

Recorded at request of:)
Clerk, City Council)
City of Arcadia)
)
When recorded return to:)
City of Arcadia)
240 W. Huntington Dr.)
Arcadia, CA 91006)
Attention: City Clerk)
)

Exempt from Filing Fees, Government Code Section 6103

DEVELOPMENT AGREEMENT

Mixed Use Development Project

between

**CITY OF ARCADIA,
a California municipal corporation and charter law city**

and

**NEW WORLD INTERNATIONAL, LLC,
a California limited liability company**

DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter “Agreement”) is entered into as of this ____ day of _____, 2020 for reference purposes only, by and among the City of Arcadia, a California municipal corporation and charter law city (hereinafter “City”), New World International, LLC, a California limited liability company (“Owner”).

RECITALS

WHEREAS, City is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to the Development Agreement Act and the Development Agreement Resolution; and

WHEREAS, Owner is the fee simple owner of that certain real property, located at 124, 126 and 134 Wheeler Ave. and 117 and 129 E. Huntington Drive, Arcadia, California, comprising approximately 1.74 acres as described in the Legal Description and as shown on the Site Plan; and

WHEREAS, the Property is currently developed with a mix of commercial buildings and surface parking areas, and includes a public surface parking lot consisting of 55 public parking spaces; and

WHEREAS, Owner has proposed a project consisting of two buildings that contain 139 residential units, 10,200 square feet of ground floor commercial/retail space, and subterranean and surface parking comprising 350 parking spaces, 55 of which will be dedicated as public parking spaces in perpetuity, all as shown on the Site Plan and described more fully herein and in the Entitlements (the “Project”); and

WHEREAS, Owner and City desire to enter into a development agreement with respect to the Project; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by City, its Planning Commission and its City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the City and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, all of the procedures of the CEQA have been satisfied based on an initial study as a result of which certain additional focused studies evaluating the environmental impacts of the Project have been completed and the City has made certain findings and determinations that this Agreement and the Project can be supported by a Mitigated Negative Declaration, in compliance with the requirements of CEQA; and

WHEREAS, this Agreement and the Project are consistent with the Arcadia Comprehensive General Plan; and

WHEREAS, all actions taken and approvals given by City have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, development of the Project in accordance with this Agreement and the additional consideration provided by the Owner under Section 4 hereof will provide substantial benefits to City, including the availability of additional services to the residents of the City, preservation of public parking on the Property in perpetuity, substantially increased property tax and sales tax to be received by City, schools, and special districts and the furtherance of important policies and goals of City; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly Development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the Development of the Project and generally serve the purposes for which Development Agreements under the Development Agreement Act and the Development Agreement Resolution are intended.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as set forth below.

1.1.1 “Agreement” means this Development Agreement.

1.1.2 “Applicable Land Use Regulations” means the Land Use Regulations in effect on the Effective Date.

1.1.3 “Applicable Rules” means this Agreement, the Entitlements, the Applicable Land Use Regulations, and the Development Agreement Resolution in effect as of the Effective Date.

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

1.1.5 “CEQA Compliance Documents” means that certain Mitigated Negative Declaration (“MND”) for the Huntington Plaza Project, State Clearinghouse # _____, based on an Initial Study (“IS”), additional focused studies evaluating the environmental impacts of the Project, the associated mitigation, monitoring and reporting program (“MMRP”) and the City’s findings and determinations with respect thereto.

1.1.6 “City” means the City of Arcadia, a California municipal corporation and charter city.

1.1.7 “City Agency” means each and every agency, department, board, commission, authority, employee, or official acting under the authority of the City, including without limitation the City Council and Planning Commission.

1.1.8 “City Council” means the City Council of the City.

1.1.9 “Development” or “Develop” means the act of constructing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. “Development” or “Develop” does not include the act of maintaining, repairing, reconstructing or redeveloping any building, structure, improvement or facility after the initial construction and completion thereof.

1.1.10 “Development Agreement” means this development agreement.

1.1.11 “Development Agreement Act” means Government Code sections 65864 through 65869.5.

1.1.12 “Development Agreement Resolution” means Resolution No. 6469, adopted July 19, 2005, pursuant to which the City has adopted procedures and requirements for considering development agreements.

