

**AMENDED AND RESTATED
EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT
Cell 2 Fashion Outlet Retail Project**

THIS Amended and Restated EXCLUSIVE RIGHT TO NEGOTIATE AGREEMENT (“**Restated Agreement**”) is made this _____ day of May, 2017, and restates and amends that Exclusive Negotiation Agreement dated the 7th day of July, 2016, (the “**ENA**”), by and between the CITY OF CARSON, a California municipal corporation (“**City**”), CARSON RECLAMATION AUTHORITY (“**Authority**”), a joint powers authority formed under the laws of California, and CAM-CARSON LLC, a Delaware limited liability company (“**Developer**”, or collectively with City and Authority, the “**Parties**”). City has a limited role hereunder and its obligations are limited to those specifically stated herein.

A. The 157-Acre Property. The Authority acquired, and currently owns, approximately 157 gross acres of real property in the City of Carson, as shown on the Site Map attached hereto as **Exhibit “A”** (the “**Property**”). The Property was acquired by the Authority on May 20, 2015, from Carson Marketplace (“CM”) who had acquired it in 2005 and entitled it and developed an environmental cleanup program. The Property is divided into five (5) Cells as shown on **Exhibit “A”**. The Property has been vertically subdivided into a surface lot (the “**Surface Lot**”) and a subsurface lot (the “**Subsurface Lot**”), which lots are referenced on the “Designation of Parcels” (**Exhibit “B”**) as Parcels 1 (Subsurface Lot) and 2 (Surface Lot) of Parcel Map No. 70372. The Property is subject to The Boulevards at South Bay Specific Plan, approved on February 8, 2006, and amended on April 5, 2011 (the “**Specific Plan**”). The Property is a former landfill site, and on October 25, 1995, the California Department of Toxic Substances Control (“**DTSC**”) approved a Remedial Action Plan (“**RAP**”) for portions of the Property, which RAP requires the installation, operation and maintenance of certain remedial systems, including a landfill cap, gas extraction and treatment system, and groundwater collection and treatment system on the Property (“**Remedial Systems**”).

B. Reclamation Authority Acquisition. City determined that there were a number of former landfill and other sites with the need for remediation in the City, including the Property, and that a substantial need existed to establish an entity to perform such remediation and which could operate ongoing remediation systems, without putting City’s general fund and taxpayer dollars at risk for such cleanup expense. Accordingly City established a joint powers authority under the provisions of the California Joint Powers Act (Govt. Code Sections 6500 et seq.), and on January 20, 2015, the governing boards of the Housing Authority and Community Facilities Districts each approved an agreement for the formation of the Authority for the purpose of overseeing and facilitating the remediation of contaminated properties in the City, and for the maintenance and potential development of same, and said Authority was formed on February 17, 2015, and officers were elected April 20, 2015. Among the powers of Authority are to purchase, hold, sell, and improve real property, to appoint officers and employees, to enter contracts, to purchase insurance, to sue and be sued, and to construct, operate, and maintain remediation systems to alleviate soil contamination.

C. The Developer. Developer was previously investigating the development of a portion of the Property when owned by CM, and consequently has a working understanding of the development constraints and environmental conditions, and continues to conduct its due diligence investigations thereof. Developer and its affiliates currently own and manage 54 million square feet

of regional shopping centers across the United States. Developer and its affiliates have demonstrated skill and expertise in retail and mixed use real estate development, the ability to attract reputable commercial tenants. Developer, headquartered in Santa Monica, has substantial local experience in development. The Authority is negotiating with Developer for the conveyance to Developer of the Surface Lot only of Cell 2, which is approximately 41 gross acres (the “**Cell 2 Surface Lot**”) and the development thereon of a first-class regional fashion outlet shopping center. The Cell 2 Surface Lot is located directly southwest of the 405 freeway, and is uniquely positioned to attract retail and commercial business from Orange County, Long Beach, and Los Angeles. This creates a prime location for development of large-scale retail uses.

D. Memorandum of Understanding. The ENA required the parties to develop a memorandum of understanding (“MOU”) to constitute the primary business points of the transaction with the understanding that certain obligations of Developer would be triggered by entering into such MOU. Said MOU has now been successfully negotiated. That agreement, the recitals, definitions, and terms thereof, are incorporated herein and made a part hereof by this reference as it expressly set forth herein. The parties shall carry out the terms of the ENA and MOU as an integrated agreement.

