs, and except as otherwise provided in Section 7 of this Agreement, the parties agree that this Project shall not be subject to

payment of other Development Impact Fees that may be imposed following the Effective Date of this Agreement.

6. **Developer Covenants.** Developer covenants and agrees the covenants contained in this Agreement run with the land, and that should Developer construct the Approved Project, and for so long as the Approved Project is in existence, the Developer shall operate and maintain the Approved Project as a hotel use in accordance with Project entitlements contained in **Exhibit “C”** attached hereto and incorporated herein by this reference. Provided, however, Developer may seek subsequent modifications to the Approved Project pursuant to the Glendale Municipal Code as it pertains to Design Review, and subject to the applicable processes for Minor Changes and amending or modifying this Agreement, as the case may be, as provided for in this Agreement and as required by the California Government Code.

7. **Applicable Rules; Reserved Powers.** The development standards and restrictions set forth in this Section 7 shall govern the use and development of the Project and the Project Site and shall constitute the Applicable Rules, except as subject to the Reserved Powers and otherwise provided herein.

(a) **Applicable Rules.** The following shall be part of the Applicable Rules:

- (1) The General Plan;
- (2) Downtown Specific Plan;
- (3) The Municipal Code (including the Zoning Code) to the extent it is not amended or superseded by the Downtown Specific Plan;
- (4) Such other ordinances, rules, regulations, and official policies of the City governing permitted uses of the Project, and density, design, improvement, and construction standards and specifications applicable to the development of the Project and to the extent they are not superseded by the Downtown Specific Plan;
- (5) This Agreement and all attachments thereto;
- (6) The Approved Project and all Future Approvals;
- (7) The permit fees and all other applicable fees, except those set forth in Section 5 herein above, will be assessed at the time that they are required, and are not fixed as a part of this Agreement. Notwithstanding this provision, the amount of the City’s sewer mitigation fee, if any, shall be fixed in the sum applicable to the Project of the date of final approval of the Project, May 22, 2018; and

(b) **Reserved Powers.** Notwithstanding any provisions of this Agreement to the contrary, the City reserves the right through its Reserved Powers, as defined herein below, to enact and implement:

- (1) Ordinances, rules, regulations and policies relating to uniform codes adopted by City or by the State of California, such as, but not limited to, the Uniform Building

Code, the California Building Standards Code, International Building Code as adopted by the California Building Standards Commission, National Electrical Code, Uniform Mechanical Code or Uniform Fire Code, as amended (including those amendments to the promulgated uniform codes which reflect local modification to implement the published recommendations of the multi-state organization and which are applicable City-wide), and the application of such uniform codes to the Project at the time of application for issuance of building permits for structures on the Project Site including such amendments to uniform codes as the City may adopt from time to time;

(2) Rules, regulations, ordinances and/or policies determined by the City to be necessary in order to prevent or remedy conditions dangerous to the health and safety of City residents;

(3) In the event that State or Federal laws or regulations prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce. Notwithstanding the foregoing, City shall not adopt or undertake any regulation, program or action or take any action required by State or Federal laws or regulations which is/are inconsistent or in conflict with this Agreement until it has met and discussed the proposed action with the Developer;

(4) City shall retain all of its discretion with respect to determinations regarding requests for Future Approvals consistent with the Applicable Rules and this Agreement.

8. **Limitation on Application of Conflicting Requirements.** This Agreement shall not preclude the application to the Project of rules, regulations, ordinances and officially adopted plans and policies not in conflict with the Applicable Rules.

9. **Acknowledgments, Agreements and Assurances on the Part of Developer.** In order to effectuate the provisions of this Agreement, and in consideration for the City entering into this Agreement and obligating itself to carry out the covenants and conditions set forth herein, the Developer hereby agrees and acknowledges that:

(a) **Construction of Project.** The Project, including the Improvements, shall be constructed pursuant to this Agreement and the Applicable Rules.

(b) **Other Governmental Permits.** Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project for the development of, or provision of services to, the Project. The City shall cooperate with Developer in its endeavors to obtain such permits and approvals, but Developer shall have no separate cause of action against City under this Section 9 if Developer fails to obtain such permits and approvals.