1.1.13 “Development Exaction” means any requirement imposed by the City as a condition of the Entitlements such as the dedication of land, the construction of improvements or public facilities, the providing of facilities, services, or economic concessions or the payment of any Development Impact Fee in order to lessen, offset, mitigate, or compensate for the impacts of the Development of the Project on the environment or other public interests.

1.1.14 “Development Impact Fee” means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the Project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to the Development Agreement Act. Development Impact Fees do not include (a) Processing Fees and Charges or (b) 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).

1.1.15 “Discretionary Action” means an action proposed by Owner that requires the exercise of judgment, deliberation, or a decision on the part of the City or any City Agency in the process of approving or disapproving a particular activity, as distinguished from an activity

such as the issuance of Ministerial Permits and Approvals, which merely requires the City or any City Agency to determine whether there has been compliance with applicable statutes, ordinances and/or regulations.

1.1.16 “Effective Date” means the date on which the ordinance approving and authorizing this Agreement has become effective.

1.1.17 “Entitlements” is defined in Section 2.7 and includes any Subsequent Development Approvals.

1.1.18 “Land Use Regulations” means all ordinances, resolutions, codes, rules, regulations and official policies of City adopted by ordinance or resolution governing the development and use of land, including, without limitation, the Development Agreement Resolution, the Subdivision Code and any other ordinance or resolution governing the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, the design, the improvement and construction standards and specifications applicable to the Development of the Project. “Land Use Regulations” does not include any City ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) The conduct of businesses, professions, and occupations except subdivisions;
- (b) The taxes and assessments;
- (c) The control and abatement of nuisances;
- (d) The exercise of the power of eminent domain.

1.1.19 “Legal Description” means the legal description of the Property attached hereto as Exhibit “A” and incorporated herein by reference.

1.1.20 “Lender” means any lender who provides funds for the construction of the Project, or parts thereof, and takes a security interest in an asset other than the Property or Project (e.g., a security interest in the ownership interest of Owner in the Property or Project).

1.1.21 “Ministerial Permits and Approvals” means the permits, approvals, plans, inspections, certificates, documents, licenses, and all other actions required to be taken by the City in connection with the implementation of the Entitlements, which actions merely require the City or any City Agency to determine whether there has been compliance with applicable statutes, ordinances and/or regulations, including without limitation, building permits, public works permits, grading permits, encroachment permits and other similar permits and approvals. Ministerial Permits and Approvals shall not include any Discretionary Actions.

1.1.22 “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or a Lender or any other security-device lender (including any secured creditor or financier), and their successors and assigns.

1.1.23 “Owner” means New World International, LLC, a California limited liability company, and all successors or assigns of the Property, or any part thereof, permitted hereunder.

1.1.24 “Parking Easement” means the Access and Parking Easement Agreement to be entered into by and between the City and Owner as a condition of this Agreement to provide the City access to and use of 55 parking spaces on the Property in perpetuity. The Parking Easement shall be in form attached hereto as Exhibit “C” and incorporated herein by this reference.

1.1.25 “Processing Fees and Charges” means fees and charges imposed by the City to cover the estimated actual costs to the City of processing applications for permits or other entitlements or for monitoring the applicant’s compliance with the City’s issued or granted approval, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; grading permits; encroachment permits; tract maps, parcel maps; lot line adjustments, air right lots; street vacations; certificates of occupancy; filing and processing applications, and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement. Processing Fees and Charges shall not include Development Impact Fees or any exaction, impact fee, sharing fee or other fee or charge that is in the nature of a Development Impact Fee.

1.1.26 “Project” means the development of the mixed use development consisting of two buildings that will contain 10,200 square feet of ground floor commercial uses and 139 residential units and associated subterranean and surface level parking totaling 350 parking spaces, 55 of which shall be set aside as public parking spaces.

1.1.27 “Property” means the real property described in the Legal Description and shown on the Site Plan.

1.1.28 “Public Parking” means the 55 parking spaces that will be constructed on the Property as public parking, which shall be accessed and used by the public in perpetuity pursuant to the terms of the Parking Easement. The location and other specifications of the Public Parking shall be set forth in the Parking Easement.

1.1.29 “Reserved Powers” means the rights and authority excepted from the assurances and rights provided to Owner under this Agreement and reserved to City under Section 3.2 of this Agreement.