E. Negotiations with Goal of Reaching a Conveyance Instrument. The Authority and Developer desire, for the period set forth herein, to negotiate in good faith to enter into a purchase agreement for the conveyance of ownership of the Cell 2 Surface Lot to Developer, and setting forth the terms of Project development and operation in accordance with the MOU (a “**Conveyance Instrument**”). It is also anticipated that, concurrently with negotiating a Conveyance Instrument, the parties will negotiate an arrangement by which Developer will be refunded a share of the annual sales tax revenues generated by the Project (“**Tax Sharing**”) to the extent necessary to produce an economic return for the Project, as set forth in the MOU.

NOW, THEREFORE, and in consideration of the mutual covenants contained herein and incorporating the Recitals above which are deemed to be true and correct, and with the Exhibits are incorporated herein by reference, the parties mutually agree to the following:

SECTION 1. TERM; DEPOSITS AND PAYMENTS.

A. Initial Term. The initial term of this Restated Agreement commenced on July 7, 2016, (the “**Effective Date**”), and terminates on the date of this Restated Agreement (“**Initial Term**”). During the Initial Term, Developer (i) conducted its due diligence with respect to the Property and the Project as described herein, (ii) developed with Authority the basic business terms of the transaction, (iii) developed an initial project schedule in cooperation with the Authority, and (iv) produced a Project site plan and sample elevations.

B. Extended Term. The Developer and Authority have prepared the “**MOU**”, and the term of this Restated Agreement is hereby extended to the first anniversary of the date of this Restated Agreement to (i) obtain from the City any required additional entitlements and any required additional CEQA processing and negotiate a development agreement, and (ii) negotiate with the Authority the Conveyance Instrument, Tax Sharing terms and other necessary agreements for the transfer and development of Cell 2 Surface Lot (the “**Extended Term**”, or, together with the Initial Term, the “**Term**”).

C. Extensions. The Parties acknowledge that the number of days in the Extended Term represents their current estimate of the time required for the activities set forth above, but if notwithstanding their diligent efforts such period proves inadequate for such activities, the City Manager may from the date of approval of this Restated Agreement extend such Extended Term for one or more cumulative periods of up to 180 days, in his reasonable discretion.

D. Developer Deposits, Payments, Reimbursements, and Contributions. Developer has executed a Reimbursement Agreement, pursuant to the terms of which Developer has (i) paid One Million Dollars (\$1,000,000) to City, and (ii) commenced paying or reimbursing Authority for fifty percent of the carrying costs for the Cell 2 Surface Lot. In addition, upon execution of the MOU, and pursuant thereto, Developer is advancing an additional Four Million Dollars (\$4,000,000) to the Authority (the “**Performance Deposit**”), and upon the Authority’s receipt of the Performance Deposit the Extended Term shall commence. The deposits, payments, reimbursements of City and Authority costs, and contributions and advances to be made by Developer are all set forth in detail in the Reimbursement Agreement. The Performance Deposit is governed by the terms of the MOU.

E. Conflicts With Reimbursement Agreement. It is expressly understood that the terms of this Restated ENA and the MOU implementing the Restated ENA, are more recent in time than the Reimbursement Agreement and in the event of any specific conflicts in the terms of the Reimbursement Agreement with the terms of this Restated ENA and MOU the terms of the Restated ENA and MOU shall govern.

F. Developer Agreement Performance Guarantee. The Parties acknowledge that the Developer has agreed that when the Parties execute and deliver a development agreement and Developer acquires the Cell 2 Surface Lot, an appropriately creditworthy affiliate of Developer will indemnify the City against any loss of the City’s \$5,600,000 CALReUSE grant resulting from Developer’s failure to thereafter diligently pursue the Project, all as more specifically to be set forth in the development agreement.

SECTION 2. NATURE OF NEGOTIATIONS.