10. **Acknowledgments, Agreements and Assurances on the Part of the City.** In order to effectuate the provisions of this Agreement, and in consideration for the Developer entering this Agreement and obligating itself to carry out the covenants and conditions set forth in the preceding Section of this Agreement, the City hereby agrees and acknowledges that:

(a) **Entitlement to Develop.** The Developer is hereby granted the vested right to develop the Project on the Project Site to the extent and in the manner provided in this Agreement, subject to and in accordance with the Applicable Rules, Reserved Powers, and the Future Approvals. The City hereby grants and Developer shall have the vested right to develop and construct the Project in accordance with the Applicable Rules, subject to termination of this Agreement as set forth hereinafter. The vested right to develop and construct the Project includes an extension of the life of the Project Approvals for the Term of this Agreement.

(b) **Conflicting Enactments.** With the exception of those changes authorized by the Reserved Powers, as defined herein in Section 7 (b), any other change in the Applicable Rules, including, without limitation, any change in the General Plan, Downtown Specific Plan, zoning, subdivision or building regulation, adopted or becoming effective after the Effective Date, and adopted in any form by the City Council, the Planning Commission or any other board, commission or department of City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project Site and which would conflict in any way with or be more restrictive than the Applicable Rules shall not be applied by City to any part of the Project Site. If Developer elects to have any such change made part of the Applicable Rules, then Developer shall give City written notice of its election to have such change in the Applicable Rules applied to such portion of the Project and/or Project Site, in which case such change shall be deemed to be an Applicable Rule insofar as that portion of the Project and/or Project Site is concerned.

(c) **Permitted Conditions.** Provided Developer's applications for any Future Approvals are consistent with this Agreement and the Applicable Rules, City shall review and consider, subject to the Reserved Powers, including Section 7 (b)(4), such Future Approvals in accordance with the Applicable Rules and this Agreement and subject to the City's and/or Agency's review as applicable, authorize development of the Project Site for the uses and to the density and regulations as described herein. City shall have the right to impose conditions in connection with Future Approvals provided, however, that such conditions and dedications shall not be inconsistent with this Agreement or the Applicable Rules.

11. **Acknowledgements, Agreements, and Assurances on the Part of the Parties.** In order to effectuate the provisions of this Agreement, and in consideration for the Parties entering this Agreement and obligating themselves to carry out the covenants and conditions set forth in the preceding Section of this Agreement, the Parties hereby agree and acknowledge that:

(a) **Administrative Changes and Amendments.** The Parties acknowledge that further planning and development of the Project may demonstrate that refinements and changes are appropriate with respect to the details and performance of the Parties under this Agreement. The Parties desire to retain a certain degree of flexibility with respect to the details of the Project development and with respect to those items covered in general terms under this Agreement. If and when the parties find that "Minor Changes", as herein defined, are necessary or appropriate,

they shall, unless otherwise required by law, effectuate such changes or adjustments through administrative amendments executed by the Developer and the City Manager or his or her designee, pursuant to the processes established through the Applicable Rules and Reserved Powers. As used herein, "Minor Changes" are changes, modifications or adjustments, which are consistent with the Applicable Rules, and which do not materially alter the overall nature, scope, or design of the Project, including, without limitation, minor changes in locations of buildings, streets, or infrastructure, configuration and size of parcels or lots (including lot line adjustments), or development of the infrastructure, provided, however, that any Minor Changes shall be subject to the limitations set forth in this Section 11 of this Agreement. Minor Changes shall not be deemed to be an amendment to this Agreement under Government Code section 65868, and unless otherwise required by law, no such administrative amendments shall require prior notice or hearing by the Planning Commission or City Council.

12. **Cooperation and Implementation.** The City and Developer agree that they will cooperate with one another to the fullest extent reasonable and feasible to implement this Agreement. Such cooperation shall include, but is not limited to, the following:

(a) **Further Assurances; Covenant to Sign Documents.** Each Party shall take all actions and do all things, and execute, with acknowledgment or affidavit, if required, any and all documents and writings, including estoppel certificates, which may be necessary or proper to achieve the purposes and objectives of this Agreement. The Party requesting the herein described actions, including the execution of any documents, writings and estoppel certificates (collectively documents), shall pay for all legal and other consulting fees and/or costs incurred by the City in reviewing such documents.

(b) **Processing.** Upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate filing or processing fees, if any, City shall, subject to all legal requirements, promptly initiate, diligently process, and complete all required steps, and promptly act upon any approvals and permits necessary for the development by Developer in accordance with this Agreement.