1.1.30 “Site Plan” means the approved plans for Development of the Property as set forth in Exhibit “B” attached hereto and incorporated herein by reference.

1.1.31 “Subdivision Code” means Article IX, Chapter 1 of the Arcadia Municipal Code.

1.1.32 “Subsequent Development Approvals” means those certain actions taken by the City after the Effective Date, whether Discretionary Actions or Ministerial Permits and Approvals, in connection with the implementation, amendment, and/or modification of the Entitlements.

1.1.33 “Term” is defined in Section 2.3.

1.1.34 “Transfer” is defined in Section 2.4.1.

1.1.35 “Transferee” is defined in Section 2.4.1.

1.1.36 “Transferor” means any transferor of the Property or any part thereof pursuant to Section 2.4.

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Project is hereby authorized and shall be carried out in accordance with the terms of the Applicable Rules.

2.2 Interest in Property. Owner represents and warrants that, as of the date of execution of this Agreement, Owner owns the fee simple interest in the respective portions of the Property as identified in the Exhibits.

2.3 Term. The term (“Term”) of this Agreement shall commence on the Effective Date, and shall continue for ten (10) years, unless cancelled or terminated as provided herein.

2.4 Assignment.

2.4.1 Right to Assign. Owner shall have the right to sell, transfer, or assign the Property, in whole or in part, (provided that any such transfer shall be in compliance with the Subdivision Map Act, Government Code section 66410, et seq. and shall also include a transfer of the applicable portion of the Property (“Transfer”) to any person or entity (“Transferee”)) at any time during the Term of this Agreement; provided, however, that any sale, transfer, or assignment shall be made in strict compliance with the following:

(a) As a condition precedent to any transfer, at least ninety (90) days prior to the effectiveness of any Transfer, Owner shall notify City, in writing, of such proposed Transfer and shall provide City with an executed agreement (“Assignment and Assumption Agreement”), in a form reasonably acceptable to City, by the Transferee and providing therein

that the Transferee expressly agrees to be bound by the terms of this Agreement. The City shall have the right to approve or reject any such Transferee in the City's sole and absolute discretion.

2.4.2 Release of Transferee. Upon any Transfer made in compliance with this Section 2.4, Owner shall not be obligated under this Agreement with respect to the transferred portion of the Project, and the Transferee shall not be obligated under this Agreement with respect to those portions of the Project that are not transferred to the Transferee. After any such Transfer, the term "Owner" shall refer to the Transferee as to the Transferred Property.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or canceled in whole or in part only in the manner provided for in Government Code Section 65868 and the Development Agreement Resolution. This provision shall not limit any remedy of City or Owner as provided by this Agreement.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

- (a) Expiration of the Term.
- (b) Entry of a final judgment setting aside, voiding, or annulling the adoption of the ordinance approving this Agreement.
- (c) The adoption of a referendum measure in accordance with applicable laws overriding or repealing the ordinance approving this Agreement.
- (d) Termination of this Agreement based on any default of any Owner (except as provided herein) and following the termination proceedings required by this Agreement.

Termination of this Agreement shall not constitute termination of the Entitlements or Land Use Regulations applicable to the Property or the Project; provided, however, that upon any such termination, the City shall retain all rights and powers that would otherwise be applicable to the City in the absence of this Agreement to amend, modify, or revoke the Entitlements, Land Use Regulations, or both. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement that has occurred prior to such termination or with respect to any obligations that are specifically set forth as surviving this Agreement.

Any default by any Owner or its successors and assigns under this Agreement shall not constitute grounds for the termination of the rights, duties, and obligations of any Owner or its successors and assigns with respect to any other part of this Agreement.

2.7 City's Procedures and Actions/Entitlements.

(a) Planning Commission Action. On [REDACTED], as required by California Government Code Section 65867, the Planning Commission held a duly noticed

public hearing review, and made a recommendation to the City Council regarding, the following land use entitlements (collectively, the “Entitlements”):

- (1) Conditional Use Permit No. 18-04 & 19-12
- (2) Vesting Tentative Tract Map No. 19-01 & 19-02;
- (3) Architectural Design Review No. 18-05 & 19-07; and
- (4) CEQA Compliance Documents

On _____, 2020, as required by the Development Agreement Act and the Development Agreement Resolution, the Planning Commission held a duly noticed public hearing to consider, and made a recommendation to the City Council regarding, this Agreement.