A. Good Faith. For the Term, the parties agree to negotiate diligently and in good faith for any required additional entitlements and any required additional CEQA processing, a development agreement, Conveyance Instrument, Tax Sharing terms and other necessary agreements for the Cell 2 Surface Lot, all of which are subject to all rules, regulations, standards, and criteria set forth in the City’s General Plan and applicable specific plans and zoning regulations (which may require amendment or other modification to accommodate Developer’s proposed use). Neither party is obligated in any way to enter a Conveyance Instrument nor is City or Authority obligated to approve the Project or any Tax Sharing arrangement. This Restated Agreement is a limited commitment to negotiate in accordance with the terms set forth herein. During the Term, Authority will not negotiate any sort of similar agreements with any other third party regarding the development of the Cell 2 Surface Lot except as Developer may otherwise approve in writing, but Authority may negotiate development agreements for the remainder of the Property with other developers. Such agreements shall not include an outlet mall concept and shall not otherwise unreasonably interfere with the development or operation of the Project. Nor during the Term shall Developer negotiate to establish another outlet mall at any other location within 10 miles of the

Property. The Developer has developed a unique, high class flagship outlet center in the Chicago area (Rosemont), and this Project will similarly be a flagship outlet center for the Los Angeles area.

B. Developer Due Diligence. Authority represents that it owns the entire Property, but makes no representation concerning Developer's ability to perform the Project or of the viability of the Cell 2 Surface Lot for the Project. In fact, Developer is aware that (i) the entire Property is subject to a remedial action plan and oversight by DTSC, (ii) Tetra Tech developed a Remediation Plan costing over \$100,000,000, which is now being carried out by SCS Engineers, (iii) Developer has been investigating the development of the Cell 2 Surface Lot with both the Authority and the Authority's predecessor for over three years, and has spent some \$4,000,000 and over 4,000 person-hours in this effort to date, and (iv) Authority has agreed to provide Developer with open access to the entire Property and its records pertaining to the Property in order to facilitate Developer's ongoing due diligence investigations. Accordingly, at its sole cost and expense, Developer has been given the opportunity and has completed its due diligence investigation, to assure itself of the suitability of the Cell 2 Surface Lot for development and viability of the Project. During the Term, Authority remains obligated to permit Developer and its employees, agents, representatives and contractors reasonable access to the Property pursuant to a separate agreement to conduct additional environmental evaluations, engineering studies, surveys, geological work and other studies as reasonably desired by Developer for development purposes (the "**Access Agreement**"). Under the Access Agreement, Developer will indemnify, defend and hold the City and Authority harmless from any claims, injuries, damages, penalties or fees that may be caused by Developer's access to, and investigation of, the Property pursuant to the terms of the Access Agreement.

C. City Role Under Restated Agreement. City has no real property interest in the Property which is wholly owned by Authority. However, City possesses the legal authority to regulate the zoning of the Property, to approve and modify the general plan designation and specific plans, to approve development agreements, all pursuant to state law, and to undertake environmental review and approve mitigation programs and development applications for specific projects (the "**Entitlement Obligations**"). In addition to regulatory authority, City provides public infrastructure and services to the Property, including streets, sidewalks, parkways, sewer, water, drainage, lighting, and other utilities, and must assure accessibility to the Property ("**Infrastructure Obligations**"). City wishes to contract with Authority to perform City's Infrastructure Obligations to avoid any City liability for the remediation of the Property, which was a purpose for creation of Authority. Finally, City will derive certain sales tax revenues from the development of the Project. The Authority's resources are insufficient to undertake the Project. City is prepared to pledge to Authority certain funds City would receive after development of the Property, in exchange for Authority undertaking City's Infrastructure Obligations. During the Term, the City will not process entitlements for, or negotiate development or other land use agreements with any other third party regarding the Cell 2 Surface Lot except as Developer may otherwise approve in writing, but the City may process entitlements and negotiate development agreements for the remainder of the Property with other developers.

Based on the foregoing, City's obligations under this Restated Agreement are limited to the following:

1. Entitlement Obligations. During the Extended Term, City will perform the obligations stated in Section 2.D.1., subject to the provisions of Section 5. To perform the

Entitlement Obligations, City shall be reimbursed its expenses by Developer pursuant to the Reimbursement Agreement.

2. Infrastructure Obligations. These obligations will be contracted to Authority.

3. Financial Obligations. During the Extended Term, in exchange for Authority undertaking the Infrastructure Obligations, the Authority, City will negotiate a Sales Tax sharing agreement obligating City to pay Authority based on a formula not exceeding 50% of sales taxes arising from sales generated by the Project received by City for a term not exceeding 25 years from the opening of the Project, and sufficient to meet Authority's obligations under the MOU.

Any Conveyance Instrument shall provide that Developer must (i) develop the Project consistent with all applicable laws, ordinances, regulations, zoning, the General Plan and the applicable specific plan, as the same may be varied or amended by the City to accommodate Developer's project, and (ii) obtain design development review and approval from the City's Planning Commission and City Council.