(c) **Defense of Agreement.** City and Developer agree to cooperate, and to timely take all actions necessary or required to uphold the validity and enforceability of this Agreement, Applicable Rules, and Reserved Powers subject to the indemnification provisions of Section 12 (d). The City and Developer shall promptly notify one another of any claim, action, or proceeding brought forth within this time period.

(d) **Indemnification.** Developer shall indemnify defend and hold harmless (with counsel reasonably acceptable to the City) the Agency, City, their officers, agents and employees, (the "Indemnitees"), from and against any and all claims, demands, costs, judgments, attorneys' fees and/or liabilities which arise from (i) the performance of this Agreement by Developer or Developer's ownership, development, use, or operation of the Site or any portion thereof excepting those liabilities which are caused by the Indemnitees' (or any of them) gross negligence or willful misconduct, and (ii) any litigation challenging the validity and/or sufficiency of the environmental impact report and/or land use entitlements for the Project. City agrees to work with Developer to discuss and effectuate settlement of any litigation hereunder where it is in the parties' best interests to do so. Indemnitees and the Developer shall have the

right to require that any case be handled through an alternative dispute resolution process. The City and Developer agree to fully cooperate with one another in any case where no conflict of interest between the parties is apparent. Without limiting the generality of the foregoing, Developer specifically agrees to indemnify, defend and hold harmless City and Agency from any liabilities resulting from Developer's failure to comply with all laws applicable to the Project or the Project Site.

13. **Compliance; Default; Termination; Modifications and Amendments.**

(a) **Review of Compliance.** During the term of this Agreement, the City shall review this Agreement on or before each anniversary of the Effective Date ("Periodic Review") in order to determine whether Developer is in good faith compliance with any specific term or provision of this Agreement. At the commencement of each Periodic Review, the Director shall notify Developer in writing that the Periodic Review will commence or has commenced. City shall notify Developer regarding any alleged non-compliance on the part of the Developer. Within thirty (30) days after receipt of the Director's notice that the Periodic Review will commence or has commenced (and unless Developer requests and is granted a waiver by the City), City may request Developer to demonstrate good faith compliance with this Agreement.

(1) **Non-Compliance/Default by Developer.** In addition to the Periodic Review process set forth in this Section 13, in the event the Developer does not perform its obligations under this Agreement in a timely manner, the City shall have those rights and remedies provided for in this Agreement.

(2) **Notice of Non-Compliance/Default.** With respect to any non-compliance/default under this Agreement, the City shall submit to Developer, by registered or certified mail return receipt requested, a written notice of default in the manner prescribed in Section 20 herein, identifying with specificity those obligations of Developer, which have not been performed. Upon receipt of the notice of non-compliance/default, Developer shall promptly commence to cure the identified defaults(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that Developer shall continuously and diligently pursue such remedy at all times until such default(s) is cured. Pursuant to Section 19, Mortgagees may be entitled to notice of any default by Developer hereunder and an additional period on which to cure such default.

(3) **Developer Failure to Cure Non-Compliance/Default Procedure.** If, after the cure period has elapsed, the City finds and determines that (i) Developer has not demonstrated that it is in compliance with this Agreement, and (ii) Developer is out of compliance with a specific, substantive term or any provision of this Agreement, then the City shall first notify the Developer in writing and then shall make a report to the City Council and set a public hearing before the City Council in accordance with the notice and hearing requirements of Government Code sections 65867 and 65868. If, after public hearing, the City Council finds and determines, on the basis of substantial evidence, that Developer has not cured the default pursuant to this Section, then the City shall terminate or modify this Agreement. Notwithstanding the foregoing, non-performance by either Party shall be excused when it is

delayed unavoidably and beyond the reasonable control of the Parties as a result of any of the events identified in Section 24 of this Agreement.

(b) **Developer Default.** Subject to the cure period set forth in this paragraph and Force Majeure (as defined herein in Section 24), and provided that Developer elects to commence Project construction, failure by Developer to construct, operate and maintain the Approved Project as required by this Agreement, and following notice and failure to cure as described hereafter, constitutes a “Default” under this Section of the Agreement, and entitles the City to institute legal actions pursuant to Section 13 or as otherwise permitted by this Agreement. Except as otherwise expressly provided in this Agreement, the City shall not institute any proceeding against Developer and Developer shall not be in Default if within thirty (30) days from receipt of the notice required by this Section 13, Developer promptly and with due diligence, commences to cure, correct or remedy such failure or delay within such thirty (30) day period and diligently prosecutes such cure to completion. In addition to any other remedies, the City has the option, in its sole and absolute discretion, to terminate this Agreement if Developer fails to cure the Default.