(b) City Council Actions. On _____, the City Council held a duly noticed public hearing to consider the Entitlements, this Agreement, and the CEQA compliance Documents. On _____, the City Council approved Entitlements, this Agreement, and the CEQA Compliance Documents.

2.8 Notices.

2.8.1 As used in this Agreement, “notice” includes, but is not limited to, any payment, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment, or other communication required or permitted hereunder.

2.8.2 All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) on the date shown on the document as received by the recipient after transmission by facsimile to the recipient named below; or (iv) on the date shown on the document/file as sent by the sender after transmission by electronic mail. All notices shall be addressed as follows:

If to City: City of Arcadia
240 West Huntington Dr.
Arcadia, CA 91066
Attn: City Manager
Telephone: (626) 574-5401
Facsimile: (626) 446-5729
E-mail: dlazzaretto@ci.arcadia.ca.us

Copy to: Arcadia City Attorney
Best Best & Krieger LLP
2855 East Guasti Road, Suite 400

Ontario, CA 91761
Telephone: (909) 989-8584
Facsimile: (909) 944-1441
E-mail: Stephen.Deitsch@bbklaw.com

If to Owner: New World International, LLC
Attn: Andy Yong Zhang
2334 Golden Springs Drive, Suite 200
Diamond Bar, CA 91765
Phone: 951-907-9888
E-mail: andy@newworldint.com

With a copy to: Ogletree Deakins
Attn: Robert R. Roginson
400 South Hope Street, Suite 1200
Los Angeles, CA 90071
Phone: 213-239-9045
E-mail: robert.roginson@ogletree.com

Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, and/or to a different address or e-mail address. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Vested Rights to Develop.

3.1.1 Project Entitlements/Density. Owner and its successors or assigns of the Property permitted hereunder are hereby granted the vested right to develop the Project in accordance with the Entitlements, subject to the terms and conditions of the Applicable Rules and the Reserved Powers. Without limiting the foregoing, the permitted uses, density, intensity of use, maximum height and size of proposed buildings, the construction, installation and extension of public improvements, development guidelines and standards, implementation program for processing subsequent entitlements, and other conditions of Development of the Property shall be those set forth in the Entitlements. The parties intend that this Agreement, together with the Entitlements, shall serve as the definitive and controlling document for all subsequent actions, discretionary or ministerial, related to the Development and occupancy of the Project, except as expressly provided herein.

3.1.2 Minor Revisions. The parties acknowledge that refinement and further development of the Project will require minor revisions from time to time. Unless otherwise required by law, as determined in City Council's reasonable discretion, a change to the Entitlements shall be deemed "minor", shall be processed in accordance with this Section 3.1.2, and shall not require an amendment to this Agreement or any further public notice or hearing (including any hearing before the City Council, Planning Commission, or other body of the City)

provided such change does not result in any of the items listed in (a) through (e) below occurring.

- (a) Alter the permitted uses of the Property as a whole; or,
- (b) Increase the density or intensity of use of the Property as a whole; or,
- (c) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole, including but not limited to the dedication of the Parking Easement as provided for in Section 4 of this Agreement; or,
- (d) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code; or,
- (e) Constitute an action for which notice or hearing, or both, is required by the Due Process clauses of the U.S. or California Constitution.

3.1.3 Subsequent Development Approvals. The City shall not require Owner to obtain any Subsequent Development Approval that is not required by the Applicable Rules or the Reserved Powers. City hereby agrees that it shall not unreasonably withhold or further condition its approval of any Discretionary Action relating to Subsequent Development Approvals.

3.1.4 Moratoria. In the event an ordinance, resolution, or other measure is enacted, whether by action of the City, the qualified voters, by initiative, or otherwise, which relates to the rate, amount, timing, sequencing, or phasing purportedly applying to the Development of the Project on all or any part of the Property or the implementation or construction of the Project, City agrees that, unless required by applicable state law, such ordinance, resolution, or other measure shall not apply to the Project, Property or this Agreement, unless such changes are adopted pursuant to the City's exercise of its Reserved Powers.

3.1.5 Project Development. Development of the Property shall be subject to all timing and phasing requirements established by this Agreement.