As noted above, development of the Project requires agreements and efforts by both City and Authority. To the extent within its ability, given that it is a separate agency, and subject to Section 5, City shall facilitate, and shall not impede, Authority's performance of its obligations as described herein and in the MOU.

D. *Phases of Negotiation.* During the Initial Term, the Authority and Developer's obligations were to use their good faith efforts to reach conceptual agreement on the business terms of the transaction embodied in a memorandum of understanding. These Phases of Negotiation are described as follows:

1. **Initial Term.** Agreement upon the following shall be deemed the goals of the Parties for the Initial Term:

(a) ***Conveyance Instrument Terms.*** The Conveyance Instrument terms, including a mutually satisfactory designation of (i) a specific schedule for development of the Project, which may be in phases; (ii) standard use restrictions consistent with the operation of a regional retail center; (iii) rights and limitations of Developer to assign or transfer its obligations prior to completion of the Project; (iv) provision ensuring that the Agency retains responsibility for the existing environmental issues at the Property; and (v) agreement by Developer to proceed diligently in good faith to perform its obligations and to reimburse Authority for certain of its out of pocket third-party costs of negotiating the transaction.

(b) ***Financial Provisions.*** Terms relating to: (i) the purchase price payable by Developer to Authority for the conveyance or occupation of the Cell 2 Surface Lot by Developer; (ii) Developer's sole responsibility for financing and constructing the Project; (iii) apportionment of costs, and responsibility for construction of, necessary public improvements, including City fees for processing any necessary additional entitlements for the Project; (iv) apportionment of environmental costs for soils remediation, landfill liner and pile cap, landfill cap, landfill gas systems, groundwater treatment, building protection system and other Remedial Systems needed for Project implementation; and (v) apportionment of costs of, and responsibility for constructing, onsite (*i.e.*, on the Cell 2 Surface Lot) utilities, structural piles and foundation slabs. Generally the Authority is to be responsible for the remediation program, but the Parties may

agree to the use of certain financing mechanism such as the CFD (hereinafter defined), and the Developer is responsible for the cost of onsite structural piles, the foundation slabs and vertical development.

(c) ***Tax Sharing.*** Terms of a Tax Sharing arrangement whereby Developer would receive rebates/refunds of local sales tax payable by Developer and its tenants to the City. Such Tax Sharing will be negotiated for the purpose of facilitating Developer's development and operation of the Project on the Cell 2 Surface Lot. For purposes of Tax Sharing, the rebate of local sales tax payable to Developer shall be a negotiated percentage of each dollar paid by Developer and its tenants upon taxable sales and uses attributable to the construction and operation of the Project and allocated and actually paid to, and received by, the City under the Uniform Local Sales and Use Tax Law (Part 1.5, Division 2 of the California Revenue and Taxation Code). Negotiated terms of Tax Sharing shall include, for a term, without limitation, (i) a requirement setting the City as the situs for all Project retail sales, (ii) mechanisms for maximizing the taxable retail sales attributable to the Project, such as a minimum scope of operations and/or progress schedule of shared tax percentages to reflect actual Project performance, (iii) means for the Authority to review and audit records pertaining to Project retail performance and tax calculations, and (iv) provisions of indemnity and/or defense with respect to any third-party challenge to the Tax Sharing arrangement. The available Tax Sharing Revenue may be as much as 50%, if justified by the proforma analysis. The Tax Sharing arrangement may be encompassed within the terms of the Conveyance Instrument, or may be memorialized as a standalone agreement.

(d) ***CFD.*** Two community facility districts (collectively, the “**CFD**”) have been established under statutory authority to pay for (i) operation and maintenance of the Remediation Systems, and (ii) the installation of onsite public infrastructure. Terms of the CFD may need to be restructured if the Project requires modifications to the original project for which the CFD was adopted.

(e) ***Infrastructure District.*** The parties will explore the possibility of setting up an EIFD to pay for a fire station or other public infrastructure under the enabling authority.