(c) **Institution of Legal Actions.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, the City may institute an action at law or equity to seek specific performance of the terms of this Section 13 of the Agreement, or to cure, correct or remedy the Default, to collect on the Performance Bond as set forth in, and subject to the limitations of, the following subsection, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Los Angeles, State of California, in an appropriate municipal court in that county, or in the United States District Court for the Central District of California.

(d) **Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party. The right of the City to collect on the Performance Bond under a Developer Default shall be limited, whether in a single action or cumulatively, to an aggregate amount of the Performance Bond, plus reasonable attorneys’ fees, if any. Notwithstanding anything to the contrary herein, the City shall not be entitled to consequential or punitive damages.

(e) **Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

(f) **Termination of Agreement.** Subject to compliance with Government Code section 65868, the City may terminate this Agreement, after final determination of the City Council on the basis of substantial evidence that Developer has not cured its Default within the applicable cure period. Following the transfer of the Property, any portion thereof, to a permitted transferee, this Agreement may only be terminated with respect to the transferred parcel on account of a default by the owner of such transferred parcel, and no such default shall result in

termination of this Agreement with respect to the portion of the Project Site retained by the Developer.

(g) **Non-Compliance/Default by City.** With respect to any non-compliance/default under this Agreement, the Developer shall submit to City, by registered or certified mail return receipt requested, a written notice of default in the manner prescribed in Section 20 herein, identifying with specificity those obligations of City which have not been performed. Upon receipt of the notice of non-compliance/default, City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that City shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

(h) **Modification or Amendment.** Notwithstanding Section 11(a) herein above pertaining to Administrative Amendments, and subject to the notice and hearing requirements of the Development Agreement Statute, this Agreement may be modified or amended from time to time only with the written consent of Developer and the City or their successors and assigns in accordance with the provisions of the Municipal Code and Government Code section 65868. As a condition precedent to City's execution of any amendment of this Agreement, Developer shall deliver to City a preliminary title report with respect to the portions of the Developer Property to be affected by such amendment, together with a notice stating that the mortgagees listed in such report will be entitled to notice of and consent to such amendment pursuant to Section 20 of this Agreement.

14. **Administration.** This Agreement shall be administered and executed by the City Manager, or his/her designated representative, following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City Manager (or his/her authorized representative). The City Manager shall have the authority to issue interpretations, waive provisions, extend time limits, make minor modifications to City design approvals, and/or revise this Agreement on behalf of the City so long as such actions do not conflict with the substantive provisions of this Agreement, substantially change the uses, square footages, development permitted on the Project Site pursuant to the Scope of Development, or add to the City costs, or conflict with the Applicable Rules. All waivers of this Agreement shall comply with Section 23 of this Agreement. All amendments of this Agreement, other than those minor changes described in this Section 11(a), shall comply with Section 13(h) of this Agreement pertaining to Modifications or Amendments.

15. **Term of Agreement.** Except for the covenants contained herein in Section 6 which run with the land, this Agreement shall become operative on the Effective Date and the Term shall end six (6) years after the Effective Date of this Agreement, unless this Agreement is terminated, modified or extended upon mutual written consent of the Parties hereto or as otherwise provided by this Agreement. Following expiration or termination of the Term hereof, and except for the covenants to maintain and operate the hotel, this Agreement shall otherwise be deemed terminated and of no further force and effect. The Term shall be extended by the number of days equal to the number of days that any Enforced Delay as defined in Section 24

was in effect. Notwithstanding this provision, Developer shall make its best efforts to diligently construct the Project in the minimum feasible timeframe.

16. **Administration of Agreement and Resolution of Disputes.** All disputes involving the enforcement, interpretation or administration of this Agreement shall first be subject to good faith negotiations between the Parties to resolve the dispute. In the event the dispute is not resolved by negotiations, the Parties shall be permitted to pursue any remedy provided for under this Agreement or otherwise available under applicable law or judicial decision, whether at law or in equity. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies available to any Party.