3.2 Reservation of Rights.

3.2.1 Limitations, Reservations, and Exceptions. Notwithstanding any other provision of this Agreement, the following regulations shall apply to the Development of the Project as and to the extent that such regulations apply generally to similar developments proposed or approved within the City of Arcadia:

- (a) Development Impact Fees, Processing Fees and Charges, which shall be levied and charged based on the amount in effect at the time the payment required to be made by the Owner.

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure; provided such regulations do not unreasonably and materially interfere with the development rights granted to Owner hereunder.

(c) Written regulations, policies, and rules approved by the City governing engineering and construction standards and specifications applicable to public and private improvements, including, without limitation, all uniform codes adopted by the City and any local amendments to those codes adopted by the City, including, without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code, and Grading Code.

(d) Written regulations approved by the City that may be in material conflict with this Agreement but that are reasonably necessary to protect the residents of the Project or the immediate community from a condition perilous to their health or safety. To the extent possible, any such regulations shall be applied and construed so as to provide Owner with the rights and assurances provided under this Agreement.

(e) Written regulations approved by the City that are not in material conflict with the Applicable Rules or the rights granted under Agreement. Without limiting the foregoing, any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of Development of the Property shall be deemed to materially conflict with the Applicable Rules and shall therefore not be applicable to the Development of the Project.

(f) Written regulations approved by the City that are in material conflict with the Applicable Rules; provided Owner has given written consent to the application of such regulations to Development of the Property, or the Project, or any Phase.

(g) Written regulations approved by the City that impose, levy, alter, or amend fees, charges, or Land Use Regulations relating to consumers or end users, as opposed to Development, such as, without limitation, trash can placement, service charges and limitations on vehicle parking; provided, however, that no such fees, charges, or Land Use Regulations shall materially interfere with or impose an adverse material burden upon the rights granted to Owner or its consumers or end users under this Agreement.

3.2.2 Modification or Suspension by State or Federal Law. In the event that State, County, or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provision(s) of this Agreement shall be modified or suspended as may be necessary to comply with such State, County, 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.

3.2.3 Intent. The parties acknowledge and agree that City is restricted in its authority to limit certain aspects of its police power by contract and that the limitations,

reservations and exceptions contained in this Agreement are intended to reserve to City all of its police power that cannot, by law, be expressly so limited. To this end, this Agreement shall be construed, contrary to its stated terms if necessary, to reserve to City all such power and authority that, by law, cannot be so restricted. This Agreement is intended to limit the City's authority to adopt, amend, or otherwise alter the Applicable Rules during the Term, but not thereafter.

3.3 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies, not within the control of City, possess authority to regulate aspects of the Development of the Property separately from the City. This Agreement does not limit the authority of such other public agencies. Nothing contained in this Agreement shall be construed as limiting, in any way, the authority of the City to impose on the Project any new or increased development impact fees, linkage fees, exactions, assessments, fair share charges, or other similar fees or charges adopted by any other public agency, but collected by the City.

4. PUBLIC BENEFITS – PARKING EASEMENT.

4.1 Intent. The parties acknowledge and agree that Development of the Property could result in the reduction of needed public parking in the City's downtown area and further acknowledge and agree that this Agreement confers substantial private benefits on Owner that should be balanced by commensurate public benefits, including ensuring continued availability of public parking on the Property. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on Owner by requiring the Owner, on its own behalf and on behalf of all successors in interest to the Property or any portion thereof, to provide 55 public parking spaces on the Property in perpetuity, to ensure that there is no loss of existing public parking as a result of the development of the Property.

4.2 Parking Easement. Within thirty (30) days following the Effective Date of this Agreement, Owner and City shall enter into and record in the official records of Los Angeles County the Parking Easement to provide the City access and use on behalf of the public of the Public Parking to be developed on the Property as part of the Project. The Parking Easement shall be in a senior lien position to any security interest or other liens recorded against the Property by any private party. The Parking Easement shall be in the form attached hereto as Exhibit "C".

4.3 Parking Obligations Incorporated into CC&Rs. Owner shall additionally ensure that the obligations to maintain and repair the Public Parking, and to maintain insurance in accordance with the terms of the Parking Easement, and a mechanism to ensure adequate funding to satisfy such obligations shall be incorporated into the CC&Rs prepared for the development of the Property, to the reasonable satisfaction of the City.