2. **Extended Term.** During the Extended Term, the parties will complete a Development Agreement pursuant to Government Code Section 65864 *et seq.*, as well as a Conveyance Instrument, so that Developer obtains title to the Cell 2 Surface Lot and sufficient additional and modified land use entitlements to be able to proceed with development of the Project. Among other things, the following shall be completed during this phase:

(a) **City and Developer.**

(1) ***Applications for and Processing of City Approvals.*** During the Extended Term, Developer shall use reasonable good faith efforts to submit applications for the requisite additional and modified land use entitlements for the Project from all governmental and/or quasi-governmental entities, including the City and Los Angeles County Fire Department (collectively, “**Permits**”), except for actual building permits, which will be obtained after Developer has acquired the Cell 2 Surface Lot. Approval of all of the Permits (subject to only those conditions

which have been approved by Developer) and the expiration of all applicable appeals periods to such approvals without the filing of any such appeal by a third party shall be a condition precedent to the consummation of the transaction under the Conveyance Instrument, which condition precedent is for the benefit of each of Developer, City and Authority. City shall use reasonable good faith efforts to expeditiously process, and lend reasonable cooperation to other agencies in processing Developer's Permits.

(2) **Design Theme.** The design will be suitable for a high fashion outlet center, but the design theme of the center has yet to be established. There will be a strong entry element and while stores will have varying architectural frontages facing inward, the exterior, particularly facing the freeway will have a superior architectural frontage which will make the Project noteworthy compared to other I-405 Freeway projects. Once the design is established, there will be design charrette workshops with the City's Planning Commission and/or City Council or committees thereof, which shall be open to the community and such other community meetings as the City shall direct.

(3) **CEQA/Environmental Review.** An environmental review process was previously undertaken pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA") for the Property in connection with the approval of the Specific Plan (the "Prior CEQA Review"). Developer acknowledges and agrees that the City has not yet determined whether or to what extent the Prior CEQA Review satisfies the need for environmental review as to this Project. To the extent new or supplemental environmental review is legally required for the Project under CEQA, Developer will undertake the studies, reports and analyses required, including traffic analysis, environmental impact analysis and financing plans if and to the extent required. Developer has sole responsibility at its sole cost and expense to pursue and obtain any necessary environmental approvals for the Project pursuant to CEQA. City and Authority will assist Developer in preparing any environmental documentation and processing any environmental review necessary.

(4) **Tax Sharing Arrangements.** During the Extended Term, pursuant to Section 2.D.2(a) and the City shall not pledge, encumber or otherwise commit sales tax revenues from the Project in any manner that would impair its ability to provide such sales tax assistance to the Authority and thereby indirectly to the Project.

(5) **Modification of CFD.** The City shall restructure the existing CFDs encumbering the Cell 2 Surface Lot such that the Project will be charged only such annual amounts as are necessary to pay the Project's pro rata share, based on gross building area, of only those line items of operation and maintenance of environmental systems set forth in the MOU. The proceeds of such restructured CFD shall be dedicated solely to such operation and maintenance of environmental systems on the 157 Acre Site. Actual CFD assessments can rise or fall due to the actual costs of such line items. The CFD shall not in any event charge the Project more than [[\\$1.75 per square foot of gross building area]].¹

(b) **Authority and Developer.**

¹ *On reflection, we do need a cap here.*

(i) **Conveyance Instrument.** During the Extended Term, the Authority and Developer shall negotiate the *terms* of a Conveyance Instrument, including the Tax Sharing, pursuant to Section 2.D.2(a) and in accordance with the terms of the MOU.

(ii) **CEQA Review.** The Authority shall serve as lead agency for purposes of any required CEQA *environmental* review, and Developer shall provide to Authority all funds necessary to cover the out of pocket costs of such environmental review in accordance with the Reimbursement Agreement.

E. Development of Other Cells. Developer's plan encompasses only the Cell 2 Surface Lot. Authority has solicited other development proposals on the other cells at the Property. The City and Authority shall cooperate with Developer to assure that the development of the other cells harmonizes with and contributes to the success of the Project. City and Authority acknowledge that development and operation of the Project may require that the Authority complete the environmental remediation and protection improvements for the other cells simultaneously with construction of the Project. Processing of entitlements and CEQA compliance for the Project shall not be delayed if such other projects are not ready for processing when the Project is ready, and CEQA analysis will include such project alternatives as are reasonably calculated to accommodate such other projects.