17. **Injunctive Relief.** Any Party to the dispute may, in addition to any other rights or remedies provided by this Agreement, seek to enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the Parties hereto, except as otherwise provided herein.

18. **No Personal Liability.** No board member, councilmember, official or employee of the City or Agency shall be personally liable to Developer in the event of any default or breach by the City for any amount which may become due to Developer or on any obligations under the terms of this Agreement.

19. **Mortgagee Protection.** This Agreement shall not prevent or limit the Developer, in any manner, at Developer's sole discretion, from encumbering the Developer Property or any portion thereof or any improvements thereon by any mortgage, deed of trust or other security device. The City acknowledges that the lender(s) providing such financing ("Mortgagee") may, from time to time, request the City issue interpretations of this Agreement. The City agrees to respond to Mortgagee requests for City interpretation of this Agreement within a reasonable time period. The City retains sole and absolute discretion over any interpretations of this Agreement issued by the City. Any Mortgagee of a mortgage or a beneficiary of a deed of trust or any successor or assign thereof, including without limitation the purchaser at a judicial or non-judicial foreclosure sale or a person or entity who obtains title by deed-in-lieu of foreclosure on the Developer Property shall be entitled to the following rights and privileges:

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

(b) **Request for Notice to Mortgagee.** The Mortgagee of any mortgage or deed of trust encumbering the Developer Property, or any part thereof, who has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive a copy of any notice of non-compliance/default delivered to the Developer.

(c) **Mortgagee's Time to Cure.** The City shall provide a copy of any notice of non-compliance/default to the Mortgagee within ten (10) days of sending the notice of non-compliance/default to the Developer. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of thirty (30) days after receipt of such notice of non-compliance/default. Notwithstanding the foregoing, if such default shall be a default which can only be remedied by such Mortgagee obtaining possession of the Developer Property, or any portion thereof, and such Mortgagee seeks to obtain possession, such Mortgagee shall have until thirty (30) days after the date of obtaining such possession to cure or, if such default cannot reasonably be cured within such period, to commence to cure such default, provided that such default is cured no later than one (1) year after Mortgagee obtains such possession.

(d) **Cure Rights.** Any Mortgagee who takes title to all of the Developer Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or a deed in lieu of foreclosure, shall succeed to the rights and obligations of the Developer under this Agreement as to the Developer Property or portion thereof so acquired; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of the Developer arising prior to acquisition of title to the Property by such Mortgagee, except that any such Mortgagee shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees and other monetary or nonmonetary obligations due under this Agreement for the Developer Property, or portion thereof acquired by such Mortgagee, have been satisfied.

(e) **Bankruptcy.** If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving the Developer, the times specified in Section 16(c) above shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

(f) **Disaffirmation.** If this Agreement is terminated as to any portion of the Developer Property by reason of (i) any default or (ii) as a result of a bankruptcy proceeding, this Agreement is disaffirmed by a receiver, liquidator, or trustee for the Developer or its property, the City, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new development agreement for the Project as to such portion of the Developer Property with the most senior Mortgagee requesting such new agreement. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this Section 19.

20. **Notices.** All notices under this Agreement shall be in writing and shall be deemed delivered when personally received by the addressee, or within three (3) calendar days after deposit in the United States mail by registered or certified mail, postage prepaid, return receipt requested, to the following Parties and their counsel at the addresses indicated below; provided, however, if any Party to this Agreement delivers a notice or causes a notice to be delivered to any other Party to this Agreement, a duplicate of that Notice shall be concurrently delivered to each other Party and their respective counsel. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City: City of Glendale
 633 E. Broadway, Suite 201

Glendale, California 91206-4387
Attention: City Manager
FAX: (818) 240-7913

With copies to: City of Glendale, City Attorney's Office
613 East Broadway, Suite 220
Glendale, California 91206
Attention: Gillian van Muyden,
Chief Assistant City Attorney
FAX: (818) 547-3402

To Developer: Vista Investments LLC.
2225 Campus Drive
El Segundo, California 90245
Attention: Amanda Mauceri

With copy to: Armbruster Goldsmith & Delvac LLP
12100 Wilshire Blvd., Suite 1600
Los Angeles, California 90025
Attention: Dale Goldsmith

Notice given in any other manner shall be effective when received by the addressee. The addresses for notices may be changed by notice given in accordance with this provision.