4.4 Maintenance of Public Parking Prior to Construction. Owner covenants and agrees that the 55 public parking spaces that are located on the Property as of the Effective Date of this Agreement shall be maintained and available to the public until such time that Owner obtains a building permit for all or part of the construction of the Project.

4.5 Completion of Public Parking.

4.5.1 Prior to issuance of a building permit for all or any portion of the Project, Owner shall deliver to City a performance bond, issued by a reputable bonding company licensed to do business in California, and reasonably acceptable to Landlord, each in an amount not less than One Hundred Ten Percent (110%) of the Public Parking Costs, to be payable to the City and to be conditioned upon the faithful performance of any and all work required to be done for the completion of the Public Parking. Said bond shall be further conditioned to the effect that, should all work required to be done hereby not be completed within the time specified in Section 4.4.2 below, the City may, at its option, cause all uncompleted work to be done and the parties executing the bond shall be formally bound for the payment of all necessary costs therefor.

4.5.2 Owner shall ensure that the Public Parking completed and available to the public no later than [REDACTED] months following issuance of the first building permit for construction of the Project.

4.5.3 In the event that Owner fails to complete the Public Parking within the time provided for in Section 4.4.2 above, the bonding company providing the performance bond under Section 4.4.1 shall have the duty to take over and complete the Public Parking herein specified. However, if within fifteen (15) days after the servicing upon it of such notice of breach, the bonding company does not give City written notice of its intention to take over the performance of the contract, and does not commence performance thereof within twenty (20) days after notice to such election, City may take over the work required to complete the Public Parking and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Owner and the bonding company shall be liable to City for any excess cost or damages occasioned City thereby.

4.5.4 The remedies set forth in this Section 4.4 applicable to the completion of the Public Parking shall be in addition to the Remedies set forth in Section 5 of this Agreement, and the process set forth in Section 4.4.3 hereof shall apply in the event Owner fails to complete the Public Parking as provided herein.

5. DEFAULT AND REMEDIES.

5.1 Remedies in General. It is acknowledged by the parties that City would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof. In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that City shall not be liable in damages to Owner, or to any successor in interest of Owner, or to any other person, and Owner, on behalf of itself and its successors and assigns covenants not to sue for damages or claim any damages:

- (a) For any breach of this Agreement or for any cause of action that arises out of this Agreement; or
- (b) For the taking, impairment, or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy, or issue regarding the application or interpretation or effect of the provisions of this Agreement.

5.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against City as provided in Section 5.1 above.

(b) City is entering into this Agreement in reliance on Owner ensuring that the public parking required herein shall be made available to the public in perpetuity, and parking in the downtown area is a finite resource that is not easily replaceable.

(c) Due to the size, nature, and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, Owner may be foreclosed from other choices it may have had to utilize the Property or portions thereof. Owner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate Owner for such efforts.

5.3 Release. Except for non-damage remedies, including the remedy of specific performance and judicial review, Owner, for itself, its successors, and assignees, hereby releases the City, its officials, officers, agents, and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability based or asserted pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage whatsoever upon the City because it entered into this Agreement or because of the terms of this Agreement.

5.4 Default of Owner.

5.4.1 City may terminate or modify this Agreement for any failure of Owner to perform any material duty or obligation of Owner under this Agreement, or to comply in good faith with the terms of this Agreement (a "Default"); provided, however, City may terminate or modify this Agreement pursuant to this Section only after providing written notice to Owner of Default setting forth the nature of the Default and the actions, if any, required by Owner to cure such Default and, where the Default can be cured, Owner has failed to take such actions and cure such Default within 120 days after the effective date of such notice or, in the event that such Default cannot be cured within such 120 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such Default within such 120 day period and to diligently proceed to complete such actions and cure such Default. Without limiting the nature of the foregoing, any one or more of the following events will constitute a "Default" by Owner:

(a) Failure of Owner to enter into the Parking Easement and record said Parking Easement against the Property in the time set forth in this Agreement;

(b) Failure of the Owner to complete and make the Public Parking available as provided herein, provided however that in the event the Owner fails to complete the Public Parking as provided herein the remedies set forth in Section 4.4 of this Agreement shall apply;

(c) Default by Owner in the observance of any of the other agreements, conditions, representations, covenants or warranties on its part in the Entitlements, this Agreement, or the Parking Easement; or

(d) The filing by Owner of a voluntary petition in bankruptcy, or failure by Owner promptly to lift any execution, garnishment or attachment, or adjudication of Owner as bankrupt, or assignment by Owner for the benefit of creditors, or the entry by Owner an agreement of composition with creditors, or the approval by a court of competent jurisdiction of petition applicable to Owner in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereinafter be amended.