SECTION 3. DEVELOPER'S NEGOTIATION RESPONSIBILITIES. During the Initial Term, Developer prepared studies, reports and analysis necessary for Developer to determine the feasibility of the Project. Based on such analysis, subject to the terms of the MOU, and with the apportionment of responsibility as set forth therein, Developer has determined that the Project is feasible. Developer has submitted the following:

A. Project Plan and Development. A "Site Plan" specifying the conceptual framework to guide the overall development of the Project. In addition, Developer shall prepare the preliminary design plan for the Project, including design themes, as reasonably required by Authority and City, sufficient, to the extent feasible and practicable, to allow evaluation of the architectural design and site layout. In addition, Developer shall prepare the preliminary design plan of the Project including building elevations and design themes, as reasonably required by Authority and City, sufficient to the extent feasible and practicable to all evaluation of sign configuration, architectural design and similar issues. Developer shall also order and review a preliminary title report.

B. Proforma. Developer has provided a detailed *pro forma* showing the estimated budget for the development and construction of the Project. Developer intends to seek the financial assistance from Authority, described in the MOU, without which the Project would not be economically feasible, including direct financial assistance, sales tax rebates, and installation of offsite public improvements by Authority, and Developer acknowledges that the *pro forma* must justify the requested assistance as required for the Developer's return on investment. The *pro forma* shall also show an estimate of the economic return to the City for at least a ten year period after completion of the Project, including all taxes and fees (including proposed Tax Sharing scenarios), and other economic returns to the City as well as jobs and general community benefits.

C. Confidentiality. Subject to the duty of the public entities to produce documents and analysis publicly to explain the transaction, and until the Conveyance Instruments are publicly presented for approval, Authority and City agree, to the maximum extent permitted by law

including the California Public Records Act, to keep confidential the substance of the ongoing negotiations, the parties' positions, and all proprietary financial and other information submitted by Developer to Authority and City in connection with Developer's satisfaction of its obligations under this Restated Agreement, at all times during the Term of this Restated Agreement.

D. *Partners.* In addition to the information publicly available regarding Developer and its personnel, Developer shall provide adequate disclosure of Developer's joint venturers, if any, who are participants or principals of the Project, and other reasonable and relevant information requested by Authority, concerning the above. To the extent Developer is an entity established solely to undertake the Carson transaction, its financial obligations hereunder that are not otherwise supported by deposits or other security shall be guaranteed by an appropriately creditworthy affiliate of Developer.

E. *Financial Capability.* Developer shall prepare and deliver to Authority a statement of Developer's financial capabilities, including contemplated or potential sources of equity and construction and permanent loan financing.

F. *Prospective Tenants.* Developer shall diligently contact potential tenants for the Project. During the Term, Developer shall, at its sole cost and expense, place signage on the Cell 2 Surface Lot for purposes of identifying the Project ("Signage"), and Authority shall grant the necessary easements or similar agreements to do so. All Signage shall be subject to reasonable approval of the [[Executive Director]]² or his designee, and shall comply with the City's Municipal Code and standard sign requirements. Upon termination of this Restated Agreement, Developer shall (i) promptly remove the Signage at its sole cost and expense, (ii) Developer shall indemnify Authority against any mechanic liens or other claims related to the Signage, and (iii) have no claim or other right against City or Agency for any contact by third parties as a result of the Signage.

G. *Permits.* Developer will be solely responsible for obtaining all permit approvals and entitlements for the Project and developing the Project, subject to the terms and conditions hereof and of the Conveyance Instrument.

SECTION 4. AUTHORITY'S RESPONSIBILITIES.

A. *Reasonable Assistance.* Authority shall provide Developer with appropriate and reasonable information and assistance.

B. *Preparation of Instruments.* Authority shall negotiate in good faith in accordance with the MOU a Conveyance Instrument including the Tax Sharing arrangements described therein.

C. *Processing Permits.* Authority shall use reasonable good faith efforts to expeditiously process, facilitate the City's processing, and lend reasonable cooperation to other agencies in processing, Developer's Permits.

SECTION 5. DISCRETION; NON-WAIVER OF POLICE POWERS.

Although Authority and City are obligated to negotiate diligently and in good faith, they under no obligation to enter into a Conveyance instrument or Tax Sharing arrangement and all

² Who is this now?

expenses incurred by Developer during the Term are incurred at Developer's sole risk and expense. Prior to Formal Approvals, Developer's reliance on any representations or promises by City, Authority or their staff or consultants, or individual Council members, is undertaken at Developer's sole risk and expense. Although obligated to negotiate in good faith, Developer is under no obligation to enter into a Conveyance Instrument or Tax Sharing arrangement.