21. **Severability and Termination.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is superseded or rendered unenforceable according to any law which becomes effective after the Effective Date, the remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.

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

23. **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought.

24. **Enforced Delay; Extension of Time of Performance.** Required performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: litigation challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by this Agreement; inability to secure necessary labor materials or tools; actions in connection with the remediation of Hazardous Materials, including groundwater contamination; or withdrawal of financing not caused by any act or omission of Developer; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; acts of terrorism; epidemics; quarantine

restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; building, sewer, water, or other moratoria; unusually severe weather; acts or omissions of the other party; acts or failures to act of the City or any other public or governmental agency or entity; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period reasonably attributable to the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the City and/or Developer. Notwithstanding any provision of this Agreement to the contrary, neither the lack of funding to complete the Improvements nor the inability to timely submit plans and make required fee payments shall constitute grounds for enforced delay pursuant to this Section 24.

25. **No Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit of the Developer and the City and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

26. **Attorneys' Fees.** If any Party commences any action for the interpretation, enforcement, termination, cancellation or rescission of this Agreement or for specific performance for the breach hereof, the prevailing Party shall be entitled to its reasonable attorneys' fees, litigation expenses and costs arising from the action. Attorneys' fees under this Section shall include attorneys' fees on any appeal as well as any attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment.

27. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California, and the venue for any legal actions brought by any Party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions.

28. **Authority to Execute; Binding Effect.** Developer represents and warrants to the City that it has the power and authority to execute this Agreement and, once executed, this Agreement shall be final, valid, binding and enforceable against Developer in accordance with its terms. The City represents and warrants to Developer that (a) all public notices and public hearings have been held in accordance with law and all required actions for the adoption of this Agreement have been completed in accordance with applicable law; (b) this Agreement, once executed by the City, shall be final, valid, binding and enforceable against the City in accordance with its terms; and (c) this Agreement may not be amended, modified, changed or terminated in the future by the City except in accordance with the terms and conditions set forth herein.

29. **Entire Agreement; Conflicts.** This Agreement represents the entire agreement of the Parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof. Should any or all of the provisions of this Agreement be found to be in conflict with any other provision or provisions found in the Applicable Rules, then the provisions of this Agreement shall prevail.

30. **City Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by the City, the City Manager, or his designee is authorized to act on behalf of City unless specifically provided otherwise or the context should require otherwise.

31. **Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all Parties, shall constitute a binding agreement.

32. **Integration.** This Agreement contains the entire understanding between the Parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each Party is entering this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such Party deems material. This Agreement includes Exhibits "A" through "C," (each such Exhibit incorporated in this Agreement as if fully set forth herein) which together constitute the entire understanding and agreement of the Parties, notwithstanding any previous negotiations or agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

33. **Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both Parties.

34. **Legal Advice.** Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

35. **Conflicts of Interest.** No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

36. **Assignment.** The burdens of the Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest and assigns of the parties to the Agreement. The parties shall provide thirty (30) days advance written notice of any assignment. Said notice shall be in compliance with Section 20 herein.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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

CITY OF GLENDALE, CALIFORNIA

VISTA INVESTMENTS, LLC, a California
limited liability company

By: _____
Roubik Golanian, City Manager

By: _____

APPROVED AS TO FORM:
MICHAEL J. GARCIA, CITY ATTORNEY

By: _____
Gillian van Muyden,
Chief Assistant City Attorney

ATTEST:

Aram Adjemian, City Clerk

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1:

THE EAST HALF OF LOT 21 OF GRIDER AND HAMILTON'S LOMITA PARK, IN THE CITY OF GLENDALE, AS PER MAP RECORDED IN BOOK 6 PAGE 105 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

THE WEST HALF OF LOT 21 OF GRIDER AND HAMILTON'S LOMITA PARK, IN THE CITY OF GLENDALE, AS PER MAP RECORDED IN BOOK 6 PAGE 105 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 3:

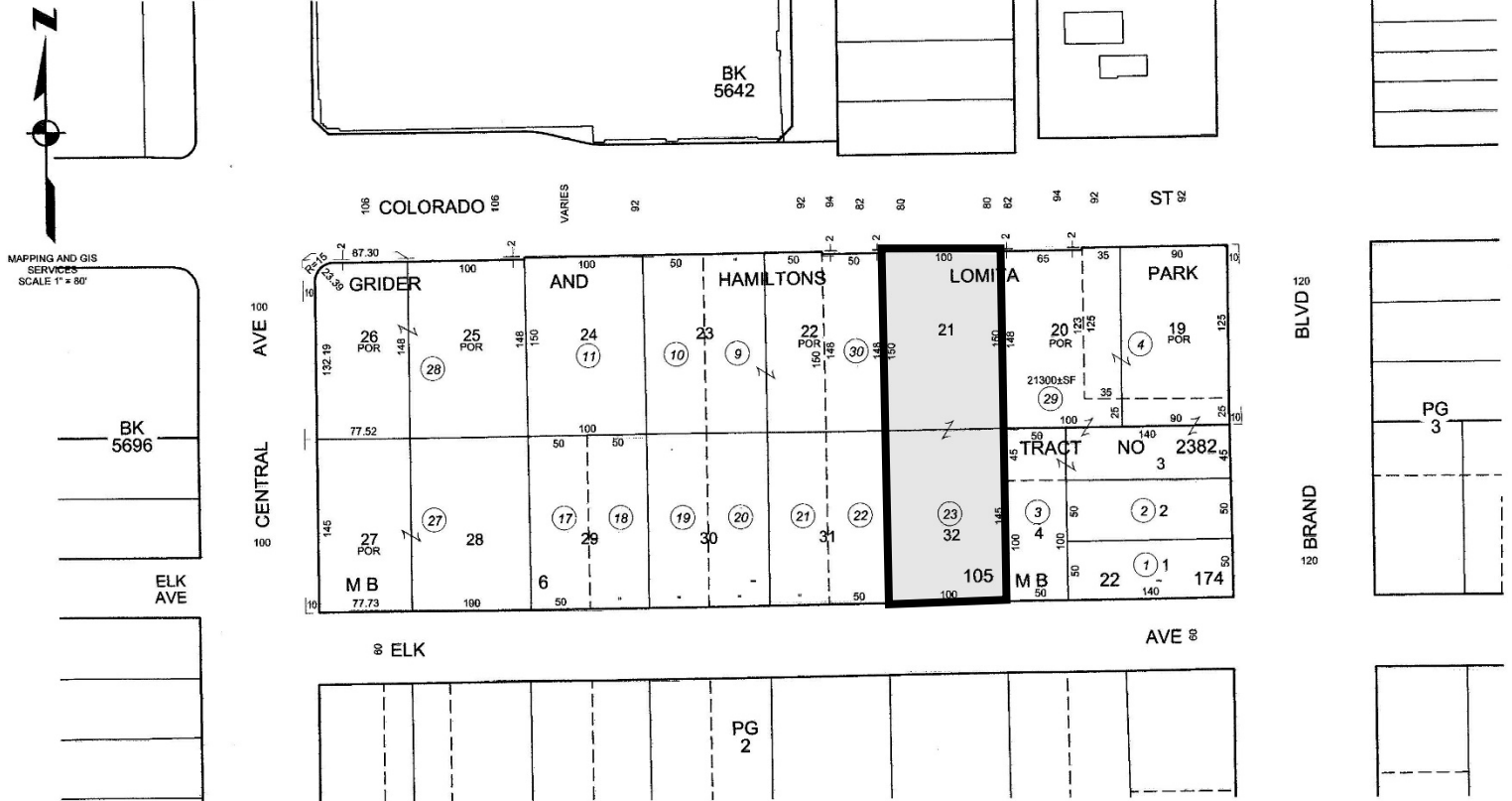
LOT 32 OF GRIDER AND HAMILTON'S LOMITA PARK, IN THE CITY OF GLENDALE, AS PER MAP RECORDED IN BOOK 6 PAGE 105 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT "B"

PROJECT SITE

5641	1	P.A. 5642-16	IHA 4045	REVISED 88060902002001 2014111219003001-24	2014111919	SEARCH NO	OFFICE OF THE ASSESSOR COUNTY OF LOS ANGELES COPYRIGHT © 2002
SHEET							

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EXHIBIT “C”

APPROVED PROJECT

(The Approved Project, which includes the Stage I & II Design (PDR 1721930), standards variance to allow 38% of the required parking spaces to be in a tandem and/or vertically stacked (PVAR 1721927) where a maximum of 25% is allowed, approved by the City on May 22, 2018, is kept in the official records of and available for review in the Office of the Glendale City Clerk)