5.4.2 City may, in lieu of terminating this Agreement and seeking damages against owner for failure to provide the required parking, seek specific performance based on Owner's failure to comply with one or more of the following obligations of this Agreement.

5.5 Default of City. Owner may terminate this Agreement only in the event of a default by City in the performance of a material term of this Agreement and only after providing written notice to City of default setting forth the nature of the default and the actions, if any, required by City to cure such default and, where the default can be cured, City has failed to take such actions and cure such default within 120 days after the effective date of such notice or, in the event that such default cannot be cured within such 120 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 120 day period and to diligently proceed to complete such actions and cure such default.

6. LITIGATION.

6.1 General Plan Litigation. City has determined that this Agreement is consistent with its Comprehensive General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and that the General Plan meets all requirements of law. Owner has reviewed the Plans and concurs with City's determination. City shall have no liability in damages under this Agreement for any failure of City to perform under this Agreement or the inability of any Owner to develop the Property as contemplated by this Agreement as the result of any judicial determination that, as of the Effective Date, or at any time thereafter, the Plans, or any portions thereof, are invalid or inadequate or not in compliance with applicable law.

6.2 Third Party Litigation Concerning Agreement. Owner shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless City, its agents, officers, and employees from any claim, action, or proceeding brought by a third party against City, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the

Entitlements, except any such claim, action, or proceeding based on the General Plan. City shall promptly notify Owner of any claim, action, proceeding, or determination included within this Section 6.2, and City shall cooperate in the defense. If City fails to promptly notify Owner of any such claim, action, proceeding, or determination, or if City fails to cooperate in the defense, Owner shall not thereafter be responsible to defend, indemnify, or hold harmless City. City may, in its discretion, participate in the defense of any such claim, action, proceeding, or determination, at its own expense.

6.3 Environmental Assurances. Owner shall indemnify and hold City, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of Owner, and as long as there is no contributory act by City its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns, or independent contractors, for any violation of any federal, state, or local law, ordinance, or regulation relating to industrial hygiene or to environmental conditions on, under, or about the Property, including, but not limited to, soil and groundwater conditions, and Owner shall defend, at its expense, including attorneys' fees, City, its officers, agents, and employees in any action based or asserted upon any such alleged act or omission. City may in its discretion participate in the defense of any such action.

6.4 Reservation of Rights. With respect to Section 6.1 herein, Owner reserves, and with respect to Sections 6.2 and 6.3 herein, City reserves, the right to approve the attorney(s) that the indemnifying party selects, hires, or otherwise engages to defend the indemnified party hereunder, which approval shall not be unreasonably withheld.

6.5 Challenge to Entitlements. By accepting the benefits of this Agreement, Owner, on behalf of itself and its successors in interest, hereby expressly agrees and covenants not to sue or otherwise challenge any Land Use Regulation or Entitlements affecting the Property and in effect as of the Effective Date except to the extent any such Land Use Regulation and/or Entitlement may be improperly or illegally applied to Owner. Such agreement and covenant includes, without limitation, the covenant against any direct suit by Owner or its successor in interest, or any participation, encouragement, or involvement whatsoever that is adverse to City by Owner or its successor in interest, other than as part of required response to lawful orders of a court or other body of competent jurisdiction.

7. MISCELLANEOUS PROVISIONS.

7.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the Los Angeles County Recorder by the Clerk of the City Council within ten (10) days after the City enters into the Agreement, in accordance with Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement, or if the City terminates or modifies this Agreement as provided herein for failure of the Owner to comply in good faith with the terms and conditions of this Agreement, the City Clerk shall have notice of such action recorded with the Los Angeles County Recorder.