The Authority Board, City Council and the City's Planning Commission will be required to review and hold hearing(s) on the Project's entitlements and environmental documentation. Authority and City reserve the right to exercise their discretion as to all matters which they are, by law, entitled or required to exercise, at their discretion and nothing in this Restated Agreement shall be construed as having the effect of waiving or limiting police powers and exercise of discretion by Authority and/or the City. To this end:

(1) *Discretion.* City Council and Authority Board have complete and unfettered discretion to enter into any Development Agreement or Conveyance Instrument or Tax Sharing Agreement without explanation or cause, and this Restated Agreement is not committing Authority/City to undertake any activity requiring the exercise of discretion, including the approval and execution of a Development Agreement or Conveyance Instrument, Tax Sharing Agreement, or any other act or approval.

(2) *Instruments.* The duty of Authority and City to approve any project or execute a Development Agreement or Conveyance Instrument or approve Tax Sharing Agreement shall be conditioned upon the successful review and approval of all necessary findings and conclusions which the City Council and Authority Board are required to make, including all necessary findings and determinations required under CEQA as well as state and local land use provisions. As to any matter which Authority and City may be required to exercise its unfettered discretion with respect to the Project, nothing herein nor in a Conveyance Instrument or Tax Sharing Agreement shall obligate Authority and City to exercise discretion in any particular manner, and any exercise of discretion reserved hereunder or required by law, shall not be deemed to constitute a breach of Authority or City's duties under this Restated Agreement.

(3) *Agreement to Negotiate.* This Restated Agreement does not constitute a disposition of property and, therefore, does not require a public hearing. Authority and City's execution of this Restated Agreement is merely an agreement to enter into exclusive negotiations for a specified time period.

SECTION 6. MISCELLANEOUS.

A. *Brokerage Commissions.* Developer agrees to pay and to hold Authority and City harmless from any claim by any broker, agent, or finder retained by Developer with respect to the Cell 2 Surface Lot. Neither Authority nor the City shall be liable to pay any real estate commission or any broker's fees which may arise in relation to the Project.

B. *Copies of Documents.* During the Term, Developer shall provide Authority/City for its information, and for public reports to be prepared in connection with the Project, at no cost or expense to Authority/City, with copies of certain third party consultant, contractor, or subcontractor reports, studies, analysis, site plan layouts, engineering studies, memorandums, or similar

documents, excluding legally privileged or confidential items or proprietary financial information, regarding the Cell 2 Surface Lot. Authority and City may not sell such plans or drawings and may use them solely for planning purposes relating to the Project on the Cell 2 Surface Lot and coordinating the Project with other projects on other cells at the Property. Delivery of such documents to Authority and City shall be made without any representation, warranty, or liability whatsoever by Developer as to the accuracy or sufficiency of the contents of such documents and shall be subject to the rights of the preparers of such documents including, without limitation, any applicable copyrights.

C. *No Personal Liability.* No employee, agent, board member, partner, principal or shareholder of a Party shall have any personal liability or obligation under this Restated Agreement except as specifically set forth herein.

D. No Conflicts. Each party (“**Representing Party**”) represents to the other party that the execution and delivery by the Representing Party of this Restated Agreement, the performance of its obligations hereunder, and its fulfillment of the terms and conditions hereof do not conflict with, violate or result in a breach of any applicable law or any term or condition of any document to which Representing Party is subject.

E. *Amendment.* This Restated Agreement may only be amended in writing executed by both parties.

F. Notices. All notices, including without limitation all approvals and consents, required or permitted under this Restated Agreement shall be delivered in person, by messenger, by overnight mail courier, or by registered or certified mail, postage prepaid, return receipt requested, to each party at its address shown below, or to any other notice address designated in writing by such party. Any notice so delivered by messenger shall be deemed delivered upon actual delivery. Any notice so delivered by US mail shall be deemed delivered three (3) days after deposit in the US Mail.

Authority and City: Carson Reclamation Authority / City of Carson
701 East Carson Street
Carson, CA 90745
Attention: City Manager

With copy to: Aleshire & Wynder, LLP.
18881 Von Karman Avenue, Suite 1700
Irvine, CA 92612
Attention: Sunny Soltani, Esq.

Developer: CAM-Carson LLC
c/o The Macerich Company
401 Wilshire Boulevard, Suite 700
Santa Monica, California 90401
Attention: Randy Brant

With a copy to: CAM-Carson LLC
c/o The Macerich Company

401 Wilshire Boulevard, Suite 700
Santa Monica, California 90401
Attention: Thomas J. Leanse, Esq.

And to:

Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, California 90064
Attention: Tom Muller, Esq.

G. Default & Remedies. If a party fails to comply with its obligations (“**Defaulting Party**”), the other party (“**Non-Defaulting Party**”) may terminate this Restated Agreement if the Defaulting party fails to cure such default within thirty days after receipt of notice of default from the Non-Defaulting Party, or if such default is not susceptible of cure within such thirty day period, then if the defaulting party fails to commence such cure within such thirty day period and thereafter diligently pursue such cure to completion, not to exceed ninety days in the aggregate (“**Cure Period**”). If the Defaulting Party fails to cure during the Cure Period, the Non-Defaulting Party may terminate this Restated Agreement by providing written notice to the Defaulting Party prior to cure of such default (“**Termination Notice**”). Notwithstanding the foregoing, in no event shall any Cure Period hereunder extend the Term. Developer’s sole remedy for an Authority/City default shall be to terminate this Restated Agreement by written notice. Authority/City’s sole remedy for a Developer default shall be to terminate this Restated Agreement by written notice. Upon termination of this Restated Agreement, (i) neither party shall have any right, remedy or obligation under this Restated Agreement, except that any indemnifications provisions shall survive such termination; and (ii) each party specifically waives and releases any such rights or claims it may otherwise have at law or in equity and expressly waives any rights to consequential damages or specific performance from the other party.

H. Indemnification. Developer agrees to indemnify, defend, and hold Authority, City and their respective members, officers, staff and agents (collectively, “**Authority Indemnitees**”) harmless from any and all third party claims, actions, suits and other liability asserted against Authority or City resulting from Developer’s breach of this Restated Agreement including Signage or under the Access Agreement. This indemnity shall survive the expiration or termination of this Restated Agreement. In the event that any claim is filed against any City Indemnitees, Authority and City shall notify Developer of such claim in a timely manner to permit Developer, the opportunity to provide adequate representation to Authority Indemnitees with respect to any such claim. Nothing in this Section shall be construed to mean that Developer shall hold Authority Indemnitees harmless and/or defend them to the extent of any claims arising from the gross negligence, willful misconduct or illegal acts of any of the Authority Indemnitees.

I. General Provisions. This Restated Agreement and all terms and conditions hereof shall be governed by and construed and enforced in accordance with the laws of the State of California. If any legal action is necessary to enforce this Restated Agreement, a court of competent jurisdiction in Los Angeles County shall be the sole venue and jurisdiction for the bringing of such action. Any term may be waived only by a written waiver signed by the party against whom such waiver is to be asserted. All provisions shall not be construed in favor of or against either party, but rather as if both parties prepared this Restated Agreement. This Restated Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument. This Restated

Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof.

J. Assignment. Developer may not assign this Restated Agreement or any of its rights or obligations hereunder to any third party or entity without the prior written consent of Authority, except to an entity at least fifty percent owned and effectively controlled by The Macerich Partnership, L.P. Transfer of any ownership interest in Developer inconsistent with the foregoing shall be deemed a transfer under this provision.

K. Attorney's Fees. In any action between the parties to interpret, enforce, reform, modify, rescind or otherwise in connection with any of the terms or provisions of this Restated Agreement, the prevailing party in the action or other proceeding shall be entitled to recover its reasonable costs and expenses.

L. Authority. The persons executing this Restated Agreement on behalf of Developer warrant that (i) Developer is duly organized and existing, (ii) they are duly authorized to execute and deliver this Restated Agreement on behalf of Developer, (iii) by so executing this Restated Agreement, Developer is formally bound to the provisions of this Restated Agreement, and (iv) entering into this Restated Agreement does not violate any provision of any other agreement to which Developer is bound.

IN WITNESS WHEREOF, the parties have executed this Restated Agreement as of the day first above written.

DEVELOPER

CAM-CARSON LLC,
a Delaware limited liability company

By: _____
Thomas J. Leanse, Senior Executive
Vice President, Secretary

AUTHORITY & CITY

CITY OF CARSON, a California municipality

By: _____
Albert Robles, Mayor

CARSON RECLAMATION AUTHORITY, a
California joint powers authority

By: _____
Albert Robles, Chair

ATTEST:

City Clerk / Secretary

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Sunny Soltani
City Attorney / Authority Counsel

Exhibits: A: The Site Map (showing cells)
 B. Designation of Parcels
 C. The Preliminary Site Plan with Elevations