7.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations,

understandings, or ancillary covenants, undertakings, or agreements that are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings, or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

7.3 Severability. If any term, provision, covenant, or condition of this Agreement shall be determined invalid, void, or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provisions of Section 4 of this Agreement and the payment of the Development Impact Fees are essential elements of this Agreement and City would not have entered into this Agreement but for such provisions and, therefore, in the event such provisions are determined to be invalid, void, or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

7.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

7.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

7.6 Singular and Plural. As used herein, the singular of any word includes the plural.

7.7 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

7.8 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

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

7.10 Force Majeure. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default, or considered to be a default, where delays or defaults are due to the force majeure events of war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes or lack of transportation, weather-caused delays, inability to secure necessary labor, materials, or tools, delays of any contractors, subcontractor, or supplier, which are not attributable to the fault of the party claiming an

extension of time to prepare, or acts or failure to act of any public or governmental agency or entity. An extension of time for any such force majeure cause shall be for the period of the enforced delay and shall commence to run from the date of occurrence of the delay; provided however, that the party that claims the existence of the delay has first provided the other party with written notice of the occurrence of the delay within ten (10) days of the commencement of such occurrence of delay. The inability of the Owner to obtain a satisfactory commitment from one or more construction lender(s) for the Development of the Project or to satisfy any other condition of this Agreement relating to the Development of the Project shall not be deemed to be a force majeure event or otherwise provide grounds for the assertion of the existence of a delay under this Section. The parties hereto expressly acknowledge and agree that changes in either general economic conditions or changes in the economic assumptions that may have provided a basis for entering into this Agreement and that occur at any time after the execution of this Agreement, are not force majeure events and do not provide any party with grounds for asserting the existence of a delay in the performance of any covenant or undertaking that may arise under this Agreement. Each party expressly assumes the risk that changes in general economic conditions or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such party under this Agreement, but that such inconvenience or hardship is not a force majeure event and does not excuse the performance by such party of its obligations under this Agreement.

7.11 Mutual Covenants. The covenants contained herein are mutual covenants. In addition, the covenants contained herein also constitute conditions precedent to the concurrent or subsequent performance by the party benefited thereby.

7.12 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement, including, without limitation, any and all Hotel Condominium Unit Owners. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each party, each of Owner's assignees and successors in interest, during their respective ownership of the Property or any portion thereof.

7.13 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

7.14 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Los Angeles, State of California, and the parties hereto waive all provisions of law providing for the filing, removal, or change of venue to any other court.

7.15 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the Development of the Project is a private undertaking, that

neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. No partnership, joint venture, or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

7.16 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

7.17 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain.

7.18 Agent for Service of Process. In the event Owner is not a resident of the State of California or is an association, partnership, or joint venture without a member, partner, or joint venturer resident of the State of California, or is a foreign corporation, then in any such event, Owner shall file with the Development Services Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence, and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon such party. If for any reason service of such process upon such agent is not feasible, then in such event such party may be personally served with such process out of this County and such service shall constitute valid service upon such party. Owner is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. Owner for itself, assigns, and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638). Copies of any service of process served on Owner shall be provided to any permitted assignee of such party signed in accordance with Section 2.4 of this Agreement.

7.19 Authority to Execute. The person or persons executing this Agreement on behalf of each party warrants and represents to the other that he or she/they has/have the authority to execute this Agreement on behalf of his or her/their corporation, partnership, or business entity or the City, as the case may be, and further warrants and represents that he or she/they has/have the authority to bind City or such Owner, as the case may be, to the performance of the respective party's obligations hereunder.

7.20 Days. Any referenced in this Agreement to the term "day" shall mean calendar days, or any portion thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Development Agreement on the last day and year set forth below.

“OWNER”

NEW WORLD INTERNATIONAL, LLC,
a California limited liability company

By: _____

Print Name: _____

Date: _____

By: _____

Print Name: _____

Date: _____

“CITY”

CITY OF ARCADIA, a California municipal
corporation and charter law city

By: _____
April Verlato, Mayor

Date: _____

ATTEST:

By: _____
Linda Rodriguez
Assistant City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

City Attorney

EXHIBIT "A"

Legal Description of the Property

DRAFT

Exhibit "A"

EXHIBIT "B"

Site Plan

DRAFT

Exhibit "B"

EXHIBIT "C"

Parking Easement

DRAFT

ACKNOWLEDGMENTS

STATE OF CALIFORNIA)
) ss
COUNTY OF)

On _____, 20__, before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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.

STATE OF CALIFORNIA)
) ss
COUNTY OF)

On _____, 20__, before